

COMMENTS

The purpose of this department is to afford an opportunity for informal exchange of ideas on matters related to legal education. Typical comments will range from about 1200 to about 3000 words in length, and may either advocate innovations in curriculum or teaching method or respond critically to previously published material. As a general rule, the authors will gladly answer inquiries and, to the extent available, upon request, supply copies of materials referred to.

FIRST-YEAR LEGAL RESEARCH AND WRITING: THEN AND NOW

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Why don't faculty members and deans consider legal research and writing important? Why do they fail to hold the status of instructors in these fields at the same high level enjoyed by the fellow tort, contract or commercial law professors? . . .

What happens eventually is that the faculty experts get together at faculty meetings and decide upon a person to assign as instructor in research. They assign the chore to some old professor or young junior associate. Why don't they want to do it personally? Because they won't soil their hands on such an unimportant subject. So it falls to the lot of a minor instructor, or the librarian is asked to take on an additional duty.

—From paper by Professor Albert P. Blaustein ¹

The teaching of legal research is one of those areas that we all talk about—and do least about. Few men really like to teach it. Those who do it well—such as Harry Kalven at Chicago—readily move on to more “worthwhile” things—such as teaching Torts.

—From paper by Professor Charles D. Kelso ²

As a long-time proponent of the educational value of first-year research and writing courses and of regular faculty members teaching them, I was frequently met with generalized responses such as appear in the introductory quotations. In Spring 1970, therefore, I conducted a survey intended to test the validity of these and other generalizations about research and writing courses and to collect information about the teaching and objectives of such courses in other schools. The purpose of this Comment is to summarize and interpret some of the responses to the questionnaires mailed for the survey. Since the questions which I asked and my interpretations of the responses were and are influenced by my view of the early development of research and writing courses, I will first summarize my views of that development.

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¹ Panel discussion: *The Teaching of Legal Writing and Research*, Fifty-Second Annual Meeting, American Association of Law Librarians, 52 LAW LIB.J. 350, 358-59 (1959).

² *Roundtable on Curricular Reform*, 20 J.LEGAL ED. 387, 412 (1968).

Development of Legal Research and Writing Courses

The early "research and writing" courses were what the name implies, a joinder of bibliography instruction with writing experience, frequently with an added mixture of remedial objectives related to deficiencies in legal education perceived during the post-World-War-II ferment.³ The established bibliography course, having appeared in law school curricula around the turn of the century, was the dominant partner in the new union.

It has been said that the early bibliography courses were added to law school curricula as a consequence of the publication in 1906 of *Brief Making*, edited by Roger Cooley.⁴ If this be true, then the early institutional courses went beyond bibliography instruction, since the Cooley text covered not only where and how to find the law, but also how to use decisions and statutes (which covered both analysis and evaluation) and how to prepare both trial and appeal briefs.⁵ In 1923, however, a competitive bibliography text was published, authorized by Associate Professor Frederick Hicks, Law Librarian of the Columbia University Law School. This text covered only where and how to find the law (that is, bibliography), the author urging that the analysis, logic and constructive argument that goes into "brief-making" be split off as inappropriate for first year instruction.⁶ The Hicks view apparently prevailed. Legal Bibliography courses ultimately became a staple part of the first-year curriculum.⁷ The second round of course texts focused on detailed descriptions of the ever-increasing varieties of legal research sources and their more-or-less mechanical use.⁸ Short chapters describing trial and appeal briefs provided the basis for accompanying writing and appellate moot court

³ See generally Rohan, *Some Basic Assumptions and Limitations of Current Curriculum Planning*, 16 J.LEGAL ED. 289, 290 (1964); *The Place of Skills in Legal Education*, 45 COLUM.L.REV. 345 (1945) (report of the AALS Committee on Curriculum, chaired by Professor Karl Llewellyn).

⁴ Preface, BRIEF MAKING AND THE USE OF LAW BOOKS at v (R. Cooley ed., 2d ed. 1909). Mr. Cooley was described as "Special Lecturer in Legal Bibliography in the University of Michigan, University of Chicago, University of Virginia, Cornell University, and in Some Thirty Other Prominent Law Schools." 2 A.M.L.SCH.REV. 509 (1911). Early bibliography lectures were provided by publishing company representatives, Introduction, HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 14 (1923), a substantial source of instruction well into the century and still used at some schools. The need for instruction in the law schools on how to find and use the authorities was urged early in the century. Keasbey, *Instruction in Finding Cases*, 1 A.M.L.SCH.REV. 69 (1902).

⁵ The analysis and evaluation descriptions were derived from WAMBAUGH, STUDY OF CASES (2d ed. 1894). For a description of the type of course envisioned under the "Brief-Making" title, see Mason, *Brief-Making in Law Schools*, 1 A.M.L.SCH.REV. 294 (1904).

⁶ HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 18 (1923).

⁷ A 1939 survey of forty-five smaller law schools disclosed that twenty-three of the schools required a course in Use of Lawbooks in the first year, eighteen granting one semester hour credit and five, two hours of credit, and that four of the schools required a course in Briefing or Legal Bibliography in the second year, three granting one hour of credit, one granting two hours of credit. Leflar, *Survey of Curricula in Smaller Law Schools*, 9 A.M.L.SCH.REV. 255, 258-59 (1939).

⁸ See, e. g., HOW TO FIND THE LAW (West Publishing Company 1931); A. BEARDSLEY, LEGAL BIBLIOGRAPHY AND THE USE OF LAW BOOKS (1937); M. DOUBLES & F. FARMER, MANUAL OF LEGAL BIBLIOGRAPHY (1947).

exercises at some schools, but the limited credit allotted to the courses usually precluded emphasis on finished legal writing.⁹ The descriptions of legal intellectual skills earlier exemplified in the Cooley text were gone, and with them the possibility for early systematic instruction in bibliography in combination with the problem-solving intellectual processes that are a necessary part of effective research. Since the bibliography courses dealt with description and use of law books, it was natural that law librarians should teach the courses.

Separate instruction in "legal writing" came later. In 1947 the category was first formally recognized by listing in the *Directory of Teachers in Member Schools*, published by the Association of American Law Schools. The category encompassed courses variously labelled, including upperclass instruction in specialized forms of legal writing.¹⁰ The type of course in which we are interested, however, focused on basic writing skills, first-year courses intended as vehicles for teaching post-World-War-II students how to write.¹¹ The current that produced the decisions of law school faculties to embark on teaching what should have been a pre-law-school-acquired skill was running at least ten years earlier, however.¹² One may speculate that law schools attracted students with deficient writing skills before the late 1930's, but that the problem was exacerbated by the press for advanced education during the 1930's¹³ and, later, as a consequence of the 1930's educational fad that formal study of English grammar had no or little place in the public school curricula.¹⁴ Be that as it may, law faculties grudgingly saw the necessity to become teachers of English grammar and composition.

A separate writing course was not always the vehicle chosen. Other currents were running at the same time. Legal educators were concerned about student thinking deficiencies as well as writing deficiencies; they were beginning to question the effectiveness of the vaunted case method in teaching basic legal intellectual skills.¹⁵ One method of dealing with both these concerns was to add a course with the dual objective of improving both writing and "legal thinking" abilities. Appellate moot court exercises provided a basis for one such course.¹⁶ A course in "Legal Method" was another possibility.

⁹ See Roalfe, *Some Observations on Teaching Legal Bibliography and the Use of Law Books*, 1 J.LEGAL ED. 361, 371 n. 18 (1949).

¹⁰ See, e. g., Cook, *Teaching Legal Writing Effectively in Separate Courses*, 2 J. LEGAL ED. 87 (1949).

¹¹ See, e. g., Kepner, *The Rutgers Legal Method Program*, 5 J.LEGAL ED. 99 (1952); Mandelker, *Legal Writing—The Drake Program*, 3 J.LEGAL ED. 583, 586 (1951); Lockhart, *The Minnesota Program of Legal Education—The Four-Year Plan*, 3 J.LEGAL ED. 234, 245-46 (1950).

¹² See Prosser, *English As She Is Wrote*, 7 J.LEGAL ED. 155 (1954). The basic article was originally published in 28 ENGLISH JOURNAL 38 (1939).

¹³ That students' writing inadequacies may be a consequence of fundamental cultural changes leading to increased size and changed composition of student bodies, see Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U.CIN.L. REV. 9, 56 (1968).

¹⁴ PENNCE & EMERY, *A GRAMMAR OF PRESENT-DAY ENGLISH*, Preface to First Edition reprinted at iv (2d ed. 1963).

¹⁵ See, e. g., *The Place of Skills in Legal Education*, supra note 3, at 351-56.

¹⁶ See *Id.* at 372-74, 377. It is not clear when appellate moot court exercises were first generally elevated from extra-curricular to curricular status. The wisdom of such an elevation (with no credit) was debated at a meeting of the Association of America Law Schools as early as 1916. Oliphant, *A Course in Brief Making and Legal Argument*, 4 A.M.L.SCH.REV. 258 and discussion following at 260-72.

The "Legal Method" category of courses was baptized by inclusion in the *Directory* in the same year that "Legal Writing" was added, 1947. The first popular legal method course book combined an introduction to interpretation of legislation, case analysis and synthesis, and legal reasoning with an introduction to legal bibliography.¹⁷ It was an instant success. Two years after its publication, it was being used in more than fifty law schools.¹⁸ A legal method course offered a good basis for comprehensive problem-solving exercises requiring integrated use of the intellectual legal skills with research and writing.¹⁹ However, the authors of the popular first legal method course book urged use of practice writing exercises in connection with the course only to test students' understanding of the bibliography materials therein,²⁰ and their emphasis on development of the legal intellectual skills was directed toward use in the study of law rather than in broader legal problem-solving activities.²¹ Thus passed a second opportunity for early development of systematic instruction in all the basic skills necessary for problem-solving.

The strongest current of all came out of the University of Chicago Law School, with published description of its ten-year experiment involving a program in research and sustained exposition.²² Obviously planned with a view to correcting perceived deficiencies in legal education, including lack of the individualized work of faculty with students common to other graduate schools, the Chicago program nevertheless was not presented as a "remedial" program, but one having an independent rationale. The program carried eight hours of credit. Among the objectives emphasized were training in use of legal research tools and in sustained and creative exposition, with emphasis on the intimate working relationship of research, analysis and exposition; work with the precedents of a single jurisdiction, and exposure to realistic problem fact patterns and to the fuzzing of subject matter classifications in real problems. The author emphasized the potential of the program for experiment in the problem method of teaching and for the type of more rigorous training in case analysis and other legal-craft skills urged by Professor Karl Llewellyn as part of the renewed debate about the teaching of practical skills in the law schools.²³ Perhaps most importantly, the author emphasized that the purpose of the writing objective was not the teaching of English com-

¹⁷ N. DOWLING, E. PATTERSON & R. POWER, *MATERIALS FOR LEGAL METHOD* (1946).

¹⁸ Jones, *Notes on Teaching Legal Method*, 1 J.LEGAL ED. 13, 15 (1948). By 1950, forty-four schools offered some form of introductory course such as legal method, while fifty-five schools offered a separate bibliography course. Agnor, *A Survey of Present Law Schools Curricula*, 2 J.LEGAL ED. 510, 510-11 (1950).

¹⁹ See Kepner, *supra* note 11 for a description of a program which approached this combination.

²⁰ N. DOWLING *supra* note 17, Preface at ix.

²¹ *Id.* at vii-viii and x. See also Jones, *supra* note 18, at 15. A competitive text, W. FRYER & C. BENSON, *LEGAL METHOD AND LEGAL SYSTEM* (One vol. ed. 1950) (originally published in two volumes in a temporary edition in 1948), had a somewhat broader orientation, but its introductory character was emphasized in the authors' Preface at viii-ix.

²² Kalven, Jr., *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J.LEGAL ED. 107 (1948). To a lesser extent, the later described Harvard tutorial program contributed to the "program" current. See Cavers, *The First Year Group Work Program at Harvard*, 3 J.LEGAL ED. 39 (1950) (describing principal purposes to be increasing understanding of legal processes and of students' job as law students, removing psychological impediments to effective study).

²³ *The Place of Skills in Legal Education*, *supra* note 3.

position: "Give a man a live problem, push him hard on analysis, give him an interested reader, and his literacy will begin to take care of itself."²⁴ Unfortunately, in my view, one of the positive features urged for the program was that it contemplated its own staff of teaching fellows, recent graduates hired to teach in the program for only one year. The teacher-training possibility of this type of apprentice staffing was reported as an added bonus.

Coming as it did in the first volume of the *Journal of Legal Education*, in 1948, the published description of the University of Chicago program combined with the other currents in first year legal education to produce a sustained writing spree in the *Journal* not since equalled. Over eleven years, each volume of the *Journal* carried one or more Development Notes describing individual school variants of research, writing, legal method and other "introductory" programs. But, the real promise of the University of Chicago experiment appears not to have been adequately recognized; too many of the descriptions tended to return to focus on basic remedial elements—frequently writing—rather than on the problem-solving/practical training potential of the Chicago program.²⁵ Chicago's neat finesse of the staffing problem did not go unnoticed, however. Other schools resorted to the short-term appointment route to provide teachers. Those which could not afford that route pressed faculty members²⁶ or students,²⁷ into service or shifted the work with student papers to young practicing attorneys.²⁸ None of the other faculties was as generous with credit for their "program" or course variants as was the Chicago faculty, however. Thus passed a third opportunity for systematic instruction in legal problem-solving skills in law schools generally.

The "Legal Research and Writing" title attached to many of these first year course variants. The general picture of a legal research and writing course which emerges from the foregoing survey is of a course which focused on significant skills not being developed through traditional first year courses, the need for which was apparently generally recognized among faculties. Unfortunately, many of the early courses were essentially remedial, gap-filling courses which focused on "research" (bibliography) and "writing" (remedial) instead of on the potential unifying theme—legal problem-solving. Thus, the potential for teaching and honing the broader intellectual legal skills within the course was obscured. The early dominance of legal bibliography, with instruction by librarians; the remedial and introductory image; the abnormal staffing methods—all combined to create an image of a course requiring less than the expertise of "law" teaching, and not very much credit.

Perhaps in 1959, then, Professor Blaustein's evaluation of faculty attitudes toward the significance and staffing of legal research and writing enterprises, as reflected in the opening quotation in this Comment, was justified. But was it still justified in 1968 when Professor Kelso focused on "research" with his observations in the second opening quotation? Or had research and writing courses evolved beyond their earlier objectives and staffing patterns? This was the general question for which I sought an answer through my survey.

²⁴ Kalven, Jr., *supra* note 22, at 117.

²⁵ Macaulay & Manne, *A Low-Cost Legal Writing Program—The Wisconsin Experience*, 11 J.LEGAL ED. 387 (1959).

²⁶ See, e. g., Mandelker, *supra* note 11, at 584.

²⁷ Macaulay & Manne, *supra* note 25.

²⁸ Kepner, *supra* note 11, at 102.

The Survey Responses

General Description of the Survey.

Four different questionnaires were used. The basic questionnaire (hereinafter called R & W questionnaire) was mailed to all persons listed in the *Directory of Law School Teachers* (1968-70) as teaching a "Legal Research and Writing" course. A shorter questionnaire (hereinafter called Bibliography questionnaire) was mailed to all persons listed in the *Directory* as teaching only a "Legal Bibliography" course. A combination of these two questionnaires (hereinafter called Combination questionnaire) was mailed to all persons listed in the *Directory* as teaching both types of courses. Finally, arrangements were made for distribution of another questionnaire (hereinafter called Short Term questionnaire) to persons hired to teach in a legal research and writing program for a short term, that is, recent law school graduates hired for one or two years as "instructors," "fellows," or "associates."

Overall response to the individually addressed questionnaires was 47%.²⁹ A total of at least eighty-four schools are represented among the responses, or 71% of the schools to which some form of questionnaire was addressed. Twenty-three of the represented schools appear only in responses to the Bibliography questionnaire.³⁰

Who Teaches Legal Research and Writing Courses—and Why?

A diversity of staffing methods was still being used for the 1969-70 school year among the sixty-three schools responding with respect to a research and writing course. For example, sixteen schools used students in combination with faculty members, sometimes with attorneys as well. Three schools relied exclusively on attorneys. Twelve used short-term instructors.

²⁹ Responses, although smaller in number than hoped for, were nevertheless gratifying in light of the fact that the questionnaires were mailed during the Kent State unrest and resultant disruptions of normal routines that swept law schools in Spring 1970.

³⁰ Complete details as to the distribution and responses are as follows:
R & W questionnaire (43% response):

197 copies mailed

1 returned, address unknown

6 responses by letter from persons no longer teaching such a course

76 completed questionnaires returned

7 of the completed questionnaires were completed by persons teaching upper-class courses and those questionnaires have not been tabulated in figures reported herein

3 of the completed questionnaires were completed by persons teaching Legal Bibliography only and were tabulated with the Bibliography questionnaires

8 of the completed questionnaires were completed by practicing attorneys, library staff member, or faculty members having supervisory responsibility only, and their responses were included selectively (when appropriate) in some of the figures reported herein.

Combination questionnaire (53% response):

19 copies mailed

1 copy returned, address unknown

2 responses by letter from persons no longer teaching the courses

8 completed questionnaires returned.

The remainder relied primarily on faculty members, both regular and library.³¹

My initial inquiry was whether responses supported the generalizations quoted at the beginning of this Comment. Among the schools relying primarily on faculty members, did the teaching responsibilities fall disproportionately on older professors, the young in rank and years of service, and librarians? No such pattern is suggested by the data, though librarians do carry a substantial part of the teaching load. Among the persons with faculty rank who responded to the R & W and Combination questionnaires, 36% were librarians (including one assistant librarian); almost half of these were respondents to the Combination questionnaire, however (that is, those who were listed in the *Directory* as teaching Legal Bibliography as well as Research and Writing).³² Among the regular faculty members, 28% were professors, 37% were associate professors, and 35% were assistant professors.³³ Among the regular faculty members, there appeared to be no pattern of assignment to "some old professor." One of the full professors had been teaching in law schools for 39 years and one for 25 years, but the remainder had taught for from one to fifteen years. Nor did teachers appear to be unduly concentrated among the very young—in years of teaching—faculty members. Years of law school teaching within the associate and assistant professor group ranged from one to eight years. Only three were in their first year of teaching, however, and only six, in their second year of teaching.

Bibliography questionnaire (62% response):

45 copies mailed

2 copies returned, address unknown

1 reponse by letter from a person no longer teaching such a course

27 completed questionnaires returned.

Short term questionnaire:

Packets of this questionnaire were mailed to the Deans of 34 selected law schools. Some of these schools were selected because I knew that their research and writing programs were staffed by short-term appointees. The remainder were selected because their school catalogs described a more or less comprehensive research and writing course, but the *Directory* listed no or only one faculty member as teaching such a course. Eight schools did not respond. Twelve Deans indicated use of short-term instructors to staff their programs. Questionnaires were returned by at least one instructor from each of these twelve schools, a total return of 32 questionnaires.

³¹ "Regular" faculty members will be used herein to exclude faculty members who are also librarians or assistant librarians, who will be referred to as "library faculty" members.

³² Among respondents to the Bibliography questionnaire, on the other hand, 89% were librarians (including one assistant librarian).

³³ The breakdown by rank and duties was as follows:

| | <u>R & W</u> | <u>Combined</u> | <u>Bibliography</u> |
|--|------------------|-----------------|---------------------|
| Regular faculty: Professor | 12 | 0 | 2 |
| Associate Professor | 16 | 0 | 1 |
| Assistant Professor | 14 | 1 | 0 |
| Library faculty: Professor (or equivalent) | 7 | 4 | 10 |
| Associate Professor | 4 | 2 | 7 |
| Assistant Professor | 5 | 1 | 7 |

Was there a pattern of "assignment" to the unwilling, as suggested in one of the opening quotations? Among all respondents to the R & W and Combined questionnaires, 56% indicated that they taught solely by reason of choice. An additional 14% taught because of some element of choice (hence, a total of 70%), leaving only 30% who indicated that they taught solely because of assignment, moral suasion, or a combination thereof. Among regular faculty members, the choice element appears slightly less often—in 64% of the responses—but among full professors, the 70% choice figure holds.³⁴

The final characteristic of research and writing teachers suggested in the opening quotations is a desire to escape from the teaching assignment. Rapid movement out of the teaching assignment is not suggested by the responses. Among the seventy-two respondents whose responses were included in one or more of the tabulations reported in this section, seventeen were not teaching research and writing at the time of completing the questionnaire, though four of them indicated an expectation to return to teaching this course in the future.³⁵ Among the tabulated respondents also were eight persons who did not expect to continue teaching the course in the future. Of these eight, three came from the regular faculty professional rank; interestingly enough, these were the three professors who indicated that they taught solely because of assignment. Of those eight persons not expecting to continue in the teaching post after 1969-70, only two, both assistant professors, had indicated an element of choice in their teaching of the course. One might conclude that movement away from teaching research and writing is strongest among those who did not want to teach the course in the first place—not at all surprising. The conclusion is strongly supported by a tabulation of responses to a question about how many years respondents had been teaching the course: Those who taught because of choice only or some element of choice had generally been teaching the course for more years than the unwilling teachers. Among those exercising some element of choice, the average years of teaching

³⁴ The breakdown was as follows:

| | Choice | Choice plus Assignment and/or Moral Suasion | Assignment Moral Suasion or a combination |
|----------------------------|--------|---|---|
| Regular faculty: Professor | 6 | 1 | 3 |
| Associate | 5 | 3 | 6 |
| Assistant | 7 | 1 | 4 |
| Library faculty: Professor | 8 | 2 | 2 |
| Associate | 5 | 0 | 1 |
| Assistant | 3 | 1 | 3 |

Surprisingly, among respondents to the Bibliography questionnaire, the choice element appeared less frequently. Only 17% of the respondents taught legal bibliography solely by reason of choice. The number who taught it because of some element of choice increased the overall percentage to only 50% versus the 70% total for teachers of Legal Research and Writing courses.

³⁵ Note, however, that six of the 197 addressees of the R & W questionnaire did not complete a questionnaire because they were no longer teaching such a course.

the course was 5.2 years; among those teaching because of assignment and/or moral suasion, the average was only 2.4 years.³⁶

Reactions to the Teaching Experience.

If one accepts, for purposes of argument, that "Few men really like to teach" research and writing, the first inquiry must be, "Why?" How does this teaching experience compare with other law school teaching experiences? In response to a question intended to elicit such comparison, about half of all the legal research and writing teachers who taught other law school courses expressed the view that teaching this course was less stimulating, was more challenging, and required more work than teaching other courses.³⁷

³⁶ The average years of teaching the course among responding faculty members was as follows: (Figures in parentheses indicate the number of persons in each group who responded to the question about years of teaching the course.)

| | <u>Those who teach by choice</u> | <u>Those who teach by Assignment</u> |
|-------------------|--------------------------------------|--|
| Regular Professor | 7. (7) | 3.3(6) |
| Associate | 3.3(9) | 2.5(3) |
| Assistant | 2.3(7) | 1.8(5) |
| Library Professor | 8.9(6) | 1.5(2) |
| Associate | 4.8(5) | 3 (1) |
| Assistant | 3.5(5) | 3.5(2) |

³⁷ Percentage responses were as follows:

| | <u>More stimulating</u> | <u>Less stimulating</u> | <u>About the same</u> |
|------------------------------------|-------------------------|-------------------------|-----------------------|
| Regular faculty | 15% | 56% | 29% |
| Library faculty | 38% | 33% | 29% |
| Regular faculty teaching by choice | 18% | 45% | 37% |
| | <u>More challenging</u> | <u>Less challenging</u> | <u>About the same</u> |
| Regular faculty | 41% | 34% | 25% |
| Library faculty | 78% | 11% | 11% |
| Regular faculty teaching by choice | 40% | 25% | 35% |
| | <u>More work</u> | <u>Less work</u> | <u>About the same</u> |
| Regular faculty | 55% | 15% | 30% |
| Library faculty | 70% | 15% | 15% |
| Regular faculty teaching by choice | 60% | 4% | 36% |

Different questions had to be asked of the short-term instructors about their reaction to the teaching experience. Their responses:

I found the teaching experience to be:

| | |
|---|-----|
| An intellectually stimulating and challenging experience | 19% |
| Sometimes stimulating and challenging, sometimes drudgery | 75% |
| Sheer drudgery | 6% |

If I had the opportunity to continue similar teaching:

| | |
|---|-----|
| I would not be interested under any circumstances | 41% |
| I would be interested in repeating the experience once or twice | 43% |
| I would be interested in making a career of this type of teaching | 16% |

One's first reaction is that there has to be something wrong with an experience that almost half of the responding participants would not want to repeat under any circumstances. However, this negative response was higher among the 25% of the short-term respondents who indicated that they did not plan to continue in law school teaching, perhaps reflecting general disenchantment with or lack of interest in teaching rather than unhappiness with the particular teaching experience.

Fifty-six per cent of the regular faculty teachers found teaching the course to be less stimulating than teaching other courses. It is difficult to reconcile that response with the 41% response of regular faculty members that the course is more challenging than other courses: challenge usually provides intellectual stimulation. We might speculate that the "less stimulating" response is relatable to work with first year students, but would nearly so many regular faculty members respond that teaching traditional first year courses is less stimulating than teaching traditional upperclass courses? We might speculate that it is the slower-paced paper (rather than class discussion) framework which makes the experience less stimulating, but would nearly so many respond that teaching an upperclass seminar or working with individual students on research projects is less stimulating than teaching a traditional upperclass course? Perhaps the answer to both these questions is affirmative. If so, the combination of first year students and paper framework will of necessity provide the least intellectual stimulation for a majority of law school teachers. My speculation would lead me to find other explanations, however—too narrowly conceived objectives for the courses and the "more work" comparison by 60% of the regular faculty members (since intellectual stimulation diminishes as work load accumulates). I would speculate further that there is a relationship between these two explanations and the 50% of regular faculty members who found time insufficient to do all that seemed necessary and desirable in teaching the course.³⁸

That such a high percentage of regular faculty members found teaching this course to require more work than teaching other courses (55%) is not surprising. Perhaps the surprise is that the percentage is so low. A research and writing course almost inevitably has more peak workloads than does a traditional course, for which a peak workload ordinarily occurs only at examination-grading time. There is a peak for a research and writing teacher if preliminary writing exercises are assigned.³⁹ There are peaks for drafting problem assignments,⁴⁰ for critiquing the students' papers, and for conferring with the students—the whole sequence being repeated if more than one major problem assignment is used. Furthermore, the number of students in a research and writing class has a direct relation to the amount of work required, whereas the number of students in a traditional course has much smaller impact on the work load, usually only on the examination-grading time. Herein lies a second explanation of the "more work" evaluation. Among the regular faculty respondents to the R & W question, less than half worked with under thirty students. Above the thirty breaking point were five who worked with 35, 40, 50, 90 and 90 students respectively. The remainder of the regular faculty respondents were working with from 126 to 300 students, an incredible teaching burden if one merely attempts to become minimally acquainted with the abilities of the individual students and to do a critique of one major paper for each. (Further, to return to the "less stimulating" evaluation, critiquing the papers of and conferring with even ninety students can hardly be stimulating.)

Certainly the less-stimulating/more-work combination might account for some reluctance to teach or to continue to teach research and writing, but are

³⁸ See note 41 and accompanying text, *infra*.

³⁹ See note 46 and accompanying text, *infra*.

⁴⁰ Most of the research and writing teachers indicated that they drafted their own problems, estimates of time devoted to drafting ranging from one hour to an estimate of desperation, 2000 hours. Most estimates fell within the 30 to 100 hours range.

there more specific aspects of the teaching experience that make it unattractive? Among regular faculty members, the most frequently identified "worst" part of the teaching experience was insufficient time to do what seemed necessary or desirable (50%), with administrative details running a close second (42%).⁴¹

Only 18% of the regular faculty members objected to dealing with remedial writing problems, but the small percentage is perhaps attributable to the fact that few of the responding teachers believed improvement of basic writing skill to be a primary objective of their courses, as will be subsequently discussed. The percentage of short term instructors who objected to this aspect of the work was substantially higher (45%), but then they found work with the papers to be the most onerous part of their work (68% vs. 37% among regular faculty teachers). One may speculate that the short-termers' reaction is attributable to lack of experience. As with the first experience with grading examinations or working with seminar papers, the first time is the worst time.

The small percentage of regular faculty members who objected to teaching bibliography (17%) is also misleading. Among respondents to the R & W and Combination questionnaires, only 20% of the regular faculty members actually taught bibliography, the others indicating that someone else (usually the librarian or a member of the library staff, but occasionally students) taught this part of their course. Among regular faculty members who taught bibliography, all but three indicated that this was a "worst" part of the teaching experience.

The "best" part of the teaching experience for regular faculty teachers and short-term instructors was clearly the work and discussion with individual

⁴¹ The question asked was an invitation to check one or more features of teaching research and writing which were listed following the statement, "The worst part of the experience is:" The following breakdown shows the percentage responses for each feature, with the number of respondents identified in parentheses.

| | <u>Regular Faculty</u> | <u>Library Faculty</u> | <u>Short Term</u> |
|---|------------------------|------------------------|-------------------|
| Insufficient time to do all that seems necessary or desirable | 50% (19) | 48% (11) | 26% (8) |
| Administrative details | 42% (16) | 17% (4) | 13% (4) |
| Work with papers | 37% (14) | 39% (9) | 68% (21) |
| —Particularly: | | | |
| Writing style | 21% (8) | 8% (2) | 33% (11) |
| Remedial writing | 18% (7) | 13% (3) | 45% (14) |
| Grades | 15% (6) | 30% (7) | 48% (15) |
| Analysis | 5% (2) | (0) | 16% (5) |
| Research | 3% (1) | (0) | 13% (4) |
| Classroom teaching | 24% (9) | 30% (7) | 13% (4) |
| —Particularly: | | | |
| Bibliography | 17% (7) | 17% (4) | 13% (4) |
| Analysis and synthesis | (0) | 4% (1) | (0) |
| Legal Reasoning | (0) | (0) | (0) |
| Problem solving | (0) | (0) | (0) |
| Moot Court | 3% (1) | (0) | (0) |

students (63% and 61% respectively), but not for library faculty, 61% finding the classroom teaching to be the best part, the work with students being a secondary attraction (43%).⁴²

One final basis for evaluating a teaching experience is the perceived attitudes of the students. The final question asked on all questionnaires was, "Indicate your best guess as to the students' reaction to the program," followed by a list of possible student thoughts about the course. Among all research and writing teachers responding to this question, 32% "guessed" that half or more of their students found research and writing to be their *most* interesting course, while 91% guessed that half or more of their students thought the course was "relevant." However, 65% guessed that half or more of their students thought that other faculty members did not sufficiently appreciate the course.⁴³ If our perceptions of others' thoughts tend to reflect our own, perhaps many of the responding research and writing teachers

⁴² The breakdown of responses was:

| | <u>Regular Faculty</u> | <u>Library Faculty</u> | <u>Short Term</u> |
|----------------------|------------------------|------------------------|-------------------|
| Work with students | 63% (24) | 43% (10) | 61% (19) |
| Classroom teaching | 29% (11) | 61% (14) | 58% (18) |
| —Particularly: | | | |
| Legal Reasoning | 13% (5) | 9% (2) | 26% (8) |
| Writing | 11% (4) | 13% (3) | 6% (2) |
| Bibliography | 8% (3) | 39% (9) | 6% (2) |
| Problem Solving | 5% (2) | 17% (4) | 26% (8) |
| Analysis | (0) | 4% (1) | 13% (4) |
| Work with papers | 13% (5) | (0) | 13% (4) |
| Moot Court arguments | 24% (9) | 4% (1) | 29% (9) |

⁴³ The detailed percentage responses are set out in the following chart. Responses to the same question from the Bibliography questionnaire are included in the tabulation primarily because of the divergence in response on the first item.

| | <u>All</u> | <u>Most</u> | <u>About Half</u> | <u>Few</u> | <u>None</u> |
|--|------------|-------------|-------------------|------------|-------------|
| Thought it was their most interesting course | | | | | |
| —Research and writing teachers | 1% | 12% | 19% | 54% | 15% |
| —Bibliography teachers | 0% | 0% | 5% | 70% | 25% |
| Thought it was relevant (important) | | | | | |
| —Research and writing teachers | 21% | 54% | 16% | 8% | 0% |
| —Bibliography teachers | 24% | 60% | 16% | 0% | 0% |
| Thought too little credit was given | | | | | |
| —Research and writing teachers | 34% | 32% | 11% | 13% | 9% |
| —Bibliography teachers | 35% | 39% | 0% | 13% | 13% |
| Thought it required too much time | | | | | |
| —Research and writing teachers | 25% | 41% | 17% | 11% | 6% |
| —Bibliography teachers | 0% | 47% | 7% | 20% | 26% |
| Thought other faculty members did not sufficiently appreciate the course | | | | | |
| —Research and writing teachers | 5% | 30% | 30% | 21% | 15% |
| —Bibliography teachers | 7% | 33% | 13% | 27% | 20% |

still sensed what Professor Blaustein earlier surmised about general faculty attitudes toward their course: "They won't soil their hands on such an unimportant subject."

Does such a general faculty attitude still exist, assuming that it once did? My survey provides no complete answer. That faculty members generally view a research and writing course as unimportant is difficult to believe in light of the changed attitudes among law faculties toward teaching practical skills through clinical programs and of the increased recognition that two years—or even one year—of exposure of our students to the "case method" is a snap and a bore for increasing numbers of those students. Responses to the survey do establish, however, that some people—some regular faculty members included—do choose to teach a first year research and writing course and that many do find the experience at least as tolerable as teaching other law school courses and sometimes an even more stimulating and challenging experience.

Characteristics and Objectives of Legal Research and Writing Courses.

Unfortunately, my survey furnished few answers to my questions about the stage of evolution of present research and writing courses, in part because of inadequacies in the questions asked and in part because of inadequacies in tabulation methods.

One answer is clear: credit allotments for the courses have not generally increased. One school still managed to get by without giving any credit for the course. The greatest credit, six quarter hours (4 semester hours) was allotted for a course taught by short-term instructors which was tied to a substantive course, so that some of the credit was probably allotted for work in the substantive course. Two runner-up schools allotted five quarter hours (3.3 semester hours), for, respectively, a similarly allied and instructed course and for a course taught by regular faculty members. Eleven schools allotted three semester hours or the rough equivalent in quarter hours, but the remaining forty-six schools were divided, about two-thirds to granting two semester hours credit or quarter hour equivalent, and about one-third, one semester hour.⁴⁴

There may be some movement toward broader characterization of the objectives of the courses. Teaching bibliography and research methods (80%) and improving writing style (73%) were overwhelmingly identified as the primary objectives, but other strong primary objectives were teaching legal reasoning (58%) and problem solving (52%). To a lesser extent, teaching the more basic opinion synthesis (35%) and analysis (30%) skills were still primary objectives. Improvement of basic writing was in the lower third of possible primary objectives (30%) and almost at the bottom was introduction to study of law (11%). Thus, the remedial (improving basic writing and opinion analysis skills) and service (introduction to study) elements were subordinated at most schools.⁴⁵ My characterization of the legal reasoning

⁴⁴ Expectably, even less credit was allotted to bibliography courses. The bulk of the schools (22) allotted one semester hour or quarter equivalent, two schools allotted two and three semester hours respectively, and three allotted no credit.

⁴⁵ The question permitted checks for primary, secondary, incidental and "not at all" objectives. Percentages of responses for primary and for primary-plus-secondary objectives are reported in the following chart, with responses to a similar question on the Bibliography questionnaire similarly tabulated in the adjoining columns to

and problem-solving objectives as "broader" objectives may be overly optimistic, however. Both were also regarded as primary objectives of legal bibliography courses by a fair number of respondents to the Bibliography questionnaire (21% and 34% respectively). It is possible that questionnaire respondents did not share my view of these objectives as encompassing a full range of legal intellectual skills. Furthermore, among twenty respondents who indicated that they used reading assignments in teaching analysis, synthesis and legal reasoning, eight were using legal bibliography books which carry only the most rudimentary mention of these facets of legal problem-solving and four were assigning writing style books which include no coverage thereof.

Most research and writing courses appeared to have a strong practical orientation. The formats required for students' written submissions were overwhelmingly practice-oriented rather than scholarly: memoranda (87%), letters to clients (25%), appeal briefs (57%), and trial court memoranda or briefs (17%). Only 15% of the respondents indicated that they used case note or case comment formats. A large percentage of respondents (70%) indicated that the problems which they assigned required factual analysis as well as analysis and application of the law: 33% used problems which required consideration of conflicting information; 55% used problems which required consideration of factual inferences which might or might not be validly drawn; 46% required consideration of what additional information should be sought in further factual investigations.

permit comparison of the varying emphasis as between "research and writing" and "bibliography" courses, which are sometimes viewed as interchangeable labels.

| Primary Rank | Questionnaires—All except Bibliography | | Bibliography Questionnaires | |
|----------------------------------|--|---------------------|--|---------------------|
| | Primary | Primary + Secondary | Primary | Primary + Secondary |
| 1—Legal Bibliography or research | 80% | 92% | 100% | |
| 2—Writing—Style | 73% | 92% | 24% | 34% |
| 3—Legal Reasoning | 58% | 86% | 21% | 38% |
| * 4—Writing—Argumentative | 52% | 82% | 21% | 35% |
| 5—Problem Solving | 52% | 78% | 34% | 55% |
| 6—Synthesis of Court Opinions | 35% | 75% | 7% | 17% |
| * 7—Oral Advocacy | 32% | 57% | Not included on bibliography questionnaire | |
| 8—Analysis of Court opinions | 30% | 67% | 14% | 35% |
| 9—Writing—Remedial | 30% | 63% | 14% | 10% |
| 10—Analysis of Legislation | 14% | 48% | 0% | 21% |
| 11—Introduction to Study of Law | 11% | 44% | 24% | 34% |
| * 12—Ethics of Advocacy | 6% | 32% | Not included on bibliography questionnaire | |
| 13—Other | 4% | 4% | 17% | 17% |

* Appellate Moot Court was a part of the research and writing course or was taught by the same persons who taught research and writing at perhaps two-thirds of the schools.

As already indicated, a large percentage of the teachers (70%) no longer regarded improvement of basic writing—teaching grammar or basic composition—as a primary objective of their courses. Few of the teachers appeared to be attempting to “teach” basic writing except through the medium of criticism of submitted papers. Only 11% of the respondents indicated that they conducted any class devoted substantially to instruction in basic writing. Only 14% required students to purchase or use materials devoted to instruction in grammar. However, 22% did give assignments designed primarily to test their students’ command of grammar.⁴⁶

Although the survey did not assist me in knowing whether research and writing courses are now more generally tailored to the potential envisioned by Professor Harry Kalven when he described the experimental program at the University of Chicago School of Law in 1959, I continue to share his vision of the potential for a course in which first year students are required to use the full range of skills which attorneys, judges, and other law-trained persons must use in dealing with real-life problems and are given rigorous, individualized evaluations of their efforts. Our increasingly competent first year students deserve no less.

⁴⁶The techniques used by the research and writing teachers to assist students to improve their basic writing and, more usually, their writing style are listed below, with percentage responses as to use for each, together with the percentage responses as to use of the same techniques by the fifty-two per cent of the respondents to the Bibliography questionnaire who indicated that they also assigned comprehensive research problems and required submission of written answers, usually in memoranda form. Although it would appear that a bibliography course is frequently used as a substitute for a research and writing course, note the lesser incidence of individualized attention to the student papers by bibliography teachers in comparison with the research and writing teachers.

| | <u>R & W, Combination and Short-Term</u> | <u>Bibliography</u> |
|---|--|---------------------|
| Written criticism and editing | 91% | 40% |
| Individual conferences and oral criticisms | 91% | 44% |
| Requiring some complete rewrites | 44% | 7% |
| Requiring some selective rewrites | 27% | 0% |
| Requiring students to edit or evaluate papers other than their own | 20% | 0% |
| Other (including referrals to writing clinics, grading satisfactory/unsatisfactory, critique by others) | 13% | 7% |