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## The State of Legal Research Education: A Survey of First-Year Legal Research Programs, or “Why Johnny and Jane Cannot Research”

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## The State of Legal Research Education: A Survey of First-Year Legal Research Programs, or “Why Johnny and Jane Cannot Research”\*

Caroline L. Osborne\*\*

*Prof. Osborne reviews the state of legal research education at U.S. News & World Report’s 200 rated law schools, and explores whether or not legal research is a required first-year class, the number of semesters of research instruction, the expertise of the instructor, the number of credits awarded for legal research, the scope of the legal research curriculum, areas of observed difficulties and challenges in instruction, and the type of grade assigned.*

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### Introduction

¶1 In 1993, Donald Dunn wrote, “No one seems happy these days with either the quality of the legal research instruction provided by law schools or the quality

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of the research being conducted by law students and recent law school graduates.”<sup>1</sup> His article contains the now frequent and familiar refrain that all law school and law firm librarians know by heart:

[P]ractitioners complain about new associates who do not possess even the most rudimentary legal research skills. These practitioners worry when they have to “write off” portions of an associate’s billable hours because the time sheets submitted reflect research time far in excess of the reasonable cost of the final bill.

... [Law firm librarians] want to know why law schools have abrogated their responsibility for teaching legal research and have left it in the hands of the law firms.

Law professors lament that their research assistants and the students in their seminars produce flawed work products because of superficial research or failure to consult standard sources. How is it, professors wonder, that after the first year law students do not know about basic legal research materials and methodologies?<sup>2</sup>

¶2 Dunn attributes the decline in legal research skills to two seminal events: (1) an increased emphasis on writing and (2) the adoption of computer-assisted legal research.<sup>3</sup> Relying on Dunn’s critique, this study tests the hypothesis that legal research education is sacrificed at the altar of a more vigorous writing curriculum. In no manner is my hypothesis intended to suggest that the desire to improve writing is misplaced; on the contrary, as a critical part of legal education, students should write early and often. My suggestion is that the cost of graduating fluent writers should not be the legal research curriculum.

¶3 This article reviews the state of legal research education at the top 200 law schools as ranked by *U.S. News & World Report* for 2015. Questions explored include whether legal research is a required first-year class, the number of semesters of research instruction, the expertise of the professor or instructor, the number of credits awarded for legal research, the scope of the legal research curriculum, areas of observed difficulties and challenges in instruction, and the type of grade assigned. The answers to these questions illuminate why the research skills of recent graduates are often labeled as insufficient. The first part of this article describes the methodology employed to collect data about the legal research curriculum taught during the 2012–2014 academic years. It then uses the data from the survey (as defined below) as supplemented by insights from the initial survey (as defined below). The final section suggests reforms to legal research instruction designed to respond to the refrain that “Johnny and Jane Cannot Research.”

## Methodology

¶4 This article reflects on the results of a survey (hereinafter, “the survey”) conducted in December 2014. This survey was administered to the 200 law schools listed in *U.S. News & World Report* for 2015. Qualtrics, an online survey software platform and tool, was used to distribute the survey to the selected audience and to collect the responses. Recipients were identified using the distribution list from a

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1. Donald J. Dunn, *Why Legal Research Skills Declined, or When Two Rights Make a Wrong*, 85 LAW LIBR. J. 49, 49 (1993).

2. *Id.* at 49–51 (footnotes omitted).

3. *Id.* at 52. Dunn argues for a combined research and writing class that emphasizes research, writing, and analysis.

prior survey (hereinafter the “initial survey”) on this same topic (the initial survey is further described below) as updated by the actual contacts from the initial survey and as further supplemented by information provided by the author. The survey was a traditional survey in which the recipients were provided specific questions with a framework of answers and the opportunity to complete the survey instrument in an online format. A copy of the survey is included as the appendix. Ninety-seven of a possible 200 survey recipients participated.<sup>4</sup>

¶5 The initial survey was a phone survey conducted by the staff of the Washington and Lee University School of Law Library during March 2013. Nine staff members from the Washington and Lee Law Library conducted phone interviews of representatives of the top 100 law schools as ranked by the 2013 *U.S. News & World Report* rankings. I initially provided a point of contact to the surveyors. By default, the director of the law library was used when no other contact was identifiably in charge of legal research instruction at the specified school. The surveyors were instructed not to leave voicemail messages but to continue to seek direct contact with the appropriate representative of each law school. Surveyors worked from a script containing ten basic questions with numerous subparts. The questions were designed to discover basic information regarding the research program with a specific focus on who teaches the research classes, the qualifications of the research instructors, the number of credits awarded for research, the type of grade awarded, areas of research taught, the pedagogical approach to research instruction, types of assessment employed, and areas of greatest challenge to the instructor and student.

¶6 All 100 potential respondents were successfully contacted and provided answers to the surveyor’s questions. The intended purpose of this initial survey was to gather information for the purposes of improving legal research instruction at Washington and Lee University School of Law. Surveyors were instructed to have a conversation about the research program with the intent to gather as much information about the existing research programs as those being interviewed were willing to share. Surveyors recorded the information using a survey created by Qualtrics. As the information collected in this prior survey was not intended for publication, data and comments from the initial survey are used in this article solely to provide additional insight to the results compiled from the survey.

### The Status of Legal Research Instruction

¶7 The 2014 *ABA Technology Report* indicates that attorneys spend approximately one-fifth of their billable hours engaged in legal research.<sup>5</sup> The MacCrate Report lists the essential skills for legal practice as problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution, organization and management of

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4. This article divides the responses of the 200 schools into two subsets, the top 25 and the top 100 as indicated by their *U.S. News & World Report* rank, for the purposes of determining whether the rank of a school alters how research instruction is delivered. For the top 25–ranked schools, fourteen responses were collected. For the top 100–ranked schools, fifty-two responses were collected.

5. Joshua Poje, *Legal Research*, ABA TECHREPORT 2014, <http://www.americanbar.org/publications/techreport/2014/legal-research.html> [https://perma.cc/UK9K-TQQ5].

legal work, and recognizing and resolving ethical dilemmas.<sup>6</sup> In 2005, the ABA amended its Standard 302(b)(2)(i) [now 302((b)(2)] to include legal research problem solving as an entry-level practitioner competency skill.<sup>7</sup> Despite the emphasis on legal research by the ABA and MacCrate, it is notable that the *Carnegie Foundation Report on Educating Lawyers for the Profession* fails to include any discussion of legal research.<sup>8</sup> As recently as 2009, law firms continued to decry the deficiencies in legal research skills of their new associates.<sup>9</sup>

¶8 We are in an environment where research techniques generally and legal research techniques specifically are undergoing a significant transformation due to technological changes and the mass of information now available to attorneys. Technology presents a challenge with the proliferation of information that must be managed in an effective and efficient manner by the researcher.<sup>10</sup> This means research tasks are significantly more complex, and the corresponding need for research education is ever greater.<sup>11</sup> As Feliú and Frazer suggest, the current legal research curriculum focuses on writing and therefore requires minimal research, applies few sources, and employs minimal research strategies, ultimately producing attorneys who lack professional levels of expertise.<sup>12</sup> Anecdotal evidence supports Dunn's prediction that research education is diminishing in the effort to emphasize writing. Kaplan and Darvil are specific:

The current state of legal research instruction fails to train students to adequately research the law. Because of the limited amount of time devoted to teaching legal research and the superficial nature of that instruction, law students graduate and fail to perform at the level required of them by their employers. In order for law schools to fulfill their obligations to students, a fundamental change needs to be made in the way legal research is taught. Law students must be taught how to research in a cost-effective manner, with a variety of tools and in a variety of formats. They must also be taught how to research a problem conceptually within an ever-changing "legal paradigm."<sup>13</sup>

This is in an information environment increasingly made more complex by the abundance of resources at the fingertips of inexperienced researchers—researchers who are predisposed to regard Google as their first, last, and best research solution.

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6. AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138–40 (1992).

7. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015–2016, at 15 (2015); Viciñç Feliú & Helen Frazer, *Embedded Librarians: Teaching Legal Research as a Lawyering Skill*, 61 J. LEGAL EDUC. 540, 541 n.8 (2012).

8. *Id.* at 542.

9. See Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 LAW LIBR. J. 297, 305, 2009 LAW LIBR. J. 17, ¶ 24; see also Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM. & RHETORIC: JALWD 153 (2011). "Legal professionals in particular are critical of new lawyers' research skills; they say that new lawyers are unprepared to conduct legal research and that their research skills are unsophisticated." *Id.* at 155.

10. Feliú & Frazer, *supra* note 7, at 544.

11. See generally *id.* at 541 (supporting the argument that the research environment of lawyers is undergoing wide-ranging change due to technology, creating a need to reform the teaching of advanced legal research).

12. *Id.* at 550.

13. Kaplan & Darvil, *supra* note 9, at 164.

¶9 Further complicating the question of how to successfully teach research is the question of how prepared today's first-year student is for law school. Analysis, research, and writing are symbiotic. You research to locate information, analyze it for fit to the specified context, and ultimately communicate the result, frequently in a written format, be it a letter, memo, brief, or e-mail. In Susan Stuart and Ruth Vance's article, *Bringing a Knife to a Gunfight: The Academically Underprepared Law Student and Legal Education Reform*, the authors highlight what most of us see and know—today's student is not the student of yesterday. The erosion of basic research and writing skills at the high school and college levels is not a figment of our collective imagination.<sup>14</sup> Stuart and Vance cite deficiencies in written communication skills, social skills, and rudimentary problem-solving techniques. Today's students highlight multitasking as a benefit, but most lack the ability to successfully multitask and are likely not to have developed the brain circuitry that supports knowledge acquisition, indicative analysis, critical thinking, and reflection.<sup>15</sup> A preference for images over words also diminishes their desire to tackle lengthy written passages.<sup>16</sup>

¶10 Any consideration of improving research skills and research education must embrace technology. The technological sophistication of today's first-year law student is shallow.<sup>17</sup> Yet the Google generation is in law school and entering the door to the legal profession. Accessing information is seemingly easy, particularly for the digital native who has never seen a phone book and relies on Siri or Google Maps for directions rather than navigating via an actual map. The ability of today's first-year law students to find something through Google is not at issue; rather the issue is their ability to dig deep, to think critically, to evaluate the information they are finding for fit, and to engage in the legal analysis required in the practice of law.<sup>18</sup>

¶11 For those involved in legal education, the goal is to provide students with the tools they need to succeed on graduation. The consistent critical evaluation of the ability of graduates to conduct effective legal research suggests pedagogical improvement is required; but exactly what should we change? This was the overarching question informing the initial survey and the survey. The surveys were designed to seek out basic information about what leading law schools are teaching, who is teaching in the legal research classroom, and how those schools signal the importance of legal research through grading and credit.

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14. Susan Stuart & Ruth Vance, *Bringing a Knife to a Gunfight: The Academically Underprepared Law Student and Legal Education Reform*, 48 VAL. U. L. REV. 41 (2013).

15. *Id.* at 65.

16. *Id.* This may also explain the appetite for visual tools such as Casetext, Ravel, and features such as Shepard's graphical display. See also Katrina June Lee, Susan Azyndar & Ingrid Mattson, *A New Era: Integrating Today's "Next Gen" Research Tools Ravel and Casetext in the Law School Classroom*, 41 RUTGERS COMPUTER & TECH. L.J. 31 (2015).

17. Simon Canick, *Infusing Technology Skills into the Law School Curriculum*, 42 CAP. U. L. REV. 663 (2014).

18. As Elaine Egan, at a 2014 AALS meeting in New York, so succinctly put it, "If your clients can Google it, they don't need you." Elaine Egan, Head of Research & Info. Servs., Americas, Shearman & Sterling LLP, Panel on Law Libraries and Legal Info.: What Students Don't Know (But Should Know) About Research in Practice (Jan. 3, 2014) (notes on file with author).

## The Survey, the Data, the Results

### Do We Require Legal Research Education?

#### *Is Legal Research a Required, Graded, 1L Class?*

¶12 Eighty-two percent of respondents indicated that legal research was a required first-year class.<sup>19</sup> This leaves open the question as to what is done at the remaining eighteen percent of surveyed institutions that do not require formal research training in the first year. Creating subsets of the 200 schools sheds some light on this question. Ten percent of schools ranked in the top 100 indicate they do not require first-year legal research, and twenty-three percent of those responding from the top 25-ranked schools answer that legal research is not a required class.

¶13 Even if you accept the eighty-two percent as sufficient, this is deceptive. Here, the survey's two follow-up questions are informative: "Is the 1L legal research course a one or two semester class?" and "Is the research class a separate stand-alone class or taught as part of a writing class?" These follow-up questions reflect on the significance assigned to research within the academy.

#### *Is the 1L Research Course a One or Two Semester Class?*

¶14 Sixty-seven percent of respondents indicated one or two semesters are required, but what occurs in the remaining third of institutions? One interpretation might be that research is required for more than two semesters.<sup>20</sup> Comments to both the survey and the initial survey reflect a small number of institutions have legal practice or legal skills courses of more than two semesters involving writing, research, interviewing, and counseling. These comments are a distinct minority and would not account for the full one-third of institutions responding "other."<sup>21</sup> More likely, those schools responding "other" are spending less than one semester teaching research skills. Twenty-five percent of the top 25-ranked schools indicated "other."

#### *Is Research a Stand-Alone Class or Taught as Part of Legal Writing?*

¶15 If graduates are expected to possess good research skills, adequate time to learn how to productively use those tools and methods is essential. Time is the key. Only sixteen percent of all responding institutions indicate they have a stand-alone research class. The percentage, seventeen, from the top 100 schools is similar. Some variance is seen in the responses from the top 25 schools with twenty-three percent reporting that they provide stand-alone instruction in legal research. While expected, the answers remain shocking. In an environment where the MacCrate report indicated legal research skills are fundamental and law firms routinely decry

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19. Unless otherwise indicated, where a percentage is stated, it is of those responding from the 200 rated schools.

20. The comments to question 2 from the respondents from the 200 rated schools reflecting that research is part of a larger skills program included "3 semesters" and "taught within our legal practice program."

21. Comments to question 2 from respondents from the 200 rated schools indicating that research was less than one semester included "4 weeks," "one-week intensive," and "5 sessions." "Seven weeks" was also a repeated comment.



the research abilities of our graduates, less than one-quarter of the top 25 law schools require a class focused solely on legal research.

¶16 At the same time, what message do we send our students about the importance of legal research? More specifically, what do we signal to first-years?<sup>22</sup> For better or worse, today's students, like those of yesterday and likely tomorrow, actively engage in a risk/reward analysis when deciding how to budget their time. Three survey questions attempted to address what we signal with credit and grading. With that in mind, the survey asked whether students received a letter grade in legal research or whether their class was graded pass/fail. The impetus behind the question was that students are more likely to assign importance to a class when they receive a letter grade than when they are graded on a pass/fail basis. Credit awarded is another signal indicating importance since how much credit a class is worth is another part of the risk/reward analysis.

¶17 The consistent theme emerging from the answers to this suite of questions is that we fail to signal the importance of legal research in the practice of law. Research is most frequently buried in a writing or general skills class that is already crowded for time and must teach a multiplicity of basic skills.<sup>23</sup> Research and writing are symbiotic; thus the prevailing premise that they can and should be taught together seems sound, at least in theory. You use your research skills to find the content to communicate in a brief or memo. As you write, you find holes in your argument or understanding of the law and you return to research to fill the gaps. It seems natural to teach research and writing together, as they are part of the same process. Does it work, or is research lost in the larger task of teaching legal writing? The answers to this set of questions, as illustrated in figures 1, 2, and 3, imply that writing and other skills development are the focus of the class, with research as the orphan child.

¶18 When the answers to the type of grade assigned and amount of credit received to legal research questions are read together, they suggest that students typically receive a letter grade for a writing class that includes research. Comments on the question on letter grade versus pass/fail support this conclusion. Comments<sup>24</sup> include:

- Legal practice is graded.
- Research counts for part of this grade.
- 10 percent of letter grade in writing class.
- Letter grade pertains to legal writing component of the class; legal research assignments are not graded.
- The legal research portion is pass/fail; the entire course is for a letter grade.

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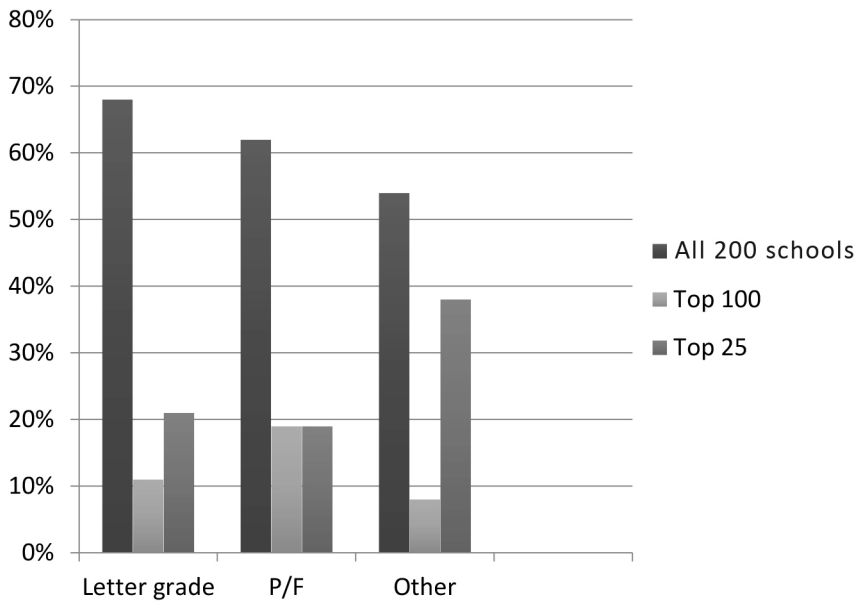
22. At least second- and third-year law students are likely to receive some glimmer of the importance of research from their summer positions. I have had more than one student return from a summer position and thank me for making them learn research. I always find those conversations interesting, as the students admit they did not grasp the importance of research until they were in a position that required them to research.

23. See generally Ian Gallacher, "Who Are Those Guys?": *The Results of a Survey Studying the Information Literacy of Incoming Law Students*, 44 CAL. W. L. REV 151 (2007) (discussing incoming law students and their perceptions of their reading, writing, and research skills and habits).

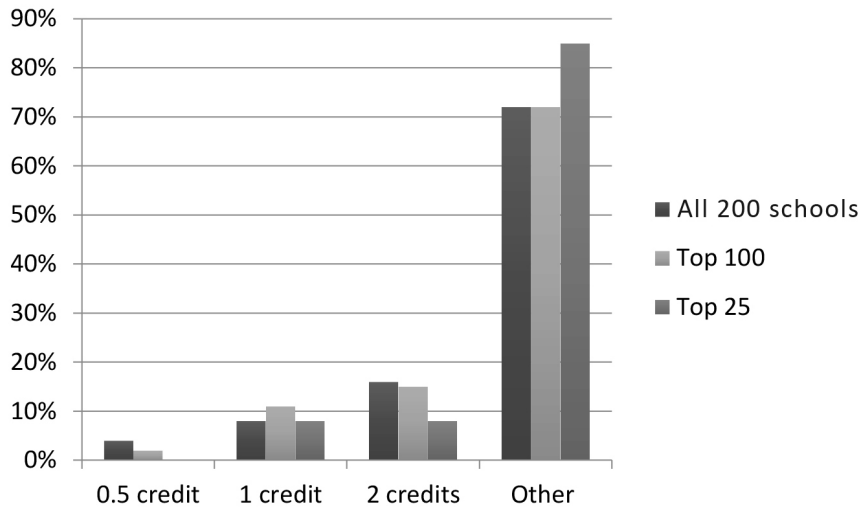
24. Comments included in the text are quotes taken from the survey unless otherwise indicated and include the abbreviations and other hallmarks one expects of an online survey comment field.

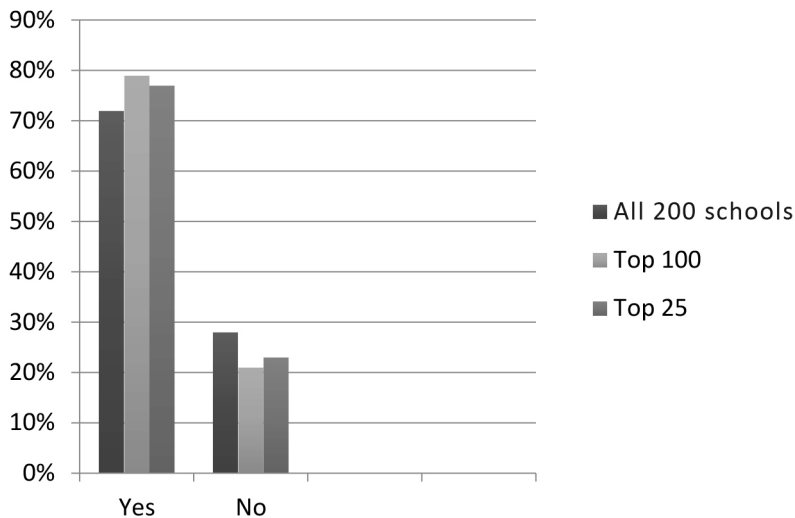


**Figure 1**  
Grading Method for 1L Research



**Figure 2**  
Credit Received for 1L Research



**Figure 3****Research Grade Incorporated into Writing Guide**

- The research grade is incorporated into the writing grade.
- Students receive a letter grade that is incorporated into their legal writing grade (worth 25% of their LW grade).
- The grade is combined with the Legal Writing grade.
- Legal writing class is graded and legal research portion is mandatory, but separate “legal research” grade is not given.
- Letter grade appears on transcript but is worth 0 credits so it does not affect their GPA.

Comments on the follow-up question about the percentage of the writing grade attributed to research again affirm the diminished presence in the overall course.

- Not sure.
- Maybe 10%.
- Very little.
- Determined by the writing program.
- 25% of the total points available in the three credit course each semester.
- 12%.
- 20%.
- Varies by instructor.
- 40% of the grade for the 6-credit year-long course.
- 5%.
- Students must pass the research course or they fail the writing course.
- Not separated out.
- Maybe 20%? Counts as part of all writing assignments.

Similar comments were provided as part of the credit allocation question.

- 10 percent of the writing class.
- The legal research part of the class is not graded.
- It is part of the writing course.
- 25% of the 3-credit Lawyering Skills course each semester.
- Points.
- It is bundled into the three-credit LS II course.
- None.
- A percentage of the LRW class.
- The credit is combined with Legal Writing.

### Who Teaches Legal Research?

¶19 In 1973, an ABA questionnaire of library instruction practices indicated forty-three percent of the then 124 law schools combined research and writing in one course.<sup>25</sup> Of interest is that Helene Shapo, the author of the study, concluded that in most law schools law librarians did not teach research.<sup>26</sup> She noted that “research instruction by adjuncts and third-year students tends to be more idiosyncratic and anecdotal than instruction informed by a more comprehensive study of the types of research materials available in the law school library.”<sup>27</sup> Shapo’s argument for the combined class is that an integrated class avoids “treasure hunt” research assignments in favor of more realistic assignments teaching research as part of “the analytical process lawyers undertake. This process requires students to define issues, plan research strategies, evaluate the authoritative value of the materials they have found, and engage in further research as their writing reveals analytical weaknesses.”<sup>28</sup> While sound in theory, this approach fails to address the question of who is teaching legal research. Again, if the experts are those who routinely use and engage with the tools of research, why are they not the ones charged with teaching our students? Shapo even alludes to the larger issue: if the legal writing instructors are experts in writing rather than research, where is their time and energy likely to be focused?

¶20 The results of the survey identify dual-degree law librarians and legal writing faculty as the primary instructors of legal research at forty-four and forty-three percent respectively. As written, the question provides for multiple options thus leading to results greater than one hundred percent. The descriptors include: (a) tenured/tenure-track faculty, (b) adjunct faculty, (c) legal writing faculty, (d) law librarians (not dual degreed), (e) law librarians (dual degree) and (f) other. Of note, the number of dual-degree librarians rises to sixty-two percent when viewing responses from the top 25 schools. This is significant. Who is best able to teach legal research but for those that are expert in the subject? As Richard Danner once suggested, we hire someone whose expertise is contracts to teach contracts, not someone whose expertise is torts.<sup>29</sup>

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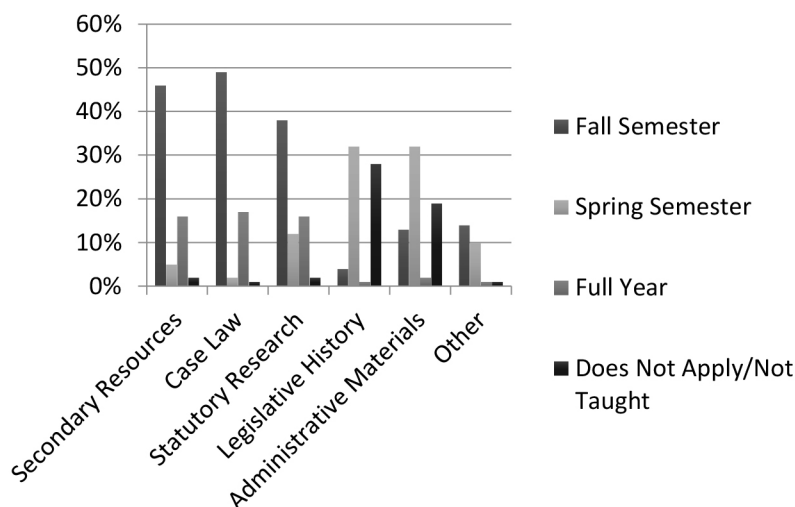
25. Helene S. Shapo, *The Frontiers of Legal Writing: Challenges for Teaching Research*, 78 LAW LIBR. J. 719, 724 (1986).

26. *Id.* at 725.

27. *Id.*

28. *Id.* at 726.

29. Richard A. Danner, *From the Editor: Teaching Legal Research*, 78 LAW LIBR. J. 599, 600 (1986).

**Figure 4****Subjects Taught in 1L Research****What Is Taught?**

¶21 Next the survey turned to a series of questions targeting what is taught in the research class. Figure 4 illustrates the subjects taught in the research class and in what semester. A frequent observation from law firm librarians is the reluctance of associates to use secondary resources and engage in cost-effective research.<sup>30</sup> Similarly, in a recent white paper sponsored by LexisNexis, forty-nine percent of those surveyed answered that research should be a larger part of the law school curriculum.<sup>31</sup> The same paper recommends that increased time be devoted to statutory research and administrative law.<sup>32</sup> Secondary resources, case law, statutory research, legislative history, and administrative materials are taught by a majority of the responding institutions.

¶22 Sixty-seven percent continue to teach print research skills, with digests, reporters, statutes, and secondary sources all being taught by a significant majority of those responding. Of those who teach print research skills, large majorities report teaching statutory research (ninety-three percent) and secondary sources (seventy-nine percent). The question also permitted comments as to other resources taught. Practice materials, state materials, jury instructions, and legal forms were all cited in comments.

“Just as law school curriculum provides a contracts specialist, not a torts scholar, to teach the first-year contracts course, so should it provide someone with active knowledge of research sources and techniques to teach legal research.” *Id.* at 600.

30. Jill L.K. Brooks, *Great Expectations: New Associates’ Research Skills from Law School to Law Firm*, 28 LEGAL REFERENCE SERVS. Q. 291, 292–93 (2009); see also Meyer, *supra* note 9, at 304, ¶ 18 for similar statements.

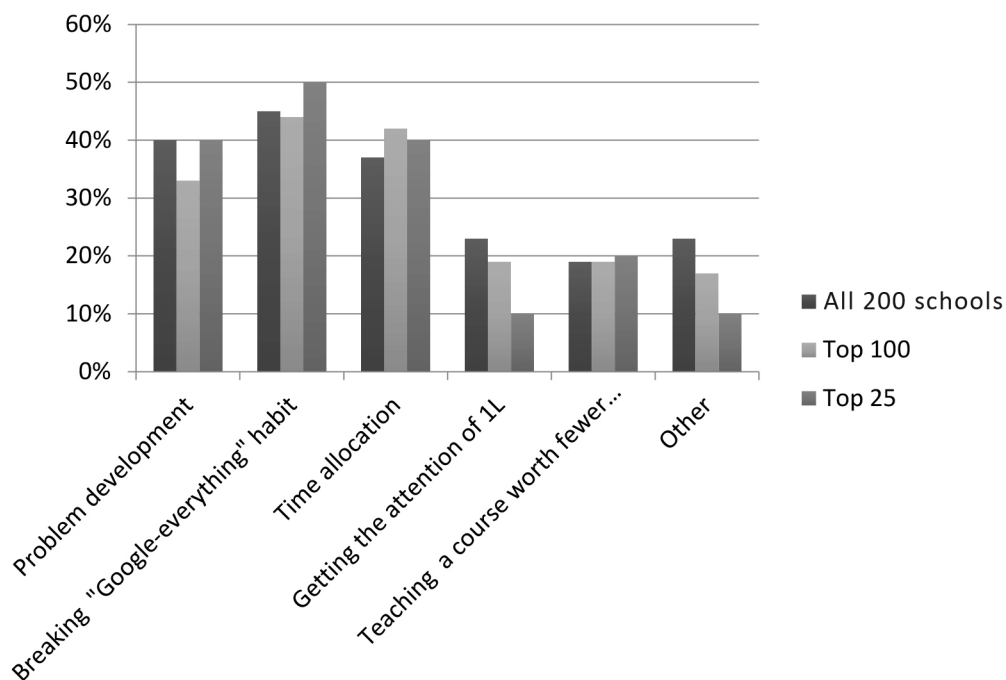
31. Steven A. Lastres, *Insights Paper: Rebooting Legal Research in a Digital Age* (Dec. 2012), [http://www.lexisnexis.com/documents/pdf/20130806061418\\_large.pdf](http://www.lexisnexis.com/documents/pdf/20130806061418_large.pdf) [https://perma.cc/YA8U-BWG3].

32. *Id.*

¶23 Research assignments are integrated with the writing assignment at fifty-seven percent of the responding institutions. Independent research hypotheticals, “treasure hunt” assignments, and other variations on the research assignment follow at thirty-seven percent, twenty-two percent, and fourteen percent of responding institutions respectively. When the responses of the top 25 schools are isolated, integration of the research assignment into the writing assignment rises to seventy percent while the independent research hypotheticals and “treasure hunt” assignments fall to ten percent each.

¶24 Respondents were also asked how many research assignments were administered during the first year. In absolute numbers, for the fall semester 43 respondents indicated 1 to 4 assignments with only 12 indicating more than 4; for the spring semester 40 respondents indicated 1 to 4 assignments with only 18 responding more than 4 assignments. When asked whether a final exam was administered at the conclusion of the course, fifty-nine percent answered no. The forty-one percent that do administer a final exam employ a broad spectrum of assessment techniques, including oral exams, multiple-choice tests, short-answer exams, and other assessment formats. “Other” was the most frequent response at fifty-four percent. Multiple-choice and short-answer formats follow at forty-six percent each. Schools indicating no final exam is given were asked whether a final project or other form of evaluation is employed. Their comments are revealing. Somewhat surprisingly, a number of comments also reflect research projects as the final assessment—“comprehensive library research assignments,” “compiling research logs documenting the research for appellate briefs,” “‘research plan & report’ for the big writing assignments.” Despite the promise of the comprehensive library-type assignments, many of the chosen forms of assessment are consistent with that of a writing class. Examples include assigning open memos, closed memos, briefs, and oral arguments—all possible examples of an excellent end product for a research class to the extent research is a central focus and, yet, all consistent with a writing class where writing is likely to be the focus over the research. Briefs, memos, and oral arguments are the typical types of assessment reflected in the comments and often with language that the assessment is of a written product for a writing class. A typical comment is that “no, because the legal research classes are a component of the fall legal research and writing classes”; “first semester a closed memo and an open memo and second semester an open brief with an appellate argument.” Overall, the comments reflect the diminished presence of research with statements such as “no final evaluation of legal research skills” and “legal research training is extremely limited and targeted to the writing project.”

¶25 Ninety-nine percent of respondents offer an advanced research class, but only nine percent of those responding mandate that their students take the course. Descriptions of the advanced research class vary broadly. The class is most often a one-semester, two-credit class taught by a dual-degree librarian. Representative topics in the advanced class include review of basic skills, statistics, foreign and international law, and interdisciplinary sources. The other style of advanced research class is subject specific, with tax, intellectual property, international law, and health law being offered. The survey also inquired as to distance learning for the advanced legal research class. Eighty-eight percent indicated distance education is not used for the advanced class.

**Figure 5****Challenges in Teaching Research**

¶26 The survey also inquired as to the popularity and use of the flipped classroom. Forty-one percent indicated use of a flipped classroom, and of those, seventy-three percent were in their first or second year of this model. Nine percent of the cohort indicated use of a flipped classroom for more than four years. In-house generated modules and CALI lessons were the most frequently utilized components in the flipped classes.

### What Are the Challenges in Teaching Research?

¶27 In the initial survey, the surveyors posed an open-ended question permitting a variety of responses. Benefiting from the initial survey, question 36 as asked in the survey was a structured question. Quotations from the responses from the initial survey as to challenges faced in teaching legal research are captured below and informed the ultimate design of question 36 in the survey. Figure 5 identifies common challenges in research instruction by rank of law school.

- Lack of time available to 1Ls for anything beyond that of their required courses.
- Not enough time in a one-credit required class to address all changes happening in the field and to prepare students for the many different eventualities.
- Finding interesting problems to use.

- They don't like it, they are bored with it.
- 1Ls believe they are great researchers. In fact they are great at accessing information and often not particularly strong at making judgments about the quality of the information they've accessed or at determining how to use/integrate the information in their assignments.
- Lack of receptiveness to time-sensitive and cost-effective search methods, and the need to plan search strategies.
- They don't seem to have a grasp of what it is they should be doing, as lawyers. The whole concept of legal research as an integrative process takes longer to sink in than it should.
- Organizational skills.
- Blind trust in the effectiveness of online research.
- Student frustration at the comparatively low credit they receive for the time they put into the required course.
- Students that arrive in possession of poor basic research and writing skills.
- Getting time with the students.
- Getting them to take it seriously . . . making them understand they need to know legal research.
- Teaching approach and concepts to the "Google" generation.
- Failure to understand the structure of the law.
- The closed reference model does not require actual research, therefore students get no practice at what they are taught.

Question 36 in the survey read: "What is your greatest challenge in teaching legal research?"

- Problem development
- Breaking the "Google-everything" habit
- Time allocation
- Getting the attention of 1L students
- Teaching a course worth fewer credits than substantive law classes
- Other. Please describe.

Those responding "other" were asked to expand on their responses. Similar to the comments from the initial survey, time, attention, and lack of understanding by the students of the importance of research are mentioned. One new comment of interest also appeared—"working with the writing faculty."

### General Comments on Teaching Legal Research

¶28 The final question of the survey asked respondents to comment generally on their experience of teaching legal research. The comments reflect the challenges in teaching this subject:

- Integrating is the only way to get students engaged in the work when the class is worth such a little percentage of an already devalued class.
- Try to break the Westlaw habit. Not every problem is best solved by typing words in a box to get everything and then filtering. There is still room to do searches that are more controlled for certain kinds of problems.



- Each spring semester brings a different class with a different attitude. Some are highly motivated, some not so much. I have taught a similar class over the past 11 years and detect a slight trend towards students only wanting to learn something they have an immediate use for.
- Has become more difficult in every aspect: learners come less prepared and less interested, there is more to cover as platforms have changed and more government information is on the web.

### The Future of Legal Research Instruction

¶29 Based on the survey responses and paying particular attention to the challenges in teaching research identified by respondents, what is the ideal design of the basic legal research class? The ideal suggested here focuses on what an effective introductory research class should look like. Integration of research into the three distinct years of law school, although highly desirable, is beyond the scope of this recommendation and article. The introductory legal research class should employ four basic requirements. These basic requirements are simple and most likely controversial, if for no reason other than the increased cost in time in the curriculum and personnel:

1. A required research class of a minimum of two credits taught in the spring semester of the first year (one credit) and the fall semester of the 2L year (one credit)
2. A professor with both a J.D. and an M.L.S. or M.I.S., preferably admitted to the bar and possessing some experience in the practice of law or an equivalent level of practical experience
3. A grading schema equivalent to that of the first-year doctrinal courses
4. A curriculum that includes research strategy; the fundamental resources of secondary sources, case research, statutory research, and the administrative state; problem solving; and concepts of efficiency and effectiveness

¶30 Why a minimum of two credits? At a practical level, students equate credit with value. Anything less than two credits is likely to be dismissed in the risk/reward calculations conducted by students. More realistically, teaching everything a student should master in a research class designed to prepare that student for the rigor and realities of practice will exceed the minimum class time for two credits as established by the ABA.

¶31 The popular fiction that everything is online and thus easy to access plays not only to those who believe everything is free and online but also to the students who believe they are masters of research when, in all likelihood, Google is their master. As we all know, not everything is freely available online, and millennial students are more likely to lack the basic research skills of prior generations. This is certainly what is suggested by the comments from those in the trenches.<sup>33</sup> To be valuable, the research class must be interesting, relevant, and integral to a student's legal education. Today's lawyer is "flooded with so much information that it is easy

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33. Paul Douglas Callister, *Beyond Training: Law Librarianship's Quest for the Pedagogy of Legal Research Education*, 95 LAW LIBR. J. 7, 9, 2003 LAW LIBR. J. 1, ¶¶ 5–6.

to get lost. It is the lawyer's job to find information that is pertinent to the legal problems presented and ultimately to create something meaningful from that information.<sup>34</sup> Thus, the recommendation is for a professor with both the practice experience as a lawyer and the expertise of the lawyer librarian for credibility.<sup>35</sup> In other words, permit the experts to teach the subject in which they are the experts.<sup>36</sup>

¶32 Finally, a grade consistent with that of a doctrinal class is a must. Is pass/fail an option? Perhaps, if other required classes in the first year are also graded pass/fail. The key to the grade is to indicate value in the context of the legal education offered by the highly desirable institution. The class must be perceived by students to have real academic value. Students are likely to connect value with the concept of a letter grade, particularly if the research class competes for time with other classes that carry letter grades.<sup>37</sup> The answer here lies not with pass/fail versus letter grade versus some other schema but answering the question of does it connote importance in the same way students' other classes are perceived as important?

¶33 What is included in the curriculum? The goal of law school, for most, is admission to the bar and representation of clients in the practice of law. The goal of the research curriculum should be to provide students the research skills needed to practice law.<sup>38</sup> We are already teaching the basics—secondary resources, case research, statutory research, legislative history, and the administrative state. We need to add research strategy, analysis in a research context, and cost-effective research. The advanced legal research class, especially as an elective substituting for the basic first-year class, is insufficient to cure the problem.

34. Yasmin Sokkar Harker, *"Information Is Cheap, but Meaning Is Expensive": Building Analytical Skill into Legal Research Instruction*, 105 LAW LIBR. J. 79, 80, 2013 LAW LIBR. J. 4, ¶ 1.

35. See Peter Toll Hoffman, *Teaching Theory Versus Practice: Are We Training Lawyers or Plumbers?*, 2012 MICH. ST. L. REV. 625. Practical experience is rarely listed as a qualification required for traditional law school teaching positions, except for clinical and lawyering skills positions where such practice is the norm. Some suggest that actual law practice is a negative that is viewed as a lack of commitment to scholarship. *Id.* at 639; see also Callister, *supra* note 33, at 24, ¶ 38 ("[L]aw librarians may need to stretch (or reflect on earlier days when they practiced law) to fully understand the package of skills needed by their students.").

36. Kaplan & Darvil, *supra* note 9, at 188 ("Historically, librarians taught legal research. During the last few decades, however, law schools merged the teaching of legal research with legal writing instruction under the guise that it could be taught properly only when paired with legal writing. Given the extent of criticism by members of the legal profession and the results of studies indicating that law graduates lack proficiency in legal research, it is safe to say that 'giving responsibility of legal research instruction to legal writing faculty has [not] yielded the hoped for outcomes.'").

37. Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203, 235–36 (1995):

In a significant number of schools, the basic first-year legal research and writing course is graded on a scale different from the other traditional courses. This has the advantages of reducing competitiveness in what can be a stressful time, encouraging collaboration when appropriate and instructor participation when needed, allowing for greater flexibility, freeing instructors from the onerous task of assigning precise grades, and taking into account the experimentation that students will, of necessity, be doing in their research and writing class.

However, a "unique" grading system has disadvantages that are equally obvious. The "incentive factor" of a graded course is not present if the grade does not carry the weight that grades in other courses do. In addition, an inconsistent system for grading further distinguishes the legal research and writing course from other academic responsibilities—a distinction which the students and faculty teaching in other fields could interpret to mean that the class is less worthy of serious attention.

38. Callister, *supra* note 33, at 23, ¶ 37.

## Conclusion

¶34 The common refrain that law students lack the most basic legal research skills is likely to continue until law schools make fundamental structural changes in the method of teaching legal research. Changes to the basic research curriculum must reinforce the importance of research within the practice of law. This means a research course to which students will assign importance in a risk/reward calculation and a course taught by an expert with sufficient time allocated to effectively teach the complexities of research. A continued lack of emphasis on research within the framework of legal writing or legal practice skills, combined with the information explosion, will continue to diminish the importance of research and will result in a loud and appropriate chorus from the bench and bar that “Johnny and Jane Cannot Research.”

## Appendix

### December 2014 Qualtrics Survey

Thank you for completing this survey. It should take no more than 15 to 20 minutes of your time.

Please complete the following information about you and your institution. Your response is confidential.

Name:

Role:

Institution:

Phone:

E-mail:

### 1L Legal Research Course

1. Is legal research a required 1L class?
  - ☐ Yes
  - ☐ No
2. Is the 1L legal research course a one or two semester class?
  - ☐ 1 semester
  - ☐ 2 semesters
  - ☐ Other
3. Which of the following best describes the instructors in your 1L legal research program:
  - ☐ Tenured/Tenure-track faculty
  - ☐ Adjunct faculty
  - ☐ Legal writing faculty
  - ☐ Law librarians (not dual degree)
  - ☐ Law librarians (dual degree)
  - ☐ Other
4. Is the research class a separate stand-alone class or taught as part of a writing class?
  - ☐ Stand-alone
  - ☐ Part of a writing course
  - ☐ Other

5. Do you employ a “flipped” classroom approach in the 1L legal research course?

- ☐ Yes
- ☐ No

If yes, please describe the basic structure of your flipped classroom. For example, what types of materials do students view outside of the classroom? Video, audio, or interactive module? What technology was used to develop the materials? What types of activities do students complete in the classroom?

6. How long have you been using the flipped classroom approach?

- ☐ 1–2 academic years
- ☐ 3–4 academic years
- ☐ More than 4 academic years

7. Do 1L students receive a letter grade or is the class graded pass/fail?

- ☐ Letter grade
- ☐ Pass/fail
- ☐ Other

8. How many credits do students receive for the 1L legal research class?

- ☐ 0.5 credit
- ☐ 1 credit
- ☐ 2 credits
- ☐ Other

9. Is the 1L research grade a portion of the writing grade?

- ☐ Yes
- ☐ No

10. When are the following subjects taught in the 1L legal research class?

	Fall Semester	Spring Semester	Full Year	Does Not Apply/ Not Taught
Secondary resources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Case law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Statutory research	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legislative history	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administrative materials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. Does the 1L program teach students to conduct research using print materials?

- ☐ Yes
- ☐ No

12. If yes, is the use of print materials taught prior to the use of online materials or does the program take an integrated approach?
- ☐ Print materials first
  - ☐ Online materials first
  - ☐ Integrated, teaching both print and online together
13. Which of the resources are students taught to use in print?
- ☐ Digests
  - ☐ Reporters
  - ☐ Statutes
  - ☐ Secondary sources
  - ☐ Other
14. Have your 1L students demonstrated difficulty with any of the following basic research tasks?
- ☐ Using an index
  - ☐ Using a table of contents
  - ☐ Physically locating print resources in a law library
  - ☐ Other
15. Which of the following research tools are taught in your 1L program?

	Fall Semester	Spring Semester	Full Year	Not Taught
Westlaw	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LexisNexis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bloomberg Law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CCH	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BNA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HeinOnline	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Google	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Google Scholar	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fastcase	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GPO/Library of Congress/ other free federal sources	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

16. Do you restrict the use of Westlaw or LexisNexis in any manner?
- ☐ Yes, describe
  - ☐ No
17. Do vendor representatives participate in your 1L program?
- ☐ Yes, please describe their role
  - ☐ No, please describe why you chose not to involve vendor representatives

18. Which of the following phrases best describes your approach to 1L research assignments?

- ☐ Integrated with the writing assignment
- ☐ Independent research hypothetical
- ☐ Treasure hunt
- ☐ Other

19. How many research assignments are administered in the 1L legal research course?

	1–2	2–3	3–4	More than 4
Fall Semester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Spring Semester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

20. Are 1L students expected to work independently on assignments or is collaboration permitted?

- ☐ Independently
- ☐ Collaboratively
- ☐ Varies per assignment

21. Is there a final exam administered at the conclusion of the course?

- ☐ Yes
- ☐ No

22. How is the final exam for the 1L legal research course administered? Please choose all that apply.

- ☐ Oral exam
- ☐ Multiple choice
- ☐ Short answer
- ☐ Other

23. If there is no final exam administered in the 1L course, is there a final project or other form of evaluation? Please describe.

**Advanced Legal Research**

24. Does your school offer an advanced research class?

- ☐ Yes
- ☐ No

25. Is the advanced research class required?

- ☐ Yes
- ☐ No



26. Is the advanced research class offered as a distance learning course?

- ☐ Yes
- ☐ No

27. Which of the following best describes the instructors in your advanced legal research program?

- ☐ Tenured/Tenure-track faculty
- ☐ Adjunct faculty
- ☐ Legal writing faculty
- ☐ Law librarians (not dual degree)
- ☐ Law librarians (dual degree)
- ☐ Other

28. Is the advanced research course a one or two semester class?

- ☐ 1 semester
- ☐ 2 semesters
- ☐ Other

29. How many credits do students earn in the advanced research class?

- ☐ 0.5 credit
- ☐ 1 credit
- ☐ 2 credits
- ☐ Other

30. What topics are covered in the advance research class? Please select all that apply.

- ☐ Review of basic legal research skills
- ☐ Interdisciplinary resources
- ☐ Statistical resources
- ☐ Foreign law
- ☐ International law
- ☐ Other, please describe

31. How many research assignments are administered in the advanced research course?

	1–2	2–3	3–4	More than 4
Fall Semester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Spring Semester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

32. Are advanced students expected to work independently on assignments or is collaboration permitted?

- ☐ Independently
- ☐ Collaboratively
- ☐ Varies per assignment

33. How is the final exam for the advanced research course administered?  
Please choose all that apply.
- ☐ Oral exam
  - ☐ Multiple choice
  - ☐ Short answer
  - ☐ Other
34. Does your institution offer advanced research courses for specialized subject areas? If so, please indicate which subjects these courses cover.
- ☐ Tax
  - ☐ Intellectual property
  - ☐ International law
  - ☐ Health law
  - ☐ Other, please describe
  - ☐ Do not offer specialized research courses
35. Please briefly describe the structure of the advanced legal research course to the extent not covered in the preceding questions.

### **Teaching Legal Research**

36. What is your greatest challenge in teaching legal research?
- ☐ Problem development
  - ☐ Breaking the “Google-everything” habit
  - ☐ Time allocation
  - ☐ Getting the attention of 1L students
  - ☐ Teaching a course worth fewer credits than substantive law classes
  - ☐ Other, please describe
37. Please use the space below to comment generally on teaching legal research.