

Fall 9-1-1959

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Recommended Citation

Charles V. Laughlin, *A Day'S Work*, 16 Wash. & Lee L. Rev. 192 (1959),
<https://scholarlycommons.law.wlu.edu/wlulr/vol16/iss2/3>

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A DAY'S WORK*

CHARLES V. LAUGHLIN†

The three year law curriculum of approximately 1100 class room hours became standard several decades ago. Since then the fields of law and activities of lawyers have become considerably extended. Thus is created the problem of fitting an increasing amount of potential subject matter into a stabilized, or at least restricted, time allowance.

There has been experimentation with several possible solutions to the problem of making legal instruction adequately cover the field of operational law. Some of them are:

1. Increase the length of study time necessary for the basic law school degree.¹
2. Condense subject matter by use of more text type material, footnotes and collateral references.²
3. Eliminate certain previously standard subjects from the curriculum.³
4. Extend the number of elective subjects.⁴

It is not the purpose of this article to propose any final solution to

*This study was undertaken in order to aid the Curriculum Committee of the Washington and Lee Law School Association in its mission of making recommendations concerning the law school program. The aid of the Association in financing this research and its generosity in allowing the data gathered to be published in the form of an article are gratefully acknowledged.

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¹This seems to have been successfully accomplished in some schools. Many legal educators believe, however, that three years are enough. By the third year, students are anxious to try out what they have learned (an anxiety often aggravated by their declining financial resources) and seem to be increasingly bored by their academic pursuits.

²To some extent professors and the editors of case books fool themselves. Although there is no "law students union," there are realistic limitations upon the amount of work students will do, or can reasonably be expected to do.

³Notable casualties have been Equity and the procedural subjects. Maybe this is desirable as a lesser evil, but it seems like the death of old friends.

⁴Prima facie this seems to have merit. The principal thing that is learned in law school is method. Aside from certain basic fields that are covered in the first year, it seems not so important *what subjects* are studied as it is that three years be devoted to law study. Yet, the selection from among electives often proves to be a very frustrating experience for students, and choices are sometimes based upon irrelevant considerations, such as the hour of a day a particular course is scheduled.

the problem outlined above. The writer has, however, long had the belief that an investigation to determine the relative attention to the various fields of law actually given by the bar as a whole would produce interesting, and perhaps useful, information. It is not suggested that a law school curriculum should represent a cross section of the law in action. For instance, some fields, such as negligence, in which problems are largely factual, may involve a larger portion of the activity of the bar than other fields, such as constitutional law, which deal more with legal perspective. In order to develop a truly prepared lawyer, as much or more instructional time may be required for these so called *high brow* subjects as is required for those courses which are believed to relate closely to an attorney's *bread and butter*. However, close decisions as to the amount of attention to be given a particular course, or field of law, may be properly influenced by the importance of that field in the life of the people who use the law. It is true that it is more important to teach method than it is to teach subject matter, but method cannot be taught in a vacuum; specific subject matter must be used. In selecting the subject matter to be taught, extent of use is a major concern, not the only one or even the most important, but an important consideration.

There are several ways to determine the comparative extent to which the legal profession as a whole is confronted by the various branches of law. One method is to find out what the bar as a whole does on a particular day. There is no feasible method for gathering such data from the entire bar. However, many types of samples are available as, for example, the graduates of a particular national law school. If it be objected that the day selected will be atypical for some lawyers, the answer is that such unusual days will cancel out each other. Thus, if on the day selected—R (Report) Day—lawyer A, who normally deals with mortgage foreclosures, has his one criminal case of the year, lawyer B, who normally handles criminal cases may have his one divorce case, and lawyer C, a divorce lawyer, may have his one mortgage foreclosure. Thus a true picture of the day's work of the legal profession will be obtained.⁵

The Curriculum Committee of the Washington and Lee Law School Association was enthusiastic about making the survey. It was decided that the Washington and Lee alumni might be an appropriate

⁵Actually, in deference to the fear of some members of the committee that the day selected might be unusual for too large a number of participants, each lawyer reporting was allowed to substitute for R Day any other day in the week in which it fell. A few availed themselves of this privilege.

guinea pig group. A first letter⁶ was sent out to about 1500 to determine how many were willing to participate in the survey. There were 623 answers received, out of which 454 were affirmative and 169 negative.⁷ Ten of the negative answers did include information which was later included in the survey.⁸

⁶Dear Alumnus:

One of the ways in which our organization is seeking to aid our law school is by making recommendations regarding curriculum. For that purpose a Curriculum Committee has been established.

At a recent meeting of that committee it was decided that you, members and prospective members of this association, might be able to help us in determining the relative importance of various aspects of our curriculum. We would like to get, if possible, a composite picture of the subjects and skills which relate to the work of a cross sectional body of American lawyers. We consider you as presenting the required cross section.

The following procedure is proposed: We will select a certain day, as non-unique as possible. We will then send forms to those of you who indicate a willingness to cooperate, and ask you to report your activities for that day. Please report the type of legal subject matter covered and also the type of work engaged in. . . . Rather than saying, for example, that you worked on a tax problem, we would like for you to report that you worked on a problem involving the deductibility for Federal Income purposes of litigation expenses by a legatee who had brought suit to construe a will. Pertinent code sections and authority (case, law review, text, etc.) citations would be welcome. If you are trying a case, a list of the various evidence and procedure questions which arose, and also the substantive law questions, will be helpful. We are also asking for the type of work done, e.g., trial, negotiations, research, conferences preparatory to trial, drafting instruments, etc.

Naturally we do not expect you to divulge the names of actual cases or reveal the identity of clients or other information of any sort of a confidential nature.

A goodly portion of law graduates today engage in activity other than the actual practice of law, e.g., judicial, political, governmental, business, etc. If you fall within this group, we still will want information from you. We believe that law school teaching should also reflect your needs. There is no field of human activity to which law is not relevant.

This is a preliminary survey to see if sufficient participation in our survey might be expected to be statistically significant. If you are willing to help in the manner outlined above, please so indicate on the inclosed card. We would appreciate your returning the card even if you feel that you cannot take part.

Sincerely yours,

CURRICULUM COMMITTEE

The Washington and Lee Law School Association

⁷Many of the alumni giving negative answers explained that they had retired, or were otherwise entirely outside the legal field. Others, notwithstanding the express request in the letter, thought that their information would lack value because they were engaged in business or in governmental activities or in highly specialized legal fields.

⁸See note 26 *infra*.

Thursday, April 17, 1958, was selected as R Day. A second explanatory letter was sent to the 454 persons who indicated a willingness to participate in the survey. As indicated, they were allowed to vary the date⁹ by selecting any day of the week of April 14 through April 19, 1958. The following chart was provided for reporting the day's activities:

Name..... Address.....

Finished Law school in 19.....

() Practice alone () Practice with.....partners or associates

1		2	3	4
Time Spent		Type of Work	Branch of Law	Specific Nature of Problem Worked On
hrs.	min.			
			34 lines	

The following excerpts from the second letter explains the use of the chart:

"Each line on the chart represents a distinct item of work (except that explanations in column four may run over into several lines if need be. If time spent on any item is less than one half hour, the time need not be reported, but all things done, even though requiring but a minute or two, will be reported. If the matter requires a half hour or more, the time spent should be reported.

"Column two indicates the type of work, such as trial work, interviewing clients and witnesses, drafting documents, legal research, etc. Please distinguish between office work in preparation for trial or settlement and office work unconnected with any apparent adversary proceeding.

"Column three indicates the field of law. Broadly speaking, these will correspond to law school subjects. We contemplate for column four a more particular statement as to the nature of the matters worked on. Reference to code sections or leading cases may be helpful in that regard, but are not required. If one line is not enough use more or turn the chart over and use the other side."

A further option was given. It was realized that some participants might feel cramped in using the chart. They were permitted to substi-

⁹See note 5 supra.

tute a letter reporting the nature of their law practice, and to make observations regarding the effect of law school training upon later professional life.¹⁰

Of those who reported a willingness to participate, only one-half actually participated in the survey. The total participants were 227. Those who filled out charts were 164. Seventy-six used the letter option. The total of 240 is reduced to 227 because 13 did both.

Those participating in this survey seem to represent a true cross section of lawyers as a whole. Who is a lawyer? Undoubtedly, private

¹⁰Pertinent portions of this second letter, not stated elsewhere, are as follows:

Dear Alumnus:

You have indicated your willingness to participate in a survey designed to determine the nature of the work done by a cross section of law school graduates. . . .

The Curriculum Committee has selected THURSDAY, APRIL 17, 1958, as the date to report your activities on the enclosed sheet. However, the following options are offered you:

(1) If you believe that another day will better present a picture of your work, you may select ANY DAY during the Week of April 14 through April 19, 1958.

(2) If you prefer, you may disregard the chart entirely and write us a letter containing the following information:

(a) Estimate as to the proportion of your time you spend on various types of skills. This information corresponds to that solicited by column two of the chart.

(b) Estimate as to the proportion of your time spent on various branches of the law. This corresponds to column three of the chart.

(c) The specific types of legal problems that you are most frequently confronted with. This corresponds to column four of the chart.

(d) What subjects that you studied, and skills that you acquired, in law school do you consider most helpful in your present work?

If you decide to use the enclosed chart, the following explanations are made. Two charts are included: one is for your own use during the day; the other is for reporting to us. Please return the **LATTER CHART ONLY**.

[At this point is the portion of the letter quoted in the text of this article.]

Please use your discretion as to the reporting of purely intra-office, administrative, matters. The test is: does the particular item of work involve subject matter or skills that, in your opinion, can feasibly be taught in law school.

Please accept our gratitude for your help in the making of this survey.

Sincerely yours,

CURRICULUM COMMITTEE

The Washington and Lee Law School Association

¹¹3 American Bar News, No. 12, shows that 61 out of 98 United States Senators are lawyers, as are also 223 of the 436 members of the House of the 86th Congress. The chairmen of 15 of the 18 standing Senate Committees and 16 of the standing House Committees are members of the bar, as are three of the ten members of the President's Cabinet.

practitioners are still the back bone of the legal profession. But, in addition, there are in governmental¹¹ and judicial service, and in business and industry, many members of the bar. Any realistic appraisal of the work of the legal profession must consider their needs as well as those of private practitioners.

The following table presents a comparison of the constituency of lawyers participating in this survey with those listed in the Martindale-Hubbell Legal Directory.¹²

TABLE I
TYPES OF PRACTICE OF LAWYERS PARTICIPATING IN SURVEY

	Number in Survey	Percentage in Survey	Percentage listed in Martindale-Hubbell ¹³
Private Practice.....	164	73	80
Government Service			
Military (J.A.G. or Legal Officer).....	11		
United States Civilian.....	7		
State	2		
Prosecuting Attorney.....	3		
Local Government.....	3		
Law Clerk to Judge.....	1		
	—		
Total.....	27	12	10

¹²As reported in 3 American Bar News, No. 10. That publication gives the following figures as regards lawyers (1958 figures):

Total accounted for.....	262,320
Lawyers listed (Martindale-Hubbell).....	235,783
Private practice	188,955
Government	24,245
Judicial	7,910
Salaried in industry	18,911
Educational (salaried)	1,504
Other private employment	639
Inactive or retired	7,661

The numbers listed as in Private practice, Government, Judicial, Salaried in industry, Educational, Other private employment and Inactive or retired, total more than the *lawyers listed* in Martindale-Hubbell Legal Directory but less than the *Total accounted for*. It is concluded, therefore, that the subanalysis, as to types, is limited to those listed, but that some fall into more than one category and so are counted more than once.

¹³These figures show the percentage each indicated category is of the total lawyers listed (235,783). The total percentage of 104 in both percentage columns is no doubt due to the fact that some are counted more than once. The last item, *Miscellaneous and Retired* covers *Inactive or Retired* in the Martindale-Hubbell list.

Judicial	10	4	3
Business and Industry			
Corporate employees (in general) ..	12		
Insurance company employees	9		
Independent business (not employed)	4		
Bank employees	3		
Railroad employees	2		
Trade association employees	1		
Total	31	13	8
Miscellaneous and Retired	4	2	3
Grand Total	236	104	104
Counted Twice	-9		
Net total	227 ¹⁴		

It was decided to cover the matter of subjects both from an absolute and a relative point of view. In Table II all of the general subjects are listed according to the number of times each was mentioned without regard to the amount of time spent on each, whereas in Table VIII the subjects are listed according to percentages of time spent. A single problem in the office will frequently present a complex of legal subjects. Thus, an evidence question in connection with a will contest case must be considered both in connection with wills and with evidence; the closing of a real estate transaction involves real property, security and negotiable instruments; the constitutionality of a state tax law involves both taxation and constitutional law. This overlap is handled in Table II by listing every subject involved. Thus, the aggregate number of items reported in Table II is considerably larger than the number of cases involved on April 17, 1958, because some

¹⁴Some other statistics concerning the participants in the survey are as follows: of the lawyers engaged in private practice 92 are in cities and 72 in rural county seats. The following table shows the practitioners classified according to the size of the offices in which they practice:

Practice alone	45	Ten	4
Two in office (partners or associates)	33	Twelve	2
Three	18	Thirteen	2
Four	9	Fourteen	2
Five	8	Fifteen	2
Six	10	Sixteen	1
Seven	9	Seventeen	1
Eight	11	Twenty-three	1
Nine	4	Fifty-one	1
		One hundred ten	1

The median size office represented, not counting those who practice alone, is four; counting those who practice alone it is three. The mean size office represented, not counting those who practice alone, is seven; counting those who practice alone the mean is five.

cases have been listed several times under different headings. In Table VIII the work time indicated for each case was split and apportioned among the subjects represented in the particular task. Participants were given the option of reporting the fields covered in their law practice instead of specifically reporting the activities of April 17th.¹⁵ Each subject listed in the letters of those¹⁶ who exercised this option was counted once in Table II, irrespective of the time spent.

TABLE II
NUMBER OF SUBJECT REFERENCES

Rank	Subjects	Number of References	Rank	Subjects	Number of References
1	Real Property.....	215	21	Negotiable Instruments... 15	
2	Torts	163	22	Workmen's Compensation. 15	
3	Taxation	99	23	Damages	12
4	Contracts	95	24	Personal Property.....	12
5	Wills and Administration..	90	25	Constitutional Law.....	10
6	Criminal Law.....	76	26	Eminent Domain.....	9
7	Business Associations.....	74	27	Federal Procedure.....	9
8	Domestic Relations.....	72	28	Admiralty	7
9	Civil Procedure.....	52	29	Banking	6
10	Evidence	44	30	Agency	6
11	Security	41	31	International Law.....	6
12	Insurance	40	32	Public Utilities	6
13	Trusts	40	33	Military Law ¹⁷	5
14	Administrative Law.....	36	34	Sales	5
15	Municipal Corporations...	34	35	Trade Regulations (including Anti-Trust).....	4
16	Accounting	24		Conflict of Laws.....	4
17	Creditors Rights.....	23	36	Collections ¹⁸	4
18	Equity	23	37	Estate Planning.....	3
19	Patents, Copyrights and Trade-marks	19	38	Mechanics Liens.....	3
20	Labor Law	18	39	Statutes	2
			40		

The following tables present subanalyses of some of the subjects mentioned in Table II. These subanalyses were made possible by the more particular descriptions in column 4 of the chart. It must be remembered that in many instances the same items of legal work were also listed under other headings in Table II.

¹⁵See note 10 supra.

¹⁶76 as against 164 who filled out charts.

¹⁷In this table, only those matters were counted which were distinctively military, e.g., absence without leave or pay and allowances. Other matters handled by military lawyers, such as most criminal offences, were included under the appropriate civilian heading.

¹⁸These were periods of time devoted to collections in general. No information was given as to the number of specific cases.

TABLE III¹⁹

PROPERTY

Titles	56
Deeds	23
Sales	21
Leases	17
Contracts	12
Rights and estates in land.....	12
Description of premises.....	9
Partition	9
Easements	8
Landlord and tenant.....	8
Security transactions.....	7
Boundaries	4
Taxes	4
Adverse possession	4
Surveys or maps.....	4
Liens	3
Restrictive covenants.....	3
Suits to quiet title.....	3
Unlawful detainer.....	3
Not sufficiently specific.....	5
 Total	 215

TABLE IV²⁰

TORTS

Negligence	
Automobiles	
Personal injury.....	36
Property damage.....	17
Death	10
Several vehicles involved.....	9
Pedestrian involved.....	6
Railroad crossing.....	5
Automobiles in general (details not specified).....	26

¹⁹"Titles" includes such matters as title searches, examining abstracts, problems relating to title insurance, etc. Under "deeds" is included work relating to preparation and construction of deeds and such problems as those of warranty. Frequently the expression "closing real estate transaction" was used. Such expressions were classified under "sales." The term "contracts" refers to contracts for sale and other contracts in connection with the sale of land, such as escrow agreements. "Rights and estates in land" covers problems dealing with types of ownership, such as fee simple or life tenants, and also the power of land owners, such as the rights of an upper riparian owner to cut off a water course. It is believed that most of the other terms used in this table are self-evident.

²⁰The descriptions given in the field of Torts, although frequently quite elaborate, were not as easy to classify as those in the property field. In Table IV most of the items specified are self-evident. There is obviously considerable overlapping, and also many more cases under some categories than are listed, e. g., "several vehicles." Since no specific format was provided, different methods of describing cases were used.

Buildings	7
Explosion	1
Negligent fire.....	1
Landlord and tenant.....	1
Negligence in general (details not specified).....	12
Assault ²¹	1
Defamation	2
Malicious prosecution.....	1
Subrogation cases.....	3
Conversion	1
Problems as to coverage of liability insurance.....	7
Torts in general (details not specified).....	31
	<hr/>
Grand total.....	178
Counted more than once.....	-15
	<hr/>
Net Total.....	163

TABLE V²²

TAXATION

Federal	State		
Income			
Preparation of returns.....	11	Jurisdiction to tax problems.....	6
Deductions	9	Constitutionality of state tax.....	1
Valuations	6	State income tax.....	9
Corporate income.....	6	State inheritance tax.....	8
Estate tax.....	14	Real estate taxes.....	4
Gift tax	5		<hr/>
Transportation tax.....	1	Total state tax cases.....	28
	<hr/>	Not sufficiently specific to classify..	21
Grand total federal.....	52		<hr/>
Counted more than once..	-2	Grand Total.....	99
	<hr/>		
Net total federal.....	50		

²¹Teacher-pupil discipline case.

²²Most of the descriptions in the Tax, Wills and Administration, and Business Association fields are reasonably clearly defined, and the categories are more distinct than in the Torts field, and more self-evident than in the Property field.

TABLE VI²²

WILLS AND ADMINISTRATION

Wills	Administration of decedents estates
Drafting of wills.....15	Problems of distribution..... 15
Construction of wills.....11	Disposal of assets..... 15
Probate of wills..... 6	Qualification of personal
Will contests..... 5	representatives 10
Suit to establish lost will..... 1	Administrators and executors
	accounts 8
Total wills.....38	Appraisalment of assets..... 7
	Suits by and against estates..... 5
	Miscellaneous or not sufficiently
	specific to be classified..... 14
	Total administration..... 74
	Grand total.....112
	Counted more than once-22
	Net total..... 90

TABLE VII²²

BUSINESS ASSOCIATIONS

Stock structure and financing.....13
Organization of corporations.....11
Problems relating to officers and employees..... 7
Partnerships 7
Rights of minority stockholders..... 6
Meetings and preparation of minutes..... 6
Purchase of stock in other corporations and investment of funds..... 5
Stock transfer..... 4
Profit sharing plans..... 4
Qualification of foreign corporations..... 3
S.E.C. proceedings..... 2
Insurance problems..... 2
Not sufficiently specific to be classified..... 4
Total74

Subanalyses of the fields of Contracts and Civil Procedure were attempted, but the effort was found to be unrewarding. There was too much overlap with other fields. Distinctively clear-cut contract or procedural problems were few, but a very large number of items described in column four involved a background of one or the other. Where should the line be drawn? The figures 95 and 52 were arrived at by counting the number of times "Contracts" or "Procedure" were referred to in column three by the reporters themselves. In nearly all instances something else was also mentioned, and in many instances in which one of those subjects was not mentioned it could have

been. It was the broad relevance of those fields that prompted the decision against subanalyses. The fields of "Criminal Law" and "Domestic Relations" were not subanalyzed for the opposite reason. Each of these fields is highly integrated within itself and distinct from the main body of the law; therefore it was considered that enough information was shown by considering them as a whole. No subanalysis was attempted for subjects referred to less than 50 times.

In Tables II through VII, items of work done were enumerated without regard to the relative amount of time spent. That is important in seeing how frequently various subjects were mentioned. However, it is believed that information gained from Tables II through VII should be complemented by information as to the portion of time spent on matters relating to the various subjects. In making this determination each item mentioned was counted once, and one additional time for each fifteen minute period beyond the first. Thus, a torts problem worked upon two hours would count eight points. The aggregate points for each subject were determined and also the aggregate total points, and it was determined what portion of the total was devoted to each subject. For this purpose if the same item of work related to several subjects the time was apportioned among them, either on a basis of equality or on a determination by the author as to the degree of applicability.²³

There was also the problem of providing a common denominator for the reports that followed the charts and those that, by letter, merely estimated the proportion of that lawyer's practice devoted to various subjects. For that purpose, the mean number of hours per day worked by the 164 lawyers who filled out charts was determined. That number happened to be seven and one-half hours. Then, in the case of each letter estimate, 30 periods (*i.e.*, 7½ hours) was divided in the same ratio as the estimate of total practice. Thus, if a lawyer estimated that he spent 50 per cent of his time on real property matters, 15 periods would be added to real property. The results of this survey are shown in Table VIII.

²³It will be remembered that in Tables II through VII each subject mentioned was counted.

TABLE VIII
PERCENTAGES OF TIME

Subject	Percentage of Time	Subject	Percentage of Time
Real Property.....	17.0	Accounting	Less than 1.0 per cent
Torts	11.0	Admiralty	
Criminal law.....	6.0	Agency	
Wills and administration.....	6.0	Banking	
Contracts	5.0	Collections	
Business associations.....	5.0	Conflict of laws.....	
Taxation	5.0	Constitutional law.....	
Domestic relations.....	4.0	Eminent domain.....	
Civil procedure.....	4.0	Damages	
Security	3.0	Estate planning.....	
Administrative law.....	2.5	Federal procedure.....	
Evidence	2.0	International law.....	
Insurance	2.0	Mechanics liens.....	
Municipal corporations.....	2.0	Negotiable instruments.....	
Trusts	2.0	Personal property.....	
Trade regulations.....	1.5	Public utilities.....	
Equity	1.5	Sales	
Labor law.....	1.5	Statutes	
Military law ²⁴	1.5	Workers compensation.....	
Creditor's rights.....	1.0	Intraoffice and extra legal.....	
Patents, trade-marks, copyrights..	1.0		

By the last item we see that 6 per cent of the aggregate time of the reporting lawyers was spent in intra-office administrative matters and in matters of an extra-legal nature, such as civic, political and religious activity.

A high correlation between Tables II and VIII is apparent. Real Property and Torts stand in first and second places in both tables. Taxation, Contracts, Evidence, Insurance, Trusts, Creditors Rights, and Patents stand relatively higher on the *Number of References* list (Table II) than on the *Percentage of Time* list (Table VIII). Wills and Administration, Criminal Law, Business Associations, Security, Administrative Law, Municipal Corporations, Labor Law, Military Law and Trade Regulations stand higher on the *Percentage of Time* list than on the *Number of References* list. However, in most instances the difference in relative positions is only one place. Explanations can be ventured, at least, as to those instances in which the discrepancies are more than one place.

²⁴Unlike in Table II (See note 17 supra) all time spent by a judge advocate was attributed at least 50 per cent to *Military Law*. If it was a distinctive military problem the entire time was attributed to *Military Law*. If it was a normal civilian matter, such as a tort claim or a burglary court martial, the time was allotted 50 per cent to *Military Law* and 50 per cent to the appropriate civilian subject.

The ground gained by Military Law in the *Percentage of Time* (Table VIII) list is explained by the change in method of calculation.²⁵ The time consumed in Trade Regulation matters is a natural outcome of the fact that anti-trust cases are notorious for being time consuming. The other fields to gain considerably so far as time percentage is concerned, Criminal Law, Administrative Law and Labor Law, all involve adversary proceedings with the inevitable time lost from waiting for trials and hearings.

Most of the fields of law which rank more than one place higher on the *Number of References* list than on the *Percentage of Time* list involve fields that are not highly adversary and in which the element of office work predominates over trials and hearings. This is true of Taxation, Trusts, Patents, Accounting, and, to a lesser extent, of Creditors Rights. The notable exception is Evidence. This can be explained by the fact that there is rarely a pure Evidence problem. In the *Percentage of Time* list Evidence nearly always had to split its time with other fields. That can also be said regarding Accounting, so there are two reasons why that subject fares much better on the *Number of References* list than on the *Percentage of Time* list.

Those lawyers participating in the survey were given the further opportunity of indicating the subjects studied in law school which were subsequently found most valuable.²⁶ Only a limited number did that. Some persons listed more than one subject, but if more than three were listed, only the first three were counted. Special references are as follows:

TABLE IX
SPECIAL REFERENCES

Subject	Number of References	Subject	Number of References
Real property.....	16	Labor law	2
Civil procedure.....	11	Equity	1
Evidence	10	Ethics	1
Federal taxation.....	9	Federal procedure.....	1
Legal bibliography.....	9	Insurance	1
Drafting ²⁷	9	Negotiable instruments.....	1
Torts	6	Personal property.....	1
Wills and administration.....	4	Public Utilities.....	1
Accounting	4	Trade regulations.....	1
Contracts	3	Trusts	1

²⁵See notes 17 and 24 supra.

²⁶See Option (2)(d) in Note 10 supra. Actually, some of the lawyers who reported their activities on charts also wrote letters specifying what they considered most valuable in law school. Also, ten who declined to participate in the survey made comments on their cards which were included in this part of the survey.

²⁷One reporter wanted to make Drafting a required course.

As in the other tables, Real Property again stands out in front. Interesting it is that Civil Procedure and Evidence, which stand fairly far down in both the other summaries, are in second and third places here. The author hopes that this was not a matter of *apple polishing* since he teaches these courses.²⁸ An explanation may be found in the fact that Procedure and Evidence lie at the very heart of all adversary proceedings. In the next table it will be seen that nearly 50 per cent of all the work of those lawyers reporting was in connection with adversary matters. Although the number of specific Procedure and Evidence problems encountered may not be great, yet a general knowledge of these subjects is presupposed even when no specific problem is presented.²⁹

Other matters specially referred to, such as Legal Bibliography and Drafting, although taught, are not subjects in the sense of those covered in Tables II through VIII. Rather they are types of work. Table X gives an apportionment of time according to types of work, and it is there seen that Research and Drafting are two of the most important things the lawyer does. Thus is explained the high number of special reference each of these received.

It was also considered significant to determine the apportionment of time so far as the type of work was concerned (Column two on the chart). The principal purpose was to determine the relative importance of the adversary and nonadversary aspects of the legal profession. In this survey all time spent was weighted according to the amount of time spent, as was done in Table VIII. The exact dividing line between adversary and nonadversary work is not always easy to draw, particularly when negotiation and settlement are concerned. Doubts were generally resolved in favor of the nonadversary classification. Negotiation of settlement without suit was considered nonadversary, whereas negotiation after suit started was regarded as adversary. Collective bargaining of labor contracts was regarded as nonadversary, whereas arbitration was considered adversary. Matters relating to di-

²⁸The author is pleased that quite a few of these special references to Procedure and Evidence were by students who graduated before he took over those courses; he was especially pleased to read from one reporter: "Evidence, especially when taught by 'Boss' Moreland." The late Dean Moreland was the author's predecessor as teacher of those subjects.

²⁹An attorney for the Federal Trade Commission (not a former student of the author's) writes:

"Currently, at least, the law school subject most useful to me is that of Evidence. Even though its rules are not strictly applicable to administrative proceedings, the general rules and concern with probative values are still valid and necessary."

voce were classified as nonadversary unless the description in column four clearly showed an adversary proceeding, as for example, the problems of custody or property settlement. This is because such an overwhelming preponderance of divorces are in reality uncontested. It is thus not difficult to understand how there can be a nonadversary court proceeding. The analysis of the work of the reporting lawyers, as to type of work, is as follows:

TABLE X
TYPE OF WORK

Type of Work	Adversary Percentage of Total	Nonadversary Percentage of Total	Percentage of Total
Research	9.0	12.5	21.5
Drafting	9.0	12.5	21.5
Conference	10.0	17.0	27.0
Investigation	3.5	0.5	4.0
Correspondence	1.0	3.5	4.5
Appellate briefs.....	2.0		2.0
Title problems: searching titles and examination of abstracts		6.0	6.0
Trial and other court attendance.....	10.5	1.5	12.0
Administrative hearings.....	0.5		0.5
Pre-trial proceedings (mostly depositions).....	1.0		1.0
Total	46.5	53.5	100.0

There was some showing made for *Appearances in Appellate Courts* and *Arbitration* but not sufficient to be reflected in the statistics. It will be seen that more than half of the time spent by the reporting lawyers was on nonadversary matters. Although only about 10 per cent of time was actually spent in court attendances, almost half of the time was spent in work on adversary proceedings.

Reporters were asked to identify the problems worked on by references to statutory and other types of authority. Although not generally done a few reporting lawyers gave extensive information. Ten favored us by copies of trial³⁰ or appellate court briefs, which, of course, gave good information as to the statutory or decisional basis of the problems presented.³¹ The bases of the problems are shown on the following table:

³⁰Work spent on a trial brief was split between research and drafting.

³¹It is regretted that pressure of other work did not permit individual letters of gratitude to all those who participated, and particularly to those who sent samples of their work.

TABLE XI
BASES OF PROBLEMS

	Total
Statutory	54
Decisional	65
Text	29
	148
Grand total.....	148

It must be borne in mind that the figures in the above table do not represent all the statutory, decisional or text type authority cited. The grand total of 148 represents a total of 148 problems of law worked on by reporting lawyers on April 17, 1958. The figures show the extent to which the problems worked on were based upon statutes, decisions or general doctrine.

Although not specifically requested, several reporters made other suggestions concerning the law school curriculum. Said suggestions were welcome. They will be briefly summarized. The following additional courses were recommended:

- Grammar and English Composition (three recommendations)
- Estate Planning (two recommendations)
- Public Speaking
- Logic
- Applied Psychology
- Location, development and presentation of Evidence (after the classical course)
- Technique of Negotiation
- Law Office Management
- Legal History
- Arbitration

A number of these recommendations related to the perennial controversy over whether instruction should be centered upon teaching *know-how* or whether it should be premised upon the assumption that law is primarily a learned discipline. Six people said definitely that law school instruction should be "more practical" than it now is, and another said that, although practical skills should always be kept subordinate to knowledge, there should be more emphasis upon the practical skills than there now is. On the other hand six said, in one way or another, that the mission of a law school is to impart knowledge and develop legal mentalities rather than to teach *know-how*.³² Two

³²One letter expresses this thought as follows:

"Frequently law schools are criticized for failing to conduct courses dealing more closely with the actual practice of law such as teaching the stu-

thought that major emphasis should be placed upon ability to analyze complicated factual situations. There were some compromise proposals. Two suggested summer internship with law firms, and two others suggested that there be frequent lectures by successful lawyers. Finally, it was suggested that a committee, such as this one, reconsider the curriculum every five years.

The conclusions to be drawn from this study are significant even if not startling. Most important seems to be the insight that our curriculum is about right and needs no drastic tampering. Notwithstanding the phenomenal growth of public law during the last three decades, the standard private law courses of Property, Torts and Contracts still are of prime importance and are so recognized in our curriculum. Other fields of law which are frequently confronted in practice, such as Taxation, Wills and Administration, Criminal Law, Business Associations, and Domestic Relations, are covered by subjects which occupy a prominent part of our curriculum. Some of these courses are required. Thought might be given to making Federal Taxation a required course; it is in some law schools.³³ This study supports the conclusion that the current tendency to deemphasize the procedural courses should be arrested if not reversed.³⁴ Civil Procedure and Evidence stand fairly far down in Table II, and Evidence makes even a weaker showing in Table VIII. That is explained, however, by the fact that Evidence questions largely overlap other problems. However, Procedure and Evidence stand high on Table IX, and Table X shows that almost 50 per cent of all work done relates to adversary

dent how to examine a real estate title, try a law suit or draft legal instruments. That was my complaint when after graduation I didn't know how to institute a lawsuit or prepare a simple deed. I now realize that such criticism was unwarranted because those matters properly are not a part of any law school's curriculum nor from a practical standpoint can they be made a part of the curriculum. The law school graduate can best acquire that knowledge by an internship in the actual practice of law. While the graduate may at first feel lost in the mysteries of actual practice, his fundamental legal education will serve him well after he has mastered the routine procedural matters that vary from state to state and even in the different courts of the same state. Of course every attorney must recognize the necessity for continuing study and research in order to maintain the high standards of his profession."

³³The incidence of tax work may appear higher than normal in this survey. Several lawyers who report a large amount of tax work on April 17, 1958, mentioned that the day was atypical in that regard. That day was selected partly because of being past the April 15 deadline. However, the phenomenon of late returns was overlooked.

³⁴Regrettably, the author here finds himself in the position of a special pleader.

matters. Procedure and Evidence are like Contracts in that all three are important in furnishing background for other fields.

The high importance of the field of Contracts, as shown in Table II, and the importance of Drafting, as shown in Tables IX and X, and of Conferences, particularly Conferences in nonadversary matters, as shown in Table X, points up the changing nature of law practice. The shift is away from the extreme emphasis upon litigation and is toward planning and managerial type decisions which combine both legal and nonlegal factors—legislation in a broad sense of the term. Whereas today something less than 50 per cent of the lawyer's work is in adversary matters, at the turn of the century the percentage would have been much higher. And even much of the type of work here classified as adversary involves management, diplomacy and statesmanship as much as forensics. A case settled without trial falls within that category. The possibility of what might happen in the court room will be important in determining the type of settlement made, but it will not be completely controlling. This shift in emphasis from forensics to management may not be as important in determining what courses should be taught as in guiding a particular professor in the teaching of his course.

It is evident from Tables II and VIII that there are a large number of subjects, none of which stand out, but which form a powerful aggregate. The elective system is well adapted for covering these. If the duration of the law school course were doubled it would not be possible to cover, in law school, all matters with which lawyers are confronted in practice. But the greatest value is in studying *law*, irrespective of particular fields of activity. Thus the practice of offering a goodly number of elective courses seems desirable. Such an elective offering might as well be tailored according to the talents of the faculty available. It is not necessary that a small law school, such as Washington and Lee, teach everything. A certain course may be outstanding under a particular professor. If, through death or resignation, that professor is replaced, it is not essential that all of his courses be continued. The study of law is more important than the study of particular courses.

Washington and Lee Law Review

Member of the Southern Law Review Conference

Volume XVI

Fall 1959

Number 2

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