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# Teaching Legal Research: Past and Present\*

Joyce Manna Janto\*\*  
Lucinda D. Harrison-Cox\*\*\*

*For years librarians have debated which procedures will most effectively instruct law students in the art of legal research. Ms. Janto and Ms. Harrison-Cox trace the history of these efforts and propose a model program for the teaching of legal research.*

## I. Introduction

The idea that law students need formal instruction in legal research may meet with little argument today from law librarians, practicing attorneys, and even some law faculty, but a century ago it was considered revolutionary. Lawyers and law teachers of the early 1900s were not far removed from the time when a lawyer was expected to own and be familiar with all the materials needed for the practice of law.<sup>1</sup> As legal issues became more complex, and the quantity of legal materials increased, formal instruction for lawyers became accepted, and attending a law school became the primary method of preparing for a legal career.

While there has been growing agreement that law students need to learn legal research skills, there is no unanimity on what should be taught, how the material should be taught, or who should do the teaching. It is our thesis that academic law librarians should assert their role in legal education. Because they have devoted their professional lives to mastering legal bibliography and to refining research skills, librarians are uniquely qualified to teach legal research.

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\* © Joyce Manna Janto and Lucinda D. Harrison-Cox, 1992. The authors wish to acknowledge the contributions of Susan B. English, former Director of the University of Richmond Law School Library, and Steven D. Hinckley, current Director of the University of Richmond Law School Library, to the development of the legal research program described herein.

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1. See generally Mary S. Foote, *The Need for College Instruction in the Use of Law Books*, 10 LAW LIBR. J. 25 (1917); Frederick C. Hicks, *The Teaching of Legal Bibliography*, 11 LAW LIBR. J. 1 (1918).

At the University of Richmond Law School, the legal research program was designed and developed by the professional library staff and is currently taught by the librarians. The program is offered as one component of the first-year course in Legal Writing, Reasoning and Research. The librarians have total responsibility for teaching and grading the students in the research component. This article reviews the literature on the development of legal research instruction in law schools and describes the program as it has been implemented at the University of Richmond Law School.

## II. Historical Background—1800s to 1960s

Historically, legal training did not include formal training in legal research. Prospective lawyers were trained apprentice-style and learned what they needed to know about research by following the example of the practitioners under whom they worked.<sup>2</sup> This form of teaching was not feasible in the law school setting; consequently, other methods needed to be found. In 1820, Harvard Law School began dealing with the need of lawyers to “find the law” by creating a system of student-organized law clubs that provided instruction in legal research.<sup>3</sup> These clubs were assisted by law school library staff, although it is unclear when library staff began providing instruction or how formal the instruction was. Other institutions no doubt relied on library staff and other faculty to provide individual instruction as needed.

Other than sporadic lectures, little was provided in the form of organized instruction until after the twentieth century. Then, the push toward research instruction was led by the publishing companies.<sup>4</sup> Between 1902 and 1916, West Publishing Company and, to a lesser extent, Lawyers’ Co-operative Publishing Company instituted research/brief writing contests, published texts on legal research, sent representatives to lecture on legal research at law schools, and offered training for legal research instructors.<sup>5</sup> Largely as a result of the push by the legal publishers and popular demand by students, at least twenty-nine law schools offered courses in legal research by 1917.<sup>6</sup> By 1922, twenty-two of the over fifty member schools in the Association of American Law

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2. See Foote, *supra* note 1, at 25; Sandra Sadow & Benjamin R. Beede, *Library Instruction in American Law Schools*, 68 LAW LIBR. J. 27, 27 (1975).

3. Sidney P. Simpson, *The New Curriculum of the Harvard Law School*, 51 HARV. L. REV. 965, 982 (1938).

4. Hicks, *supra* note 1, at 2-4.

5. *Id.*

6. *Id.* at 4.

Schools offered legal research courses.<sup>7</sup> How many of these were taught by librarians is not clear. What is clear from the early sources is that librarians were recognized as being among the most qualified instructors available.<sup>8</sup>

One early program in legal research taught by a librarian was at Columbia University Law School. The program started as three lectures offered in 1912 by the law librarian, J. David Thompson. In 1915, the new law librarian, Frederick C. Hicks, gave a series of six voluntary, no-credit lectures in the fall semester. The lectures, while considered an experiment, were an immediate success and prompted Hicks to offer weekly seminars on legal research. Over one hundred students signed up for these sessions. The students were divided into eight groups, which met in the law librarian's office through the end of the semester. The weekly seminars resumed in the spring semester; six sessions per week met at the Law Librarian's convenience. Sixty-five students participated in the spring semester sessions.<sup>9</sup> The method used to instruct these students was not simple legal bibliography, but was based upon the discussion and use of specific case problems. Each student was given an individual problem to work on for the next week's session, and sample problems from the week before were discussed in the group meeting. This technique was extremely labor intensive, but it met students' demand while also clearly showing the library staff to be a valuable source of research guidance.<sup>10</sup>

By the late 1940s and early 1950s, many articles had been published on how legal research was taught in particular law schools or on how legal research should be taught.<sup>11</sup> These articles show the changing role played

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7. John H. Wigmore, *The Job Analysis Method of Teaching the Use of Law Sources*, 16 ILL. L. REV. 499, 500 (1922).

8. Foote, *supra* note 1, at 27; Hicks, *supra* note 1, at 7.

9. Frederick C. Hicks, *Instruction in Legal Bibliography at Columbia University Law School*, 9 LAW LIBR. J. 121, 121-22 (1916).

10. *Id.* at 122-24. Columbia's program is the only well-documented program conducted by a law librarian during this time period. An interesting point to remember is that all the early legal research programs were experiments and that through the 1920s, the discussion of legal research in law schools remained largely a discussion of whether law faculty should engage in legal research. See, e.g., John Hanna, *A Modern Approach to Legal Education*, 6 AM. L. SCH. REV. 745 (1928); Robert M. Hutchins, et al., *Modern Movements in Legal Education*, 6 AM. L. SCH. REV. 402 (1928); Orrin K. McMurray, *The Place of Research in the American Law School*, 5 AM. L. SCH. REV. 631 (1926).

11. See, e.g., David F. Cavers, *The First Year Group Work Program at Harvard*, 3 J. LEGAL EDUC. 39 (1950); Robert N. Cook, *Teaching Legal Writing Effectively in Separate Courses*, 2 J. LEGAL EDUC. 87 (1949); G. Robert Ellegaard, *Techniques of Group Education in Legal Research*, 41 LAW LIBR. J. 182 (1948); Alfred L. Gausewitz, *Teaching Legal Method and Analysis*, 23 ROCKY MTN. L. REV. 67 (1950); William D. Hawkland, *Report on an Experiment in Teaching Legal Bibliography*, 8 J. LEGAL EDUC. 511 (1956); Louis C. James, *Legal Writing at Stetson*, 7 J. LEGAL

by librarians in the research courses. Many do not even mention librarians, and those that do tend to relegate librarians to very minor roles. For instance, the description of the University of Chicago program points out that during the first four months "any question about the library is a good question, but that thereafter knowledge will be presumed," without ever mentioning a librarian's participation in their program.<sup>12</sup> At Northwestern University, one article stated that "the Reference Librarian obviously makes a more or less constant contribution as a consultant and advisor concerning the use of library materials."<sup>13</sup> In another article on the program, however, the same author wrote that students "may" consult with the reference librarian and that such a consultation "usually, but not necessarily, results in a screening of the requests for personal guidance, . . . so that for the most part the simpler problems are disposed of in the library and only the more difficult ones reach the instructor."<sup>14</sup>

Only one article was about a program conducted by a law librarian, the program at Montana State University.<sup>15</sup> The course was called "Orientation, Ethics and Bibliography." Regrettably, the description of the program is very brief, but it does indicate that the legal bibliography portion was taught using a combination of lectures, assigned readings, and a series of problems. The students worked on the problems in groups and their papers were graded as either acceptable or unacceptable.<sup>16</sup>

### III. Legal Research in the 1970s and 1980s

In the 1970s, several studies looked at how legal research was taught.<sup>17</sup> The most often cited of these studies was conducted in 1973 by Sandra

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EDUC. 413 (1955); Harry Kalven, Jr., *Law School Training in Research and Exposition: The University of Chicago Program*, 1 J. LEGAL EDUC. 107 (1948); Donald Kepner, *The Rutgers Legal Method Program*, 5 J. LEGAL EDUC. 99 (1952); W.L. Matthews, Jr., *First Year Legal Writing and Legal Method in a Smaller Law School*, 8 J. LEGAL EDUC. 201 (1955); Roy Moreland, *Legal Writing and Research in the Smaller Law Schools*, 7 J. LEGAL EDUC. 49 (1954); William R. Roalfe, *Some Observations on Teaching Legal Bibliography and the Use of Law Books*, 1 J. LEGAL EDUC. 361 (1949); William R. Roalfe & William P. Higman, *Legal Writing and Research at Northwestern University*, 9 J. LEGAL EDUC. 81 (1956); Mortimer Schwartz, *Legal Method at Montana*, 6 J. LEGAL EDUC. 102 (1953); Jerome J. Shestack, *Legal Research and Writing: The Northwestern University Program*, 3 J. LEGAL EDUC. 126 (1950).

12. Kalven, *supra* note 11, at 114.

13. Roalfe & Higman, *supra* note 11, at 82.

14. Roalfe, *supra* note 11, at 369, 373-74.

15. Schwartz, *supra* note 11.

16. *Id.* at 105-06.

17. See, e.g., Anita M. Morse, *Research, Writing, and Advocacy in the Law School Curriculum*, 75 LAW LIBR. J. 232 (1982); Marjorie D. Rombauer, *First Year Legal Research: Then*

Sadow and Benjamin Beede, both of the Rutgers State University School of Law Library. Their study showed that "law professors and the directors of law school libraries teach the vast majority of legal bibliography programs. The lack of involvement by other library staff is striking, especially when compared to other academic and special library instruction programs."<sup>18</sup> The survey found only eight instances of joint programs using both law faculty and the library director. Their conclusion was that "[l]ibrary instruction should be given by the persons who are accessible to students and who have the specific responsibility for backing up the formal instruction given, that is, the public service or reference librarians."<sup>19</sup>

Other articles in the 1970s and 1980s covered a broad spectrum of perspectives,<sup>20</sup> including the views of student law review editors on the effectiveness of, and student interest in, legal research as a class,<sup>21</sup> theoretical discussions of what should be taught in a legal research class,<sup>22</sup> and overviews of legal research textbooks.<sup>23</sup> The articles also began to discuss computer-assisted legal research, using LEXIS and WESTLAW.<sup>24</sup>

The "problem" of teaching legal research was discussed constantly, always with the universal conclusion that legal research did not get the intellectual respect and financial support it deserved.<sup>25</sup> Not surprisingly,

*and Now*, 25 J. LEGAL EDUC. 538 (1973); Sadow & Beede, *supra* note 2. In the first of these surveys, Marjorie Rombauer concluded that "[u]nfortunately, many of the early legal method 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." Rombauer, *supra*, at 542. Her survey was conducted using four questionnaires, one each on research and writing, bibliography, a combination of the two, and a "short term" questionnaire. She received responses to forty-seven percent of the questionnaires. Thirty-six percent of the respondents to the research and writing and combination questionnaires and eighty-nine percent of the respondents to the bibliography questionnaire were librarians. *Id.* at 543-44.

18. Sadow & Beede, *supra* note 2, at 28.

19. *Id.* at 29.

20. See, e.g., John R. Austin & Carmencita K. Cui, *Teaching Legal Research in American Law Schools: An Annotated Bibliography*, LEGAL REFERENCE SERVICES Q., Spring 1987, at 71; Robin K. Mills, *Legal Research Instruction in Law Schools, The State of the Art or, Why Law School Graduates Do Not Know How to Find the Law*, 70 LAW LIBR. J. 343 (1977).

21. David Lloyd, Comment, *A Student View of the Legal Research and Legal Bibliography Course at Utah and Elsewhere—A Proposed System*, 25 J. LEGAL EDUC. 553 (1973).

22. Wesley Gilmer, Jr., *Teaching Legal Research and Legal Writing in American Law Schools*, 25 J. LEGAL EDUC. 571 (1973).

23. Christine A. Brock, *The Legal Research Problem*, 24 DEPAUL L. REV. 827 (1975).

24. See, e.g., John D. Edwards, *Lexis and Westlaw Instruction in the Law School: University of Oklahoma*, 76 LAW LIBR. J. 605 (1983); Margit Livingston, *Legal Writing and Research at DePaul University: A Program in Transition*, 44 ALB. L. REV. 344, 358 (1980); Roy M. Mersky & John E. Christensen, *Computer-Assisted Legal Research Instruction in Texas Law Schools*, 73 LAW LIBR. J. 79 (1980); Mills, *supra* note 20, at 348.

25. See Mills, *supra* note 20, at 345-46; Morse, *supra* note 17, at 248.

some believed that in the hierarchical world of the law school community, the relatively low status of librarians played a role, but by no means was it the only factor in the low status of legal research classes.<sup>26</sup> The most significant factor was generally believed to be cost. Even though legal research had become an accepted part of the curriculum,<sup>27</sup> the financial, intellectual, and staffing commitments needed to provide a comprehensive analysis class that developed legal research, writing, and analytic skills were not provided.<sup>28</sup>

Among the more interesting research/writing programs written about during this period were at the law schools at De Paul University,<sup>29</sup> University of Akron,<sup>30</sup> University of Colorado,<sup>31</sup> University of Santa Clara,<sup>32</sup> and University of Southern California.<sup>33</sup> One other program, at Stetson University College of Law, is of interest mainly for its description of the decision to make legal bibliography a separate course as a "wise and helpful change."<sup>34</sup> Four of these six courses used librarians in the teaching process. Despite the appearance from these articles that the trend was once again toward librarians resuming a major role in the teaching of legal research and bibliography, the percentage of librarians involved in teaching legal research has continued to decline.<sup>35</sup>

In a 1980 article, Marjorie Rombauer described the research and writing program at the University of Washington, from its beginnings to its demise.<sup>36</sup> The program, which was not staffed by librarians, taught analytical skills along with research skills. Rombauer remarks that

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26. See Mills, *supra* note 20, at 346; Morse, *supra* note 17, at 233; Rombauer, *supra* note 17, at 542.

27. See Robert Batey, *Legal Research and Writing from First Year to Law Review*, 12 STETSON L. REV. 735, 735 (1983); Morse, *supra* note 17, at 263.

28. See Jack Achtenberg, *Legal Writing and Research: The Neglected Orphan of the First Year*, 29 U. MIAMI L. REV. 218, 219 (1975); Livingston, *supra* note 24, at 350; Morse, *supra* note 17, at 248; Helene S. Shapo, *The Frontiers of Legal Writing: Challenges for Teaching Research*, 78 LAW LIBR. J. 719, 721 (1986).

29. Livingston, *supra* note 24.

30. Paul Richert, *Oral Competence Testing in Legal Research Techniques*, 77 LAW LIBR. J. 731 (1984-85).

31. Rhonda Carlson et al., *Innovations in Legal Bibliography Instruction*, 74 LAW LIBR. J. 615 (1981).

32. Achtenberg, *supra* note 28.

33. Albert Brecht, *Accelerated Legal Research at U.S.C. Law Center*, 75 LAW LIBR. J. 167 (1982).

34. That was the entire description of the legal bibliography portion of their "research and writing" course. Ruth F. Thurman, *Blueprint for a Legal Research and Writing Course*, 31 J. LEGAL EDUC. 134, 134 (1981).

35. Shapo, *supra* note 28, at 722, 725.

36. Marjorie D. Rombauer, *Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post Mortem*, 44 ALB. L. REV. 392 (1980).

“research (actual use of the books . . .)” and “legal bibliography (description of features and functions of legal materials),” often had been distinguished from the process of analysis,<sup>37</sup> and the Washington program attempted to bring all the elements together. The program was staffed by law faculty, who were expected to “devote substantial time to acquiring a knowledge of legal bibliography,” rather than using librarians and requiring that they “devote substantial time to developing expertise in teaching analysis.”<sup>38</sup> These faculty were expected to teach other classes as well as legal analysis.<sup>39</sup> Ultimately, the inability to maintain an acceptable balance between the legal analysis workload and the workload of the other classes, combined with lack of acceptance by the other faculty, resulted in the program’s demise.<sup>40</sup>

Another program that did not use librarians in the teaching process was at the University of Santa Clara, where the full-time faculty was involved in a “Legal Writing Month” approach.<sup>41</sup> The entire month of January was devoted to concentrated work on research and writing. Each professor created individual problems for use in a specified jurisdiction.<sup>42</sup> The system was innovative, but the lack of focus and minimum standards resulted in significant disparities in what was taught.<sup>43</sup> Research instruction consisted of as much or as little as each professor believed appropriate.<sup>44</sup> Interestingly, it was found that the professors would have been “more comfortable with the program if the law librarian would [have] institute[d] a series of lectures for them on the wide variety of research instruments.”<sup>45</sup>

Programs at De Paul University and the University of Colorado combined the legal bibliography/research class and the legal writing class by having librarians teach research as a semi-independent segment of a single course.<sup>46</sup> Beginning in 1979, three members of the library faculty taught legal research at Colorado during the first three weeks of the legal writing course. This approach received favorable reviews, both from the students, who appreciated “the ability of the librarians to give them

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37. *Id.* at 394.

38. *Id.* at 395.

39. *Id.* at 399.

40. *Id.* at 408-09.

41. Achtenberg, *supra* note 28, at 244.

42. *Id.* at 244. Separate jurisdictions were used to reduce wear and tear on the library collection.

43. *Id.* at 245-46.

44. *Id.*

45. *Id.* at 246.

46. Carlson, *supra* note 31; Livingston, *supra* note 24.



individual attention if they were having problems," and from the librarians, who felt that "[b]ibliographic instruction enhances the reputation of the library and librarians and gives librarians an opportunity to 'advertise' their bibliographic skills and promote the use of reference services."<sup>47</sup> The librarians worked from a general teaching outline to maintain an acceptable level of uniformity in the course content.<sup>48</sup> The students worked through a variety of assignments, including "general short answer questions, integrated questions designed to show students the relationship between kinds and classes of legal materials and some standard 'treasure hunt' type questions."<sup>49</sup> This portion of the students' legal writing class constituted ten percent of their grade.<sup>50</sup>

In the late 1970s, De Paul decided to use librarians to teach legal bibliography as part of the legal writing class. Each class met for two hours a week, one hour for a research lecture and one hour for a writing lecture.<sup>51</sup> The bibliography component of the class originally included eight to ten treasure-hunt research exercises. In 1979, "the library experimented with a more complex research exercise that required students to coordinate several tools in researching a particular topic. . . . This exercise was well received by the students, who said that it unified and made sense of the many different tools that they were learning to use."<sup>52</sup> At the time the article was written, there had been no coordination between the librarians' and the writing instructors' assignments, but that was viewed as the next step in the development of the joint program.<sup>53</sup>

Two other approaches were tried by the University of Southern California Law Center and the University of Akron School of Law.<sup>54</sup> USC's intensive five-day course was first offered in 1974.<sup>55</sup> It gave a limited number of incoming first-year students the opportunity to complete their legal bibliography class before beginning other classes.<sup>56</sup> The course was presented through readings, lectures, exercises, review, and a quiz. In part because the students had not had any substantive

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47. Carlson, *supra* note 31, at 617.

48. *Id.*

49. *Id.* at 616.

50. *Id.*

51. Livingston, *supra* note 24, at 351.

52. *Id.* at 358.

53. *Id.*

54. Brecht, *supra* note 33; Rickert, *supra* note 30.

55. Brecht, *supra* note 33, at 167.

56. *Id.* at 168.

courses, only two of the four exercises presented hypothetical questions.<sup>57</sup> The course concluded with an hour quiz consisting of multiple choice and true-false questions; the grades given were pass plus, pass, pass minus, or fail.<sup>58</sup> The students were pleased with the course, and their quiz scores and retention of research skills were found to be at least as good as those of the students who took the bibliography course after school began.<sup>59</sup>

At Akron, the law librarian and associate law librarian added a unique twist to their research course. Although the legal research class was taught in the first semester of the first year, the final test, an oral exam, was not given until the second semester, after LEXIS and WESTLAW training.<sup>60</sup> An individual examination lasting from thirty to forty-five minutes was given to each student by one of the five law librarians.<sup>61</sup> The librarians believed that the program was "worthwhile because of the students' improved retention of legal research skills and the greater interpersonal contact between the librarians and the first-year law students."<sup>62</sup>

While none of these programs were perfect, they clearly reflected law students' need and desire for legal research instruction. Librarians were willing to see that need and attempt to fill it.

#### IV. Proposed Model for a Research Course

The University of Richmond Law School faculty supports and encourages librarians teaching legal research. Prior to the 1986-87 academic year, legal research was taught by the legal writing faculty. As with most legal writing programs, there was a high turnover among the full-time faculty; the law school planned to staff the program almost entirely with adjunct faculty. During this time of reevaluation, the Director of the Law Library offered to have librarians take over teaching the legal research component of the program.<sup>63</sup> As librarians, we felt uniquely qualified to teach legal research, and appreciated this opportunity to show how legal research should be taught, because we all felt that the instruction we had received in law school was inadequate.

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57. *Id.*

58. *Id.* at 169.

59. *Id.* at 169-70.

60. Rickert, *supra* note 30, at 732.

61. *Id.*

62. *Id.* at 734.

63. During the first year of the program, for political reasons, only the director and associate director of the library were permitted to teach legal research. In subsequent years, all librarians with a JD participated in the program. The faculty has decided that no one may teach in the law school without a JD.

The level of instruction now provided in the legal research component is very labor-intensive. For a four-week period, the librarians teaching legal research accept the fact that not much in the way of significant library work will be accomplished, because so much time, attention, and hand-holding is devoted to the first-year class. The goals of this instructional program are to insure minimal research competence in the students, and to make students feel comfortable using the law library and approaching a librarian for assistance.

### A. *Conventional Research*

The first-year class at the law school averages 150 students. The students take the course in legal writing, reasoning, and research in eight groups of eighteen to twenty. For the research component of this course, two groups are combined, so each of the four librarians has a classload of thirty-six to forty students.

Legal writing classes meet twice a week, and the librarians have eight class sessions in which to teach the research component. To achieve our goals in this limited class time, we decided to conduct an intensive research experience, but to make no pretense that the students were being taught everything they needed to know about legal research. We stress that the students are being taught research techniques to insure basic competence, and that the students are themselves responsible for building upon this framework during their three years in law school.<sup>64</sup>

Even without such time constraints, we would not change the level of bibliographic information given to the students. We intentionally omit as much bibliographic detail as possible. Because we are teaching law, not library science, students,<sup>65</sup> our students receive only the information necessary for them to use the material correctly. We lay the foundation; bibliographic information can be given to students after they have grasped the basics.

When developing materials for the course, we firmly rejected the old "treasure hunt" methodology, which we all had suffered through when learning legal research ourselves.<sup>66</sup> We were unanimous in our agreement

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64. In the near future, the law school hopes to offer seminars in advanced legal research. These seminars will cover specialized topics such as legislative histories, tax, etc. The law school faculty is also considering amending the curriculum and expanding the legal writing course from two to four semesters.

65. We were pleased to see that this attitude is gaining widespread acceptance. See Christopher G. Wren & Jill R. Wren, *The Teaching of Legal Research*, 80 LAW LIBR. J. 7, 10 (1988). While we do not agree with the Wren approach in entirety, we feel they are moving in the right direction.

66. In these exercises, students are given a fact and told to find it in a given source. For example, "In the *Southeast Digest*, find the 1884 Tennessee Appellate Court case that establishes entrapment as a defense in that state."

that treasure hunts are not only time-consuming and frustrating, but also of limited educational value. Because each source is presented in a vacuum, relationships between different types of material are never made clear to students. The only point these exercises drive home to novice researchers is an unintended and erroneous one—that a legal question has only one right answer.

Instead, our students are each given a hypothetical problem, drafted by a librarian to insure that there are at least three issues: a state statutory issue, a federal statutory issue, and a common law issue. Students then must analyze the facts of the problem and locate relevant information in a variety of sources; this forces them to make judgments about the material they locate. As the students soon realize, there can be more than one right answer. The hypotheticals are used as the basis for the three research assignments the students must complete.

Along with the hypothetical problem, students are randomly assigned a state and federal circuit for jurisdictional purposes. The criteria for selecting the states are simple: there must be a state encyclopedia, a state digest, and an annotated code, and the state statutes have to be easy to Shepardize.<sup>67</sup> For federal jurisdictions, the circuits that encompass the selected states are used. With the jurisdictions distributed in this manner, not all 150 students are trying to use the same material at once.

A set of instructions for completing the assignments is distributed at the first class. These instructions cover topics from reshelving books to how to complete assignment sheets. Two rules are inviolate. First, students may not discuss their research assignments with anyone other than a librarian (librarians' names are listed on the instruction sheet). Any law librarian who has ever overheard Student A ask Student B a reference question and been appalled at the misinformation given by Student B will understand the reason for this rule, which instills in the students the habit of asking a qualified person for help. The second rule is that students must work alone. Students working in groups tend to parcel out the assignment, with each student actually researching only a few questions. Our assignments cannot be completed this way, because each question builds on the previous one. These two rules have the added benefit of greatly diminishing the noise and confusion normally associated with legal research courses.

The schedule for the classes is the same each week. On Tuesday, each class receives a fifty-minute lecture based on the materials to be covered

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67. We can see no sound pedagogical reason for making the library assignments any more "challenging" than they already are. Law students are already frustrated by their inability to do something easily that they perceive as "simple."

that week. These lectures do not repeat the detailed bibliographic information covered in the textbook, *The Process of Legal Research*,<sup>68</sup> which the students are required to read before each class. The lectures elucidate and emphasize information in the text, highlight the differences among various legal resources, and explain when it would be appropriate to use each source and what one would expect to find when it is used. At the end of the class, the research assignments (due the following Monday) are distributed.

On Wednesday, optional forty-five-minute instructional sessions are held in the library. Each librarian conducts at least three sessions; attendance is limited to twelve students per session. The librarian takes students to the materials discussed in class the day before and shows how the books are used.<sup>69</sup> These sessions are the most popular element of the research component. Students find that "hands-on" sessions help them understand how to use the materials. They also ask questions more freely in informal, small groups than they do in class.

Thursday is an optional class day, designed for students having problems with the materials or in completing their assignments to come in and ask questions. Thursdays are also when the graded assignments are returned and reviewed, and any common problems are discussed.

We cover material in three lecture class periods in the order we feel a novice researcher might proceed. The first class is devoted to secondary material: legal encyclopedias, journals, treatises, and *A.L.R.* annotations.<sup>70</sup> We think this is a logical place to begin, since these are the resources a researcher would consult to learn about a new area of law. The students have had only four weeks of law school when they begin our course, and do not yet have the vocabulary necessary to research a substantive area of the law efficiently. We explain in the first class that any legal research problem must begin with an analysis of the facts to develop the issues that are presented. We recommend that students

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68. CHRISTINA L. KUNZ ET AL., *THE PROCESS OF LEGAL RESEARCH* (2d ed. 1989).

69. A hypothetical from the textbook is used in these instructional sessions. The small group analyzes the problem and finds relevant information on those topics. This tracks what the students will do on their assignments.

70. We are aware that many disagree with this position. See Wren & Wren, *supra* note 66, at 43 n.121; Robert L. Schmid, Book Review, 8 UTAH L. REV. 160, 162 (1962-63); Morse, *supra* note 17, at 233. The objection seems to be that by presenting secondary materials first, students will tend to overrely on them and accord them an importance they do not deserve. We reject this premise for two reasons. First, we assume that law students are intelligent enough to realize that secondary sources are just that, second in importance to primary material. Second, this overreliance would only take place if these were the only sources of law to which our students were exposed. But first-year students are bombarded daily with primary material; if anything, law students tend to overrely on cases.

analyze the problem as to the parties, actions, and remedies involved to develop the terms they will need to find relevant legal information.

For their first assignment, students are requested to find an article in either *Am. Jur.* or *C.J.S.* and their assigned state's encyclopedia, a law review article, a treatise, and an *A.L.R.* annotation relevant to one of the issues raised in their problem. When students find something, they photocopy that page, highlight the relevant information, and attach it to the assignment sheet.<sup>71</sup> By doing this, the person grading the paper can tell instantly if the material is truly relevant without having to look up each citation.

The second class is devoted to state and federal statutes and federal regulations. We decided to cover statutory material before case decisions because the emphasis on case law in first-year courses gives students an exaggerated view of its importance.<sup>72</sup> The second class begins with a discussion of how statutes are passed and the authority behind them. We touch briefly on statutory interpretation; we tell students what a legislative history is and what it is used for, but (due to time constraints) we do not tell students how to compile one. We also cover the executive branch of government, administrative rule-making, and the authority to promulgate these rules.

For the second assignment, students have to (1) find and update relevant federal and state statutes and a federal regulation, (2) Shepardize the statutes and regulations found, and (3) explain what they found out about the statute or regulation when Shepardizing. In this way, students must analyze what they have found, not just blindly copy out an answer.

The third class is devoted to cases, case digests, and the *Restatements*. This class begins with an explanation of the federal and state court systems. We explain the concepts of precedence and binding authority, and discuss the distinction between mandatory and persuasive authority.

For the third assignment, students must use the digests to find a federal and state case relevant to the problem, and then Shepardize these cases. Again, students must explain the meaning of what they discovered in *Shepard's*. Students then have to find the case in the reporter and identify its elements. These exercises emphasize that headnotes are

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71. We adopted this practice on the advice of Edmond P. Edmunds, Director of the Law Library at Loyola University in New Orleans. At the time our course was developed, Professor Edmunds was Director of the Law Library at the College of William & Mary School of Law. This was the procedure used by the librarians there in teaching legal research.

72. This point was graphically illustrated for us by a third-year student who came to the reference desk one afternoon in great distress. Her employer has sent her to the library to research an area of state law, but she could not find any cases on point, just a statute; could she cite to something like that in a memo?

research aids and the synopsis is a convenience, and neither are part of the judicial opinion. Finally, students must find a section of the *Restatements* relevant to their situations.

The final class is a wrap-up session: we try to pull together all the elements of the previous weeks and give an overview of the research process. We distribute a flowchart<sup>73</sup> that outlines the steps undertaken by a researcher and illustrates the basic sources to check to insure a competent research job. We also try to cover that most elusive of topics in legal research: how to tell when you are done. We emphasize that this is something that comes with experience, but researchers can be fairly confident when they are consistently directed back to sources they have previously discovered.

Students are not graded on their research assignments, because we feel that completing the assignments is an integral part of the learning experience and that it is unfair to grade students while they are learning. However, each student does have to complete each assignment perfectly. After the assignments are corrected, they are marked either satisfactory or unsatisfactory. Unsatisfactory means that one or more question is answered incorrectly or that the information provided was not relevant, and the student has to re-do the incorrect questions. Students have until the end of the legal research component to correct assignments. If the assignments are not corrected, the student will not get credit for this portion of the course. A student who correctly completes all three assignments is given a set number of points, which are factored in with the exam score, for a final grade for the research component.

After four weeks of intensive instruction and completion of three assignments, the students are given an exam, which consists of thirty multiple-choice questions. Material is drawn from the required readings, class discussions, and research assignments. We ask process-oriented rather than bibliographic questions. We describe a situation or a type of information that is needed and ask students where they would find appropriate material. The exam score (with the points for completed assignments factored in) is given to the legal writing faculty to average into the final grade for the legal writing, reasoning, and research course.

### ***B. LEXIS and WESTLAW Training***

Training in computer-assisted legal research takes place in the second semester of the first year as part of the research component of the legal

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73. This flowchart was developed by Susan B. English, former Director of the Law Library at the University of Richmond, who currently is Circuit Librarian, U.S. Court of Appeals for the Third Circuit.

writing, reasoning, and research course. Each librarian is responsible for training those students who were in their fall semester research class, thus emphasizing the continuity between conventional, manual research and computer-assisted research. We offer examples of when computerized searching makes the most sense, and when manual searching is the more efficient way to proceed, while showing that the approaches are not mutually exclusive, but complement each other.

LEXIS and WESTLAW instruction begins in the classroom. Each librarian has developed a lecture that traces the development and structure of each system and explains the similarities and differences between the two systems. While each librarian structures the lecture differently, an attempt is made to convey the same information. Some attention is paid to the theory of computerized information retrieval, because many of the students have never before used an interactive database. At the request of law firm librarians, we provide basic pricing information for each system.<sup>74</sup>

Hands-on instruction takes place in the library's eight-terminal computer lab. Sessions are limited to eight students; we have found that computer training is not nearly as effective when students are forced to share terminals. Each librarian has four or five ninety-minute sessions for each system. Students are trained first in one system and then the other. We alternate which system is offered first, in an attempt to see if system preference can be traced to which system the student learns first.<sup>75</sup>

LEXIS training is fairly unstructured. A flip chart is available to make sure that each trainer covers the same elements, but there is room for improvisation. Generally, the students search for a case in the federal library, and the trainer demonstrates the procedures for manipulating the material found (i.e., page forward and back, modifying search levels, KWIC, full). The students next try to find a federal statute using the same search request. Finally, the students run the same search on a state database. After going through basic searching, the students go on to segment searching, using Shepard's, Auto-cite, Lexstat and Lexsee. We also combine subject searching with segment limitations. The training session is scheduled for ninety minutes, with the hope that students will

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74. This was done in response to the criticism that students, who have unlimited, free access to LEXIS and WESTLAW in law school, become inefficient searchers with no concept of what their search time costs the firm and ultimately the client.

75. In the past, our students have always overwhelmingly preferred LEXIS to WESTLAW. But last year, for the first time, students received WESTLAW training on the PCs that are always available in our lab, not in the West Temporary Learning Centers. The current first-year class appears much more likely to use WESTLAW than the second or third years. It seems that familiarity with procedure is more important than timing of introduction.



have some time to search the system on their own. We have found it effective to let the students try to formulate their own searches and "play" with the system while the librarian is available to offer help and guidance as needed.

The WESTLAW training is much more structured because we use the Discourse system.<sup>76</sup> Discourse is loaded onto the hard disks of the PCs located in the computer lab so that students experience Discourse in the same manner that they will later experience WESTLAW. While this may seem a trivial point, we have found it to weigh significantly in students' perceptions of the system.<sup>77</sup> The Discourse program is designed to last one hour, during which time students run several searches. Students learn to find cases by subject, topic/key number, and citation. WESTLAW search features, such as "find" and "locate," are demonstrated. Discourse also introduces students to Insta-cite, Shepard's, and Shepard's Preview. For the remaining half hour of the training time, students are allowed to experiment with WESTLAW. Student and librarian reaction to Discourse has been generally favorable. Our only criticism is that Discourse does not adequately demonstrate field searches and limitations.

After students are trained on a system, they are given a short exercise to complete. Students are asked to locate statutes, cases, and law review articles using a variety of search techniques. They are allowed to work in pairs on these assignments, due to the limited number of terminals. Assignments are not graded, but reviewed on a good search/bad search basis. Students must give the search strategy used to obtain their results.

## V. Conclusion

We have been following this program of instruction for five years and see the improvement in the students' abilities. Compared to students in past years, our students now are better researchers,<sup>78</sup> are more comfortable in the library, are more willing to approach a library staff member for assistance, and their questions tend to be more focused.

An unintended benefit of this program is that firm and court librarians tell us that clerks and associates from our law school treat the librarians and the library staff much better than students from other

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76. The law library participated in testing Discourse in 1988, and we have used it successfully ever since. The major advantage to Discourse is that training time is not eaten up with telecommunication problems. The only disadvantage is that the trainer is restricted to a script.

77. See *supra* note 75.

78. Indeed, we were gleeful when the word came back to us via the grapevine that a senior partner in a local major law firm was appalled to enter his firm's library and find one of our students explaining to a student of a prestigious law school how to find the law.

schools. Along with legal research, we have taught our students that librarians are capable, skilled professionals who can contribute much to the students' work.<sup>79</sup>

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79. In the fall semester of 1991, the University of Richmond Law School totally revised the legal writing and research program. Law students now take a two-year course entitled "Lawyering Skills," which introduces students not only to legal writing and research, but also to negotiating, interviewing, and client counseling. Students are divided into ten law offices, in which there are two senior partners (faculty members), a firm librarian, and sixteen associates. To staff this program, the law school hired sixteen adjunct faculty and two adjunct librarians to work with four full-time faculty and three full-time librarians.

During the first semester, the librarians' contacts with the law office associates are limited. We hand out canned research files and explain how these files were compiled. This was considered important by the senior partners who did not want students to develop the idea that legal research was something that dropped magically from the heavens.

Legal research instruction now takes place at the beginning of the second semester. For the most part, we retained the basics of the program described in this article. The main changes are in timing. Each librarian has two offices, meeting for two-hour blocks on separate days. In that two-hour block, the librarian gives a short lecture on the materials introduced on that day, then breaks the class into two sections, spending forty minutes in the library with each section. We use the same textbook and cover the same material in the same order. In the law office setting, we have omitted the final examination.

WESTLAW and LEXIS training also are handled differently now. Since both manual and computer-assisted research are taught in the spring semester, we decided to let the representatives for the two companies handle the training. Although we were hesitant to do so, the training went well, with none of the representatives pushing their system to the detriment of the other system or manual legal research.