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## Outcomes in the Balance: The Crisis in Legal Education as Catalyst for Change

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## Outcomes in the Balance: The Crisis in Legal Education as Catalyst for Change

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# Outcomes in the Balance

The crisis in legal education as a catalyst for change



By Beau Steenken

A protracted “crisis in legal education” currently buffets law schools across the country, as the schools face a steadily decreasing number of applicants year after year. The downward trend began in 2010 and has only picked up steam since. While many anxious watchers of the trend hoped that a corner may have been turned early last year, the hope proved false as the number of LSAT takers nationwide declined in June and again in October. The October decline in particular elicited many headlines and declarations of doom, such as the title of Paul Caron’s TaxProf Blog post on the matter, “Law School Carnage Enters Its Fifth Year.”

Alarming, law schools seem unsure of how to respond to the crisis. Indeed, the initial response even threatens to feed into a downward spiral and exacerbate the problem. Because law schools tend to depend on student tuition, the general initial response took the form of relaxed admissions standards in order to maintain traditional enrollment from a smaller pool of applicants. The relaxed admissions standards may have had dire consequences as bar passage rates plummeted last July. Although causation remains difficult to prove, many commentators have pointed out the correlation to the relaxation of admissions

standards for the class that matriculated in 2011 and the poor bar results in July 2014, immediately after that same class graduated. The low bar passage rates engendered generally negative headlines that emphasized the risk in assuming the costs of attending law school with no guarantee of a career as a lawyer. The headlines may in turn lead to a further drop in applicants, which may then tempt law schools to lower admissions standards further, which would lead to lower bar passage rates, which would lead to headlines . . .

Fortunately, both the American Bar Association (ABA) and the law schools themselves recognize that major action needs to be taken, though no one is quite sure what form the ultimate solution will take. Part of the problem of coming up with the solution, of course, is that the causes of the crisis are both myriad and complex. While some of the contributing factors to the crisis derive from externalities outside the control of the legal academy (e.g., the financial collapse of 2008 and subsequent slow recovery), introspective legal educators recognize that many of the factors may be structural and internal to the academy. Responding to the internal, structural factors is a challenge that law schools and the ABA have begun to accept.

While I will not go over all of the structural contributions to the crisis in detail, a consensus seems to have emerged that the primary causes are the heavy student debt-loads caused by escalating costs of law school attendance, an oversupply of graduates for a limited number of high-end legal jobs (the aforementioned debt-load precludes many graduates taking lesser-paying jobs), and a failure of law schools to produce practice-ready graduates. (For a comprehensive, if somewhat scathing, critique of legal education structures contributing to the crisis, read *Failing Law Schools* by Brian Z. Tamanaha, published in 2012.)

Both law schools and the ABA have taken steps to address the structural problems. Law schools are now conscious of the need to restrain costs to students. Similarly, a number of law schools have begun shrinking class sizes to address the surplus of graduates. Finally, the ABA has addressed the failure of schools to produce practice-ready graduates by mandating that law schools reevaluate their curricula and shift to an outcomes-based educational model.

### The ABA and Outcomes-Based Education

The ABA maintains standards for the accreditation of law schools in the United States. Chapter three of the standards deals with the program of legal education. Prior to this academic year, the standard addressing curriculum, Standard 302, required that “each student receive substantial instruction in” a variety of educational goals, including both substantive law and legal skills. Under this old version of Standard 302, the emphasis was on law schools providing instruction on certain topics, and the ABA assumed that the provision of instruction on the defined subjects and skills equated to students gaining some mastery over them.

However, in response to the criticism of law graduates’ readiness to practice, the ABA decided to revise its standards on the program of legal education. As part of the revisions, the ABA issued a new, reworded Standard 302 for the 2014-2015 academic year. The new Standard 302, titled “Learning Outcomes,” requires schools to “establish learning outcomes that shall, at a minimum, include competency in” a similar mix of substantive and skill-based educational goals as previously existed. This new standard changes the burdens placed on law schools in justifying their curricula to the ABA. While previously schools needed only to show that they offered certain courses for accreditation, now schools must show that their

students are actually benefitting from the courses by demonstrating ability in the proscribed outcomes. In other words, the ABA now actually wants law schools to put the horse in front of the cart. Within education circles, this sort of results-focused approach is called “Outcomes-Based Education” or “Outcomes-Based Assessment.”

Outcomes-Based Education (OBE) began as an attempt to address the failures of public schools in the United States in the early 1990s, particularly in the work of William Spady, but it quickly caught on across the globe as advantageous for all levels of education. The central premise of OBE is that educational systems should be designed with specific results, or learning outcomes, in mind as the ultimate goals of the educational systems. In other words, educators start with desired results and work backward on the curriculum to further the desired results. Particular outcomes are then mapped to particular parts of the curriculum. In essence, every unit of instruction should be linked to one or more specific desired student results.

Furthermore, this system intrinsically links education and assessment. Because the system is designed with specific results in mind, those results should be measurable. Thus, if students consistently receive poor marks for specific outcomes, educators should adjust the curriculum to better teach skills that will allow the students to become proficient in those outcomes.

You can see the obvious appeal of such a system for the ABA in the face of criticism that law schools are not producing practice-ready graduates. After all, the presumed ultimate goal of most students choosing to attend law school is to practice law. Therefore, the learning outcomes for law school should be equivalent with the knowledge and skills necessary to the practice of law. Additionally, assessment of law students (i.e., exams) should confirm whether or not students are achieving proficiency in the outcomes, and, if law students are not, then a law school would need to adjust its curriculum to ensure that they begin to do so. Thus, by adopting OBE in the new Standard 302, the ABA seeks to ensure that law schools actually do produce practice-ready graduates.

### Opportunities for Law Libraries Inherent in the Adoption of Standard 302

Although law school libraries also support academic research, an increased focus on practical skill instruction within law schools (many schools had already started to do this even prior to the adoption of the new Standard 302) has

generally led to an increased emphasis on the importance of the library and legal research instruction. The new Standard 302 will potentially take this increased emphasis to a whole new level.

Subsection (b) of Standard 302 requires that the learning outcomes adopted by law schools specifically address competence in “legal analysis and reasoning, legal research, problem solving, and written and oral communications in the legal context.” Obviously, this particular desired outcome (or outcomes if schools choose to break it into multiple learning outcomes, which might make it easier to assess) corresponds rather exactly with material covered in a typical legal research and writing class. However, while previously law schools needed only to “provide instruction” on the skills in question, and so could perhaps get away with offering a single token course, because the schools must now actively demonstrate graduates’ competency in these skills, schools may find that they need to devote more resources and curricular time to skills instruction, including legal research.

I can see law libraries benefiting from these developments in several ways. First, for those of us who teach legal research in a formal setting, if you have ever wished for increased class time, now may be the time to ask. (I know my colleagues and I quite often feel like we are trying to cram too much information into too little instruction time. My students also frequently express the same sentiment on course evaluations.) Here’s where the beauty of the assessment portion of OBE comes in: you will have data to back up your request. Because outcomes-based assessment tracks students’ proficiencies in the desired learning outcomes, by the very act of grading assignments in such a system, you will also be collecting data justifying your efforts. In fact, it will be the exact same data that your school will need to use to justify its existence to the ABA. Thus, if you collect data for one year, point out areas in which students struggle to achieve competency, and then offer concrete suggestions on how their competency would improve with an extra class session or two, your request may be taken more seriously. Furthermore, if you do obtain extra classroom time, you will hopefully have data to show the next year demonstrating increased student proficiencies. After all, tracking of problem areas and subsequent improvement is rather the point behind OBE.

A second way in which libraries may benefit from the adoption of the new Standard 302 might be the inclusion of

more skills-based aspects in doctrinal courses. This will happen, I think, because of the way in which doctrinal law professors will need to start mapping their courses to specific learning outcomes. In the event of competition for what courses get offered or for approval of new courses, it may be advantageous for a professor to map his or her course to as many established outcomes as possible. (At the University of Kentucky College of Law, we already require outcome-mapping for new course proposals, and we are slowly but steadily working toward mapping existing courses to outcomes. I imagine other schools are adopting similar measures.) The inclusion of even a minor practical or research assignment may allow a faculty member to include an additional learning outcome in a course description. Of course, librarians can encourage such activity by offering to give topical bibliographic instruction for doctrinal courses, and it would not hurt to couch your offer in terms of specific learning outcomes. Ultimately, the inclusion of more skill-type exercises in non-skills courses would lead to greater library use (and potentially more library advocates among the faculty during discussions of budget cuts).

Non-academic law libraries may also benefit from the shift to OBE with the new Standard 302. I suspect that much of the training that firm libraries conduct for associates already follows an outcomes-based model, whether consciously or not. After all, firms want their attorneys to be able to do specific things in specifically efficient ways, so most training would work backward from those specific goals. However, now that law schools will explicitly be shifting to an outcomes-based model, firm librarians may find an academic audience more receptive to expressions of a wish list of skills for recent graduates. Speaking as an academic law librarian, a large part of the challenge of designing an outcomes-based course is settling on appropriate learning outcomes. As such, any list of desired outcomes provided by firm or government law librarians would be immensely helpful.

Of course, in order to reap the benefits of the opportunities presented by the adoption of the new Standard 302, law librarians will need to buy in to the concept of OBE by themselves adopting outcomes-based methods. The good news is that in addition to the potential long-term benefits discussed here, I have found that adopting outcomes-based assessment methods has also had an immediate positive impact on my legal research course. Let us now turn, then, to how one goes about setting up an outcomes-

based legal research course, with specific examples drawn from my experiences doing so at the University of Kentucky.

### Creating an Outcomes-Based Legal Research Course

The obvious first step in creating an outcomes-based course is to establish the desired outcomes. What do you want your students to be able to do after completing the course? To some extent, the preparation of any course, outcomes-based or not, incorporates this question at the beginning. However, the trick in answering this question for an outcomes-based course is to phrase your desired results in ways that can be measured. Fortunately, a ready-made template for measurable outcomes exists in AALL's *Principles and Standards for Legal Research Competencies*.

AALL created its *Principles and Standards for Legal Research Competencies* in response to many of the same complaints about law graduates' lack of readiness to practice law that have been identified as a contributing factor to the legal education crisis. AALL adopted the *Principles and Standards* with the outcomes-based educational model in mind, and, indeed, the *Principles and Standards* would serve admirably as learning outcomes for a legal research course:

- A successful legal researcher possesses foundational knowledge of the legal system and legal information sources.
- A successful legal researcher gathers information through effective and efficient research strategies.
- A successful legal researcher critically evaluates information.
- A successful legal researcher applies information effectively to resolve a specific issue or need.
- A successful legal researcher distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

Were you to simply adopt these principles as outcomes, you would have a decent start to an outcomes-based legal research course.

Many librarians who teach legal research, however, do so in conjunction with other faculty who teach the writing portion of legal research and writing classes. Such is our case at the University of Kentucky. Furthermore, our writing faculty adopted outcomes-based methods a couple of years before we did. Thus, when my colleagues and I reconstructed our course as outcomes-based, we specifically wanted it to fit with what the writing faculty was already doing.

In particular, our students' major research assignment for each semester is a Research Plan & Report covering the research the students need to do for their open memo/appellate brief that acts as their major writing assignment. Grading the Research Plan & Report is how we determine whether students are achieving competency in our desired outcomes. As such, we adjusted the outcomes to fit the assignment that had been designed with input from our writing faculty.

We ended up with five learning outcomes:

- Students will be able to assess how the structures of the U.S. legal system frame the research of a given legal problem (*rewording of Principle I*).
- Students will be able to select appropriate secondary sources and use them to begin active research of a given legal problem (*parts of Principles II and III*).
- Students will be able to conduct primary legal research to find and expand upon relevant authorities (*parts of Principles II and III*).
- Students will be able to assess the importance of updating the law and use of citators to evaluate the continued validity of all authorities to be used in solving a problem (*parts of Principles II and III*).
- Students will be able to cite authorities correctly (*included to make our writing faculty happy*).

Note that our outcomes at Kentucky either correspond to or incorporate AALL's principles. We decided to break up Principles II and III in the way we did because we thought they would be easier to assess if broken up by research activity type. Also, pedagogically we like making Shepardizing its own outcome to stress its importance, and so that is how our Research Plan & Report assignment is structured. Because assessment (i.e., grading papers) is the key part of outcomes-based education, I like the way that adapting AALL's principles to our assignment worked out, and I would recommend taking a similar approach if you decide to adopt OBE. (Note that if you want to use outcomes on a smaller scale during bibliographic instruction visits to topical courses, it should be pretty easy to adapt the *Principles and Standards* merely by adding specificity. For instance, "A successful legal researcher possesses foundational knowledge of the legal system and legal information sources" could become "A successful legal researcher of tax possesses foundational knowledge of the legal system, the tax structures of the U.S., and tax-specific legal information sources." I should admit that I do not do full assessments during bibliographic

instruction sessions, but I do often have the students run practice exercises and self-assess. While it is not full-blown OBE, I do think the principles can still apply to less formal instructional settings.)

After you settle on your desired outcomes, you will then need to break them down into measurable subcomponents in order to construct an assessment rubric. AALL's standards for legal research competencies work as the subcomponents for the principles. While there is not enough space to list all of the standards here, they are available on AALL's website at [www.aallnet.org/Documents/Leadership-Governance/Policies/policy-legalrescompetency.pdf](http://www.aallnet.org/Documents/Leadership-Governance/Policies/policy-legalrescompetency.pdf). You will notice that each standard has a number of competencies listed under it. The level of description included in the competencies will also be important as it will help you differentiate the grades for assessing each subcomponent of your desired outcomes.

In our adoption of outcomes-based methods, my colleagues and I used the terminology used by our writing faculty. Thus, instead of "standards" and "competencies," we have "categories" and "proficiencies," but the general idea is the same. In constructing our rubric, under each outcome we identify two to four categories, listed along the Y axis. Along the X axis, we list four proficiency levels: highly proficient, proficient, developing, and beginning. Under each proficiency level is a description of the things we would expect to see in a student paper corresponding to that proficiency level. An excerpt from our rubric example is below.

You could quite easily construct a rubric such as this with AALL's principles for legal research as outcomes, the standards as categories, and AALL's listed competencies as the description for a highly proficient paper. However, I do recommend adapting the wording and terminology to fit your program and assignments.

After constructing the rubric, the next step is using it to grade assignments, which happens to double as assessing whether students have achieved proficiency in the desired outcomes. Personally, I found the outcomes-based rubric easier to use than my previous rubrics. I feel like the grades given out with it more reliably correspond to my overall impressions of student papers, and I think it has improved my consistency in grading. Note that in addition to giving students a copy of the completed rubric as feedback, I keep scans of all the rubrics so that I can track progress toward proficiency in all the desired outcomes. At the end of the year, I plan on displaying the proficiency data in a chart to determine where my students have the most trouble. I will then be able to spend extra time on these areas next year by adjusting the curriculum. Responding to the data in targeted fashion is, after all, the final step in OBE and what makes it so popular.

#### My Recommendation

The outcome of the crisis in legal education remains uncertain, and it is yet to be seen whether the ABA's adoption of OBE will have the desired effect. However, both AALL's adoption of

the *Principles and Standards for Legal Research Competencies* and my own experiences suggest that incorporating outcomes-based methods into your instruction can help address some of the legal education shortcomings that have contributed to the crisis. Furthermore, adoption of outcomes-based methods by academic law libraries could increase the prestige of the library within the law school, as eventually doctrinal faculty will also need to account for learning outcomes. As such, I highly recommend putting in the effort to incorporate OBE into your instruction. ■



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Authors note: This article serves as only a brief introduction to OBE. For more detailed discussions of OBE and related concepts as applied to legal research instruction, consult the following articles: Vicenç Feliú and Helen Frazer, "Outcomes Assessment and Legal Research Pedagogy," *Legal Reference Services Quarterly* (2012); Nancy B. Talley, "Are You Doing It Backwards? Improve Information Literacy Instruction Using the AALL *Principles and Standards for Legal Research Competency*, Taxonomies, and Backward Design," *Law Library Journal* (2014); Margaret Butler, "Resource-Based Learning and Course Design: A Brief Theoretical Overview and Practical Suggestions," *Law Library Journal* (2012).

**Outcome for Section 2: Select appropriate secondary sources and use them to begin active research of a given legal problem.**

Category	Highly Proficient	Proficient	Developing	Beginning
<b>Select appropriate secondary source(s).</b>	Student selected multiple sources providing an accessible overview of the relevant area of law along with a more in-depth treatment of specific issues.  At least one of the sources was jurisdictionally specific.	Student selected one or more sources providing an accessible overview of the relevant area of law.  Source(s) was either jurisdictionally or topically specific.	Student selected one or more sources that cover the topic, but either too generally or too specifically to serve as an adequate starting point.  Source(s) was unlikely to contain cites to the specific jurisdiction.	Student did not consult secondary sources covering the relevant area of law.
<b>5 Possible Points</b>	5	4-3	2-1	0
<b>Points Awarded</b>				
<b>Comments</b>				