Stopping the (Unexpected) Billing: Changing the First-Year Legal Curriculum to Teach Fundamental Legal Research Skills

Frank S. Ott IV

Submitted to
Professor Penny A. Hazleton
to fulfill course requirements in Law Librarianship, LIS 595,
and to fulfill the graduation requirements of the
Culminating Experience Project for MLIS
University of Washington Information School
Seattle, Washington

5/29/2012
I. INTRODUCTION

It would be an understatement to say much has been written about the topic of teaching legal research. Law schools have struggled with the issue of how to most effectively incorporate legal research instruction into the legal curriculum for well over a hundred years.\(^1\) While the goal has remained the same – providing future attorneys the legal research skills they will need to prosper in practice – the debate about how to obtain that goal has focused on various factors: who should do the instruction, when the instruction should take place, and how much emphasis should be placed on the topic in the first place. Over the years, law schools have adopted many different approaches to legal research instruction without a clear consensus emerging on what precisely is the most effective means. Some law schools incorporate legal research into a Legal Writing class in the first year, and offer Advanced Legal Research in the second and third years. Others refrain entirely from teaching legal research in the first year. Some schools use law librarians as the primary instructors, while others use legal writing faculty. Regardless of the method, however, one thing is clear: law schools are still struggling to produce graduates with sufficient legal research skills. This paper performs a brief review of the pertinent literature, analyzes the results of a 2012 survey of 141 Law Library Directors and legal research professionals, and proposes a solution to the dilemma.

There is near unanimous agreement among those surveyed that the present situation is bleak and changes need to be made. First-year law school students arrive at campus generally lacking well-developed research skills, yet are simultaneously unaware of their inadequacy. While it is generally agreed that fundamental legal research skills should be developed for use in practice (as law firms are unsatisfied with their summer associates’ research skills), there

\(^1\) See Robin K. Mills, Legal Research Instruction in Law Schools, The State of the Art or, Why Law School Graduates Do Not Know How to Find the Law, 70 LAW LIBR. J. 343 (1977) (noting that articles about teaching legal research have been published as long ago as 1903, and citing Keasbey, Instruction in Finding Cases, 1 AM L. SCH. REV. 69 (1903) and Charles C. Moore, Law School Instruction in How to Find the Law, 7 LAW NOTES 64 (1903)).
is disagreement on whether first-year law students are prepared for rigorous instruction. There is little debate, however, that changes need to be made to the traditional first-year legal curriculum to better develop fundamental legal research skills.

Part II of the article provides the background by briefly exploring selective literature on the teaching of legal research in the first-year curriculum. Part III includes the results and an analysis of the survey. Part IV builds on the results of the survey by examining the current state of the first-year curriculum before offering a proposed solution to the dilemma. Part V concludes that amending the curriculum to include a stand-alone Legal Research course in the second semester of the first year would likely increase the development of fundamental legal research skills.

II. BACKGROUND

The failure of law schools to adequately train future attorneys in legal research has been long-established and well-documented. Robin Mills described law firm librarians’ “never ending sense of puzzlement” at the inability of new employees (both summer associates and newly-licensed attorneys) to find their way around the library. Some of that sense of bewilderment can be chalked up to the relative lack of emphasis placed upon legal research in comparison to major substantive courses such as Contracts or Civil Procedure in the Langdellian paradigm. First-year law students arrive on campus having most likely seen “The Paper Chase” and Professor Kingsfield’s infamous undressing of the unlucky Mr. Hart on the first day of Contracts. If they have not seen the movie, they will most likely witness a live replication of the scene when Hawkins v. McGee is discussed on the first day of their own Contracts course. They will hear that they will be trained “to think like a lawyer” (but not to research like one).

The Langdellian paradigm resulted in a system where legal research is perceived by law students as a topic of lower importance: it is frequently allotted fewer credit hours and taught by less-respected instructors. If first-year students have a poor understanding of legal research, they may have to rely on second-year students who have a better understanding of legal research to assist them. This can lead to a decline in the quality of legal research in the first-year because the students are not properly trained.

2 See Mills, supra note 1, at 343.
5 Id. at 452.
According to the 2011 ALWD/LWI survey results, the majority of law schools integrate legal research and writing instruction (157 of 188 surveyed).\textsuperscript{6} At 77 schools, Legal Writing faculty teach research, while at 75 schools, Legal Writing faculty and librarians combine to teach legal research.\textsuperscript{7} A first-year law student might be assigned to a credit/no-credit Legal Writing and Research course in which librarians periodically give presentations on legal research and then send them on an Easter egg hunt in the library.\textsuperscript{8} Students obviously have less incentive to pay rapt attention to a librarian who is not grading them than to their Contracts professor who is giving a major exam in a course worth six credits. Furthermore, simply being exposed to secondary sources such as American Law Reports after a finding mission in the law library does not guarantee the student makes a utilitarian connection (or, the moment when the light goes on: the librarian knew what she was talking about after all!).\textsuperscript{9} Learning how and when to use a legal encyclopedia as opposed to a treatise or a practice aid is tricky business for students who are just now becoming familiar with judicial opinions in casebooks, and are struggling with the difference between cases and statutes.\textsuperscript{10}

Additionally, a first-year law student is just getting acquainted with a very weird and different place from undergraduate or other graduate programs. The legal lexicon requires learning, as do concepts such as precedence and primary and secondary authority. The primary courses are taught out of casebooks that are primarily filled with judicial opinions, and classes are usually taught in the Socratic method.\textsuperscript{11} What are the facts of the case, and what is the holding? Did the Court get their holding correct? The Socratic method seeks to train the mind to play devil’s advocate, to make the logical extension and to watch for the slippery slope. A Contracts professor does not assign students a set of facts and send them to the library to determine the likely outcome under the law and develop arguments either way. Considering that many Legal Writing and Research assignments are closed, a student might escape the first year without being exposed to what lawyers actually do.


\textsuperscript{7} Id.

\textsuperscript{8} Helene S. Shapo & Christina L. Kunz, Teaching Research as Part of an Integrated LR & W Course, 4 Perspectives 78 (1996).


\textsuperscript{10} Jim Milles, Out of the Jungle: How to Get Beyond the Digital v. Print Debate – and Deal With the Fact that Digital Won, AALL Spectrum 10 (February 2005).

\textsuperscript{11} Nolan L. Wright, Standing at the Gates: A New Law Librarian Wonders About the Future Role of the Profession in Legal Research Education, 27 LEG. REF. SERV. Q. 305, 325 (2009).
(and not just how they think). Unless a student has the proper context for legal research, the proverbial bulb is unlikely to turn on.

The quality of legal research instruction has even been called into question. In 1989, Robert C. Berring and Kathleen Vanden Heuvel asserted that “we do not deny that most current legal training is abysmal.” Even if one postulates that most current instruction is proficient, however, there are other problems at issue here. One of those problems is that students generally enter law school lacking well-developed research skills at the same time that they are woefully ignorant of that fact. In a seminal study in 1999, Justin Kruger and David Dunning exposed the cruel paradox whereby those most ignorant of their own incompetence are the same people who have the most inflated self-assessments. Popularly known as the “Dunning-Kruger Effect,” the concept likely applies to first-year law students and their logical reasoning and legal research abilities. As part of the study, 45 Cornell undergraduates were given a 20-item logical reasoning test with the questions taken from a sample LSAT exam. Afterward, the participants made assessments with regard to their perceived aptitude relative to their peers and their estimated score. The result was that the bottom quartile estimated their scores and ability at the same level as the third quartile. The authors concluded by saying that:

“…those with limited knowledge in a domain suffer a dual burden: Not only do they reach mistaken conclusions and make regrettable decisions, but their incompetence robs them of the ability to recognize it.”

Considering that the study participants were Ivy League undergraduate students, it would not be a stretch to hold that the same effect applies to first-

---

12 See Shapo & Kunz at 78.
13 See Robert C. Berring & Kathleen Vanden Heuvel, Legal Research: Should Students Learn It or Wing It?, 81 LAW LIBR. J. 431 (1989).
14 See Ian Gallacher, Forty-Two: The Hitchhiker’s Guide to Teaching Legal Research to the Google Generation, 39 AKRON L. REV. 151, 152 at n. 4 (“there are no data to suggest that most research instructors are not able to teach the subject.”) (2006).
16 Id. at 1124.
17 Id. at 1125.
18 Id. at 1129.
19 Id. at 1132.
year law students. First, as newcomers to the legal world they certainly have limited knowledge in the domain. Second, not paying attention to legal research presentations by librarians (or doing the assigned readings\textsuperscript{20}) in a Legal Research and Writing course could certainly constitute a regrettable decision premised upon a mistaken conclusion. But, as neophyte law students, they are unable to see the folly of their ways.

For reasons similar to these, some law schools have decided to abandon any hope of effectively teaching fundamental legal research skills to first-year students. Following the Berring and Vanden Heuvel model, this approach advocates for a very limited exposure to legal research in their first-year.\textsuperscript{21} Such exposure would constitute a basic orientation to the library, some general legal research presentations and a recommendation for a legal research nutshell.\textsuperscript{22} However, Berring & Vanden Heuvel do not represent the only view on the subject. Nancy Johnson goes quite a bit further in recommending as a best practice that a first-year legal research instructor cover more than the bare essentials. Johnson first laments the poor research habits of first-year students, then describes her first-year curriculum as containing: case law research, precedent and authority, sources for case law research, reporters, details of a case such as docket number and headnotes, how to find cases online and in print, the use of citators, statutes, codes, session laws, exposure to a legislative history, administrative publications, and secondary materials such as encyclopedias, law reviews, American Law Reports and restatements.\textsuperscript{23} Johnson teaches a twelve-week, one-credit hour, pass/fail course (where students are forced to take it seriously because not all pass) over the fall semester.\textsuperscript{24} Her stated goal is to “cover the core principles [mentioned above] … [and to] instruct the students on what they will need to know to excel in their writing class, plus other materials, such as Georgia legal research and administrative legal research, that they may use in their summer jobs.”\textsuperscript{25}

The reference to summer jobs proves illustrative. In their article advocating for limited exposure in the first year, Berring & Vanden Heuvel suggest that legal research is best taught in the second year of law school because students will have worked in a legal position over the summer and

\textsuperscript{21} Berring & Vanden Heuvel, \textit{supra} note 13, at 441.
\textsuperscript{22} \textit{Id.} at 441.
\textsuperscript{23} Johnson, \textit{supra} at 1-38.
\textsuperscript{24} \textit{Id.} at 3.
\textsuperscript{25} \textit{Id.}
sufficiently realized the extent of their ignorance, thus providing the necessary motivation to increase their legal research skills. There is a risk to this approach, however. Law schools are in the business of providing the legal community with properly and thoroughly educated legal employees. A law school that sends unprepared summer associates out to work at firms risks harming its reputation in the legal community. Furthermore, students ought to have the opportunity to excel at their summer jobs, not be forced to learn lessons the hard way (who has not heard of the typical summer associate who rung up a rather sizable Westlaw or Lexis bill in complete ignorance of the pricing policy?).

Ian Gallacher illustrates a third way or compromise between Berring and Vanden Heuvel’s limited exposure idea and a typical legal research component entrenched within a Legal Writing class in the first-year. Gallacher first draws a distinction between the “traditionalists” who grew up researching with print and the “Google generation” currently inhabiting the seats at our law schools. Gallacher points to a 2005 survey from Stanford University in which 14% of law students claimed to do 100% percent of their legal research online and 93% said they did at least 80% of their legal research online. Such statistics highlight the need to adapt the traditional legal research curriculum while still finding ways to identify the unique value of the print materials. At any rate, the key compromise between Berring and Vanden Heuvel and a more traditional first-year program with legal research embedded in the Legal Writing course that Gallacher proposes is to separate Legal Writing and Legal Research, with the former a semester-long course in the fall and the latter a semester-long course in the spring. “By elevating legal research to a prominent role in the second semester, this approach allows research to step out of the shadow of legal writing and acquire its own importance, both in the curriculum and the students’ minds.”

The idea that legal research can be taught independent of a legal writing or doctrinal class has been advanced increasingly in recent years. Legal

---

26 See Berring & Vanden Heuvel, supra note 13, at 442.
27 See Gallacher, supra note 14, at 169.
28 Id.
29 Id. at 170.
30 Id. at 163.
31 Id. at 167, n. 78.
32 Id. at 202.
33 Id. at 170.
34 Id. at 170.
35 See Barbara Bintliff, Legal Research: MacCrate’s “Fundamental Lawyering Skill” Missing in Action, 28 LEGAL REF. SERV. Q. 1, 5 (2009).
writing faculty might be experts in written legal communication, but not necessarily experts in legal research. Legal research experts are most often law librarians, fully capable of teaching legal research as a stand-alone course instead of giving presentations while the legal writing instructor sits grading papers (“with the consequence of further underemphasizing research because “real faculty” are not teaching it”). A legal research course independent of a writing component could follow the Johnson model and expose students to the research skills they need to be prepared for summer clerkships. Coming in the second semester, students would have the benefit of a half a year of legal instruction, including a legal writing course that presumably would entail enough basic legal research to allow students the opportunity to grasp precedence, primary and secondary authority and finding cases, as well as exposure to secondary sources and citation. With that exposure, the Dunning-Kruger effect is somewhat muted. First-year law students will still not know the extent of their ignorance about legal research, but they might discover enough of it to make an independent, second-semester course worthwhile. Moreover, the students will theoretically be better suited for their summer jobs, bringing a benefit to the legal community, the student and the law school.

Finally, if the curriculum in the independent legal research course caters to the “Google generation” and focuses on teaching legal research as a client-based activity as Gallacher suggests, the school will both engage the students more and put forth better associates into the legal market.

That law schools have been sending students with woeful legal research skills into the workplace has been a long-standing trend that is well-documented. As far back as 1987, surveys have shown that new attorneys and summer associates are lacking fundamental legal research skills. In 1992, the American Bar Association (the “ABA”) issued the MacCrate Report, identifying ten fundamental legal skills, including “legal research,” and concluding that while American law schools were doing an acceptable job of producing students that can “think like a lawyer” and pass the bar exam, they were doing an inadequate job of producing lawyers capable of practicing law. A more recent survey from 2007, the Carnegie Report, also found that

36 Id. at 2.
37 Id.
38 Gallacher, supra note 14, at 171.
39 Id. at 201.
41 Id. at 302, n. 5.
42 A.B.A. TASK FORCE ON LAW SCH. & THE PROFESSION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - VN EDUCATIONAL CONTINUUM 135 (1992) [hereinafter MACCRATE REPORT].
law schools are not teaching the necessary practical skills. The Carnegie Report found particular dissatisfaction with the traditional Socratic method of legal instruction and recommended incorporating a more practical educational pedagogy. Respondent comments from a survey of law firms conducted in 2010 demonstrated that new attorneys routinely start their research without a plan, fail to consult secondary materials before delving into case-law, rely too extensively on Google at the expense of print materials, fail to understand the utility or even existence of print materials in the first place, and lack awareness of how to research cost-effectively on subscription electronic databases. Actual comments from attorneys ranged from “Google is not the answer!” to “most have never heard of secondary titles” to “they think everything is free! They treat the online databases like Google. They don’t think about their research before they start.”

Dissatisfaction with legal research education has reached a point where the National Conference of Bar Examiners (the “NCBE”) explored the development of a stand-alone legal research skills component on the bar exam. Such a requirement would indeed induce law schools to elevate the quality of legal research instruction, as bar passage rate stands as a key indicator in the ever-so-important U.S. News & World Report rankings. Short of the NCBE forcing the issue, however, law schools certainly have options to change the status quo, and some have indeed taken that step. In 2009, a group of legal research professionals attended a conference in Boulder, Colorado and issued what is commonly known as the Boulder Statement. The Boulder Statement specifically addresses the Carnegie Report’s recommendation that the most effective legal education occurs through three inter-related apprenticeships. First, the Boulder Statement affirms that legal research instruction “teaches the resolution of legal problems through an iterative and analytical process;” second, that “students will experience a

44 Id.
46 Id. at 21.
49 Id.
cognitive apprenticeship by learning the importance of understanding the legal system in which their question arises and evaluating available legal resources;” and third, that “students will learn to apply the professional and ethical norms implicated by their research, which will reinforce their apprenticeship of identity and purpose.”

Forty-one legal research professionals, including a number of Law Library Directors and authors quoted in this article, were signatories to the Boulder Statement. Both the Boulder Statement and the Carnegie Report envision a first-year law school curriculum that places emphasis on practical skills such as legal research.

Teaching legal research to first-year law students with an emphasis on developing a fundamental legal skill squares with the recent trend toward law schools restructuring the traditional first-year curriculum. Ironically, Harvard Law School was a trailblazer in that regard when its faculty decided to “Rethink Langdell” in 2006. As the legal landscape changes with a shift in focus toward administrative and regulatory law and away from statutory and case law, law school curriculums are growing to reflect that change.

Sarah Valentine argues that the time is now for legal research to be integrated with the entire first-year curriculum. Legal research is at its essence problem-solving; drifting away from the case dialogue method of teaching legal reasoning and using a more practice-based method featuring legal research only makes sense. As Valentine asserts, “legal research must be reorganized as a fundamental skill. This will prompt schools to reorganize their research programs so that they are integrated into the entire first-year curriculum.”

---

50 Id.
51 Id.
54 Id.
55 Id. at 186.
56 Id. at 215.
57 Id. at 226.
III. SURVEY RESULTS & ANALYSIS

In March of 2012, a link to a brief online survey regarding teaching legal research to first-year law students was posted to two separate electronic mailing lists for legal research professionals. First, University of Washington Reference Librarian Mary Whisner posted the survey on the Academic Law Libraries Special Interest Section (“ALL-SIS”) of the American Association of Law Librarians (“AALL”) website. Secondly, Associate Dean of Library and Computing Services and Professor of Law Penny Hazelton kindly asked her fellow Law Library Directors to complete the survey. Within a week, 141 legal research professionals had responded to the survey – a number that underscores the high level of interest and strong feelings in the profession with regard to the topic. A few Law Library Directors even took the time to send follow-up emails explaining their positions in greater detail than the survey allowed.

A word on methodology: the survey’s purpose was simply to mine a small amount of empirical data regarding the general pulse – or opinion – of the legal research community in 2012 concerning the topic of teaching legal research to first-years law students. It was not conducted in a highly scientific manner nor was it intended to be the basis for a dissertation on astrophysics. No effort was made to separate the responses from Law Library Directors and members of ALL-SIS. The survey contained six statements, and asked to what degree the respondent agreed or disagreed with the statement, with four choices (strongly agree, agree, disagree, and strongly disagree). Not responding to a question was another option, but one rarely employed. For most legal research professionals familiar with trends in the industry and the literature, the results should not be surprising.
The survey contained the following six statements:

- First-year law students arrive at law school with well-developed research skills
- First-year law students are unaware that they lack well-developed research skills when they arrive on campus
- First-year legal research instruction should develop fundamental legal skills for use in practice
- First-year law students are not prepared to handle rigorous instruction in legal research with the goal of developing fundamental legal skills
- Law firms are generally satisfied with the legal research skills of summer associates
- The traditional first-year legal curriculum should be amended to better develop fundamental legal research skills

The results of each statement will be analyzed in turn. Figures displaying the percentage of respondents who strongly agreed, agreed, disagreed or strongly disagreed have been included for the ease of statistical digestion.
Figure 1: (the numbers on the left represent percentage points).

Not surprisingly, the vast and overwhelming majority of legal research professionals are in near unanimous agreement that first-year students arrive on campus without well-developed research skills. Only four out of 141 respondents agreed with the statement. 68 respondents disagreed, while 69 strongly disagreed – it seems the only real disagreement was the level of degree. The “Google generation” may know how to find things quickly, but obvious questions persist over the quality of the content they find. Anyone can quickly find food in a grocery store; but only shoppers who know where to look will find all of the key ingredients for a successful meal. Without knowledge of the proper sources for conducting research, the researcher cannot help but fail to arrive at the right answer.

To be fair to the “Google generation,” the literature clearly demonstrates that this was an issue for in-coming law students long before Google and Wikipedia. Although some first-year law students may have graduate degrees in other programs and/or significant life experience, the majority of students matriculate to law school either directly from undergraduate programs or after a couple of years in entry-level jobs. In sum, new students are mostly young minds in desperate need of molding.
Once again, there is little question that first-year law students lack an awareness of how weak their research skills truly are. 48 respondents strongly agreed with the statement, while 76 agreed. Only 16 disagreed, with five strongly disagreeing. With better data from a survey of incoming law students vis-à-vis a self-assessment of their research skills, one could make a compelling argument that the Dunning-Kruger effect is indeed at work here. At the very least, the evidence is solid that a group of legal research professionals are in approximately 90% agreement on the question. Except for those already possessing higher degrees, first-year law students likely performed most of their high school and undergraduate research online (probably using Google and Wikipedia), and it has served them well thus far in their academic careers. Having successfully matriculated to law school, they truly do not understand the level of depth and knowledge of resources that adequate legal research entails. The combined data from questions number one and number two in the survey lend credence to Berring and Vanden Heuvel’s idea that teaching legal research to first-year law students was “trying to teach the wrong people
the wrong material at the wrong time.”58 However, as the following responses will illustrate, that statement is arguably the wrong conclusion to draw at the present time.

![Bar chart showing responses to first-year legal research instruction](image)

**Figure 3.**

As figure three indicates, the vast majority of respondents are in favor of teaching legal research to first-year students with the intention of developing fundamental legal skills for use in practice. This sentiment is consistent with the literature and again not very surprising. 69 respondents strongly agreed, while 68 only merely agreed (leaving roughly 93% of legal information professionals in agreement). One lone dissenter strongly disagreed; the courage to stand up to one’s colleagues to that extent surely requires supreme conviction. Legal research is considered a “fundamental legal skill” under both the MacCrate Report and the Carnegie Report (although not explicitly stated in the latter),59 and it is imperative that law schools begin developing it as soon as possible – whether the students are ready yet or not. Otherwise students will have to

58 Berring and Vanden Heuvel, supra note 13, at 441.
59 See Wright, supra, note 11, at 329.
be taught the requisite skills during their legal clinics or on the job as a summer associate.

This question was expected to stir the most debate, and indeed it did. 80 respondents either agreed or strongly agreed that first-year law students are not prepared to handle rigorous legal research instruction with the goal of developing fundamental legal skills. 50 disagreed with that statement, with nine strongly disagreeing. Clearly, there still exists a substantial portion of the legal research community that believes first-year law students are simply not ready for what rigorous legal instruction entails. One Law Library Director emailed to say that his answer depended on the placement of the word “rigorous” in the statement. He agreed with the statement “but-for” the inclusion of “rigorous.” Perhaps the results would have been slightly skewed
more in the other direction without that adjective. However, one can argue that first-year law students are already undergoing rigorous instruction in their core classes without adequate preparation (certainly neither undergraduate studies nor studying for the LSAT prepares one for the first-year of law school). Furthermore, how else is a first-year research curriculum supposed to develop fundamental legal research skills if not by strenuous (or intense) instruction? To meet the standards of the Carnegie Report, one might argue that whether the students are prepared or not, the necessity of developing fundamental legal research skills remains.

Figure 5.

Law firms are generally satisfied with the legal research skills of summer associates

Figure 5.

Once again, a lone wolf strongly agreed, but the general consensus (approximately 94%) was in keeping with the literature and the firm surveys: law firms are simply not satisfied with the legal research skills of summer associates. And why should they be, one might ask? Although the wind is shifting slightly, by and large law schools and law firms have been fundamentally at odds for quite some time. Many law school faculty members have never even practiced law, and most that did left the practice because they preferred the theoretical and analytical elements of the law to the practical nuts and bolts. It has been a matter of fact for quite some time now that the traditional first-year curriculum has only made half-hearted attempts
to leave the ivory tower for the courtroom or the negotiation in the conference room. Moreover, law firms have made a practice of continuing to hire law students in spite of their woeful legal research skills. Needing a stable supply of new attorneys and hamstrung by those tricky requirements that new attorneys graduate law school and pass the bar examination, law firms have been relegated to complaining and then simply training the new associates themselves. But one can be sure that every firm or solo practitioner who hired a summer clerk has a horror story to tell at cocktail parties: the time his hopelessly lost neophyte researcher ran up a $10,000 Westlaw bill that simply could not be passed on to the client and had to be eaten by the firm. That cannot be very satisfying. Further comments from the 2010 law firm satisfaction survey reveal just how unsatisfied the bar is with the research skills of young attorneys:

- “My experience so far this summer is that the clerks are having difficulty realizing that they may have to spend hours on one research project – it’s not a Google-it-to-the-top process.”
- “I believe law students should at least be introduced to online research costs while in school …[they] take what I call the ‘shot-gun’ approach to legal research where they just fire away (run searches) until they hit something … they have no concept of online costs until a partner or a client comes yelling about the bill.”
- “After they get to a firm they think they know everything, actually they know nothing or next to nothing. They do not even know what Wright & Miller is or Moore’s, they act like you’re speaking a foreign language, if you say Manual for Complex Litigation or MDL (Multi District Litigation) their faces turn white. They look at the books like they are foreign objects not to be touched unless they can put earphones in them. They cannot even find things using an index, table of contents or finding aids.”

The comments reflect a prevailing theme: not only does the Google generation recoil in terror at the thought of opening a book, they are unaware of secondary materials in general, let alone how to navigate through them and why they are important places to start your research (with a plan in mind).

---

60 See Meyer, supra note 45, at 25.
61 Id.
62 Id.
Instead, they waste law firms’ time and money doing ineffective online searches through subscription databases.

![The traditional first-year legal curriculum should be amended to better develop fundamental legal research skills](image)

Figure 6.

For the culminating statement of the survey, there is yet again a significant consensus. An astonishing 96% percent of respondents are in favor of changing the traditional first-year curriculum to better develop fundamental legal research skills. It should be noted that six people disagreed, yet not one disagreed strongly. Another personal email from a Law Library Director noted that he did not respond to this question because his law school already had amended the traditional curriculum, but that he agreed the traditional curriculum at other law schools should be amended. At this point one wonders whether this is the very question Law Library Directors and legal research instructors have been waiting and waiting to hear for years from the Dean of the law school or the rest of the faculty. It is obvious that nearly everyone involved in the current instruction of legal research wishes that they had more power to rectify its current state of inadequacy. Similarly, it would be a stretch to consider that a hefty majority of the respondents who strongly agreed that legal research should be amended to develop “fundamental legal skills” in the way that the MacCrate Report defined them or to fully
incorporate legal research into the first-year curriculum in the way Valentine suggests. As each law school has a slightly different first-year curriculum and various methods of incorporating legal research, no firm conclusions with regard to particular models can be drawn from the overwhelming sentiment expressed that change is needed.

IV. MODIFYING THE FIRST-YEAR CURRICULUM

The results of the survey point to an overwhelming desire, or need, on the part of Law Library Directors and legal research professionals to overhaul the traditional first-year legal curriculum in order to teach fundamental legal research skills. The key question is how; solving a problem that has persisted for years despite the valiant efforts of many talented legal research experts is obviously a bit of a sticky wicket. First of all, modifying the first-year curriculum requires getting the Dean and the faculty on board with the changes. That is an extraordinarily complex proposition that involves a tremendous collision of ego, historical precedent and reluctance to embrace change in a discipline that is notoriously slow to adapt. Secondly, every law school is different – there is no guarantee that what works for an established school historically ranked in the top twenty in U.S. News and World Report will work for a newer, but up-and-coming school. Not only are the institutional forces different, but the personalities involved are as well. While Harvard made the bold move away from the Langdellian model in 2006, many other law schools simply cannot or will not embrace that sort of radical departure from a system that has benefited them for so long. It is of little concern to many members of the faculty that their students are not proficient legal researchers – and, unless they are Legal Writing or Legal Research instructors, they would have no means by which to gauge the paucity of their research skills.

For example, take the Contracts professor who was taught in the Socratic method himself nearly 40 years ago, and has been successfully training first-year students how to “think like a lawyer” for the last 35 years. His students need precious little more than his casebook and their rapt attention in his class to succeed on his exam – weighted rather heavily, one might add, in terms of

---

credits. Neither he nor his first-year students see anything wrong with the model through which the class is being taught; little do the students know that when they are practicing transactional law in the future, *Hawkins v. McGee*\(^65\) will not prove particularly applicable. Integrating legal research into the core curriculum as Valentine suggests is indeed a noble goal, but one that would require at least partially abandoning the Socratic method and completely undoing decades of thinking concerning the pedagogy of legal instruction. Legal research instructors and law firms have been bemoaning the woeful state of students’ legal research skills for years, yet their concerns have repeatedly fallen on deaf ears. Will that hypothetical Contracts professor really start assigning actual legal research problems to his first-year students that require them to utilize the library? To think that law school Deans and faculty members will consider a complete modification of the traditional curriculum in order to incorporate teaching fundamental research skills is perhaps a bit ambitious at the current moment.

The literature on the woeful state of new attorneys’ legal research skills is vast and comprehensive. However, it is primarily written by librarians and Legal Writing or Legal Research instructors – the only faculty (or non-faculty, depending on the law school) who would have insight into the dire situation. More importantly, the literature is also primarily read by the same librarians. *Law Library Journal*, *Legal Reference Services Quarterly* and AALL’s *Spectrum* are superb publications of great interest to legal research professionals, but not to law school faculty specializing in other fields. While the MacCrate Report’s identification of fundamental lawyering skills brought forth substantive changes in other areas of the legal curriculum, legal research skills still have not been sufficiently addressed.\(^66\) This is due in large part to the fact that most law schools teach legal research to first-year law students within the confines of a Legal Writing & Research (or similarly titled) course.\(^67\) Legal writing and legal research are two distinct fields, and although it is natural to combine the two because one must necessarily perform legal research before one writes a brief or memorandum, the two doctrines must be recognized as separate.\(^68\) For legal research to be effectively taught, it must be taught by real legal research experts, usually librarians.\(^69\) Although the traditional model acknowledges this fact by inviting librarians to give research presentations in Legal Writing courses, the fact remains that Legal Writing

\(^{65}\text{Hawkins, 84 N.H. at 114.}\)

\(^{66}\text{See Bintliff, supra note 36, at 1.}\)

\(^{67}\text{Id.}\)

\(^{68}\text{See Mersky, supra note 48, at 399.}\)

instructors are doing the grading, and the grades are based on the students’ written work product and not the research skills used in the process. Since students are not graded on their research plans or methods, they are free to take the much-ridiculed path of firing away Google-style on databases with unlimited usage plans until one of their shots finally hits a mark. Instead of being taught (and graded on their use of) the Rombauer method, students can pass the first year of law school without understanding the importance of beginning with secondary sources – and, Heaven forbid, using a general index in print!

For this reason, the fundamental change to the traditional first-year curriculum that must occur is to separate Legal Writing from Legal Research, with librarians solely responsible for teaching the Legal Research component. Some schools such as Georgia State University College of Law already take this approach, and have for many years. The cumulative experience of teaching Legal Research as a stand-alone course for over 25 years has provided Johnson with an excellent model for what material to cover, and is indeed a model worth emulating. However, there are two main issues with the Georgia State University model. First, the Legal Research course is taught at the wrong time of year: during the fall semester, at precisely the time when the Dunning-Kruger effect is at its peak and students are struggling to learn how to simply brief a case for class. Law students are not fully prepared to realize the value of American Law Reports at this point in their legal education. Instead, the first-year curriculum should include a Legal Writing course in the fall semester, hopefully featuring open universe writing assignments that require basic case-law and statutory research that students can manage (or not manage, as the case may be) with Google-inspired rapid-fire searches on Westlaw or Lexis. In the second semester, law students will be much more familiar with the legal realm, firmly grasping concepts such as precedence and authority. Hopefully, they will even have had a frustrating and memorable experience with the legal research component of the Legal Writing course, giving the students further incentive to take Legal Research seriously.

The second problem with the Georgia State University model is precisely that: since the Legal Research course is a twelve-session, one credit hour,
pass/fail class, students do not do the readings\textsuperscript{74} or generally take the course as seriously as they would if it were graded on a curve and weighted heavier. The exact amount of credits a Legal Research course should be accorded will necessarily vary from school to school, but students must be provided significant incentives for them to understand the importance of polishing their legal research skills and excelling in the course.\textsuperscript{75} While few would argue that a skills course should be accorded the same weight as Contracts or Civil Procedure, first-year law students are primarily concerned with their grade point averages, and putting Legal Research on a graded curve with enough weight to affect their overall academic standing will prove sufficient to motivate the students.\textsuperscript{76} Such a second semester, stand-alone Legal Research course would go a long way toward fixing the problem of law schools sending summer clerks with woeful legal research skills out to the legal workplace.

Of course, convincing Deans and faculty that the curriculum should be amended to include such a stand-alone Legal Research course that intends to provide rigorous instruction – and is correspondingly accorded greater weight – will be no easy matter, for many of the reasons mentioned above. Not only has legal research traditionally been denied a substantive portion of the first-year legal curriculum, the voices calling for the change are the same voices whose pleas have been routinely ignored for years. Despite the MacCrate Report’s identification of legal research as a fundamental legal skill in 1992, law schools are no better at turning out attorneys skilled in legal research twenty years later – even considering the proliferation of Advanced Legal Research offerings in the past twenty years.\textsuperscript{77} For a number of reasons, too little attention has been paid to legal research for far too long by those in charge of the law school curricula. Though recent positive developments such as the Carnegie Report and the Boulder Statement highlight the promise that the institutional tendency to ignore legal research is slowly coming to an end, this article offers no suggestion for how Library Directors and legal research professionals can persuade the powers that be to amend the traditional first-year legal curriculum to greater emphasize fundamental legal research skills. That is truly a question for another day. It merely offers a framework that – if adopted – would likely increase the chances that students will be better

\textsuperscript{74} Id. at 3.
\textsuperscript{75} Charles B. Craver, \textit{The Impact of a Pass/Fail Option on Negotiation Course Performance}, 89 LAW LIBR. J. 176, 185 (1988).
\textsuperscript{76} Michael J. Lynch, \textit{An Impossible Task but Everybody Has to Do It – Teaching Legal Research in Law School}, 89 LAW LIBR. J. 415, 437 (1997).
\textsuperscript{77} See Wright, supra note 11, at 310.
prepared for their summer clerkships and law firms more satisfied with their performance.

V. CONCLUSION

For years, legal research professionals have bemoaned the lack of attention paid to legal research by others in the legal academy. First-year legal research was something to be taught by an adjunct Legal Writing Instructor, while the librarians who supported the faculty were the real legal research experts. Some have even argued that faculty members relied so heavily on the librarians that they no longer had competent legal research skills themselves. But for the reasons made clear by a review of the literature and the results of this survey, that slowly appears to be changing. For one, the Harvard faculty agreed to abandon the traditional Langdellian first-year curriculum in 2006. Outside pressure in the form of the MacCrate Report and the Carnegie Report highlighted the abysmal legal research skills of new associates and the need for a change in legal research instruction. The debate over whether first-year law students are ready for rigorous legal research instruction is clearly not over, but a trend seems to be emerging. Legal research professionals clearly believe that in spite of their lack of well-developed research skills and concomitant lack of self-awareness, first-year law students should be taught fundamental legal research skills. To reach that end, law schools must amend the traditional legal curriculum to include Legal Research as a stand-alone course in the second semester. Legal Research should be taught by librarians and accorded enough weight for the students to take it seriously. Perhaps then the cycle of law schools sending woefully ill-prepared summer clerks into the workplace will slowly end, with horror stories of unexpectedly high Westlaw bills eventually relegated to history’s dustbin.