IDENTIFICATION OF TRENDS IN THE TEACHING OF LEGAL RESEARCH

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Legal educators and practicing attorneys have long criticized the legal research skills demonstrated by new attorneys. In the late 1980's and the early 1990's a survey of law firm librarians' perceptions on legal research skills of law students and new attorneys confirmed the notion that law students were graduating with inadequate research skills. A series of articles written by Christopher and Jill Wren and Robert Berring and Kathleen Vanden Heuvel were published in which the Wrens advocated the process method of instruction in lieu of the Berring and Vanden Heuvel's bibliographic method. This paper uses content analysis of course descriptions of legal research classes in the top one hundred law schools as ranked by *U.S. News and World Report* to identify the existence of trends in the manner of legal research instruction, the identity of the instructor, the method of grading and the credit allocated the course.

Headings:

Bibliographic instruction – Law students

Legal research – Study and teaching

LIST OF TABLES

Each summer law firms across the country hire the best and the brightest rising third year law students as summer clerks. Law students compete, based in part on class rank and prestige of the law school, for such positions and ultimately for an offer to join a firm following graduation and passage of the respective bar examination. During the summer the summer associates[1] are given the opportunity to demonstrate their skills by working with practicing lawyers on a variety of tasks. One of the most popular types of assignments is that of the research memo. On a practical level this is an easy task for a law firm to give to a summer associate as it employs skills that the summer associate is expected to have already mastered. It is also viewed as an excellent tool to evaluate a potential new hire's grasp of the practical skills of research, analysis of a legal problem and the ability to communicate using the written word. Unfortunately, experiences such as the following are not uncommon.

Several summers ago one such summer associate was assigned the job of preparing a memorandum on a particular point of law and the drafting of a client letter explaining the position the firm recommended that the client take. It should be noted that the particular point of law that was the subject of the memorandum was not unusually complex or difficult. Despite the minimal level of complexity the results were less than satisfying. The particular summer associate assigned the task came

[1] Summer Associate or summer clerk is the name traditionally used to refer to law students hired during the summer as interns.

highly qualified. He was from a law school ranked among the top twenty-five, at the top of his class and a member of law review. The memorandum produced contained fatal flaws. Among such defects was the failure to locate all the relevant cases, incorrect analysis of the holdings of several of the controlling cases and the inclusion of one case recently reversed upon appeal. The research was clearly inadequate. This alone suggested a fundamental problem; however, the imperfections in the product were magnified by the poor construction of both the memorandum and the client letter. Both documents contained numerous spelling and grammatical errors as well as an absence of any demonstrated understanding of the law and related legal analysis. This member of the best and the brightest illustrated a secret of the legal profession. Many law students graduate without the necessary practical skills required to conduct legal research efficiently and competently on a specific legal problem. Unfortunately the above-described experience is not the exception to the rule. A 1988 survey of law librarians with large law firms implied similar results[2]. The results of the survey suggested that the summer clerks and the first year law students lacked the requisite skills necessary to perform adequately the research tasks required of them.

To be fair, this problem has not gone unnoticed. A review of the literature written in the last twenty years, the majority of which was written in the late 1980's and early 1990's, reveals concern over this very issue. Such literature contains

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[2] Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. LEGAL EDUC. 381 (1990). *See also*, Robin K. Mills, *Legal Research Instruction After the First Year of Law School*, 76 LAW LIBR. J. 603 (1983) (there is clearly a need for legal research instruction beyond the first year of law school).

detailed and lengthy discussions regarding the who, what, and how issues surrounding the substantive education of law students in the area of legal research. Notwithstanding the volume of the literature, conspicuously absent from the discussion is any consensus or agreement on how best to educate law students with the vital skills of legal research.

The apparent absence of consensus is reflected in a series of articles written by Christopher Wren, Jill Wren, Robert Berring and Kathleen Vanden Heuvel in the period commencing in 1988 and ending in 1990.[3] These articles are discussed in greater detail in the *Literature Review* section of this paper. The substance of the Wren/Berring/Vanden Heuvel articles debates the manner of instruction of the practical skill of legal research and the perception of the status of the class and skills that are the subject of the legal research class. With regard to how legal research should be taught, Christopher and Jill Wren suggested one approach characterized as a process approach[4]. Robert Berring and Kathleen Vanden Heuvel advocate an alternative approach characterized as bibliographic. The process approach is described as focusing on the process demonstrating a set of prescribed steps or a process to approach a particular problem[5]. The bibliographic approach is characterized by its focus on the description of the books and their location within the

[3] Herein the series of articles written by the Wrens, Berring and Vanden Heuvel are sometimes collectively referenced as the "Debate".

[4] Christopher G. Wren & Jill Robinson Wren, *The Teaching of Legal Research*, 80 LAW LIBR. J. 7 (1988).

[5] Maureen F. Fitzgerald, *What's Wrong with Legal Research and Writing? Problems and Solutions*, 88 LAW LIBR. J. 247, 265 (1996).

library.[6] A vigorous debate[7] between the advocates of these two approaches ensued. Such debate culminated in the early nineties with an ultimate agreement to disagree as to what was the preferred method for instruction in legal research and writing.

Although the how question was clearly pivotal to the question of the teaching of legal research and writing, of equal importance was the question of who should teach[8]. The question of who is critical, in part, to the criticisms associated with legal research courses in general. Such criticisms suggest that the course is not accorded the level of importance it is due based upon the status of the instructor, the number of credit hours associated with the class and the grading method utilized[9].

The importance of the debate started by the Wrens, Berring and Vanden Heuvel is underscored by the recognition of the need to include instruction in practical skills in the law school curriculum. This need was one of the items highlighted in the American Bar Association's 1992 conference on the gap between the law student and the first year lawyer[10]. The conference report, better known as the MacCrate Report, suggested a group of practical skills and knowledge of

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[6] *Id*. at 253.

[7] *See infra, Literature Review* for a more detailed discussion of the Wren and the Berring/Vanden Heuvel positions.

[8] *See generally*, Eileen B. Cohen, *Teaching Legal Research to a Diverse Student Body*, 85 LAW LIBR. J. 583 (1993).

[9] Thomas A. Woxland, *Why Can't Johnny Research? Or It all Starts with Christopher Columbus Langdell*, 81 LAW LIBR. J. 452, 454-55 (1989).

[10] American Bar Association Section on Legal Education and 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 (1992).

particular subjects that are essential to the transformation from law student to successful attorney. The report offers suggestions as to the role which legal education should play in the narrowing of the gap between student and professional[11]. The effect of the MacCrate Report was to challenge the role of legal education from teaching students to "think like a lawyer to teaching them to act (or function) as a lawyer"[12]. Among the practical skills identified as fundamental skills were the skills of legal research, legal analysis, and communication[13].

The combination of the issuance of the findings of the MacCrate Report in 1992 along with the agreement to disagree resolution on the preferred manner of instruction with respect to legal research in the early 1990'suggests the questions addressed by this paper—(1) in the past ten years have any trends developed in the area of teaching legal research regarding the manner in which legal research is taught, (2) what is the state of the profession with respect to who the instructor is, (3) what is the grading scheme utilized, and (4) what is the number of credit hours accorded the class?

Law School

Law school differs from the usual concept of graduate school as is indicated by the customary use of the term professional school to refer to a law school. The

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[11] Richard A. Matasar, *Article II. Legal Education: Skills and Values Education: Debate About the Continuum Continues*, 22 N.Y.L. SCH. INT'L & COMP. L. 25, 26 (2003).

[12] *Id.*

[13] *Id*. at 30.

traditional legal education offered by the majority of law schools consists of a three year full time program; upon successful completion of such three years a student will graduate with a juris doctorate degree. For the uninitiated the law school experience is unique. It is typically divided into the first year program and the upper level. The upper level refers to second and third year law students. In most law schools the first year consists exclusively of required courses although some programs will permit the student to select one elective course from a designated list. Typical first year courses consist of Torts, Contracts, Property, Civil Procedure, Criminal Law and in some instances Constitutional Law. Theses are customarily referred to as substantive courses and are traditionally taught by members of the full time faculty. In addition to the traditional first year courses, almost all law schools visited for the purpose of this paper referenced some type of instruction in the area of legal research and writing[14]. This instruction was provided in a variety of combinations from one day seminars to courses awarded multiple credit hours. Additional combinations included instruction in legal research, combined instruction in the area of legal research and writing and legal research as a part of a substantive course.

The Literature Review-- A Survey and a Debate

The premise of this paper draws heavily on several articles that discuss the inadequate research skills demonstrated by new attorneys and law students and the preferred manner of instruction of law students in the skills of legal research. The first such article is written by Joan S. Howland and Nancy J. Lewis relating the results of a survey of law firm librarians regarding such librarian's perception of legal

[14] *See* Appendix I for a complete list of the one hundred law schools considered in this paper.

research skills demonstrated by the summer associates and first year associates employed by their respective firms. The other major source of information was from a series of articles written by Christopher and Jill Wren and Robert Berring and Kathleen Vanden Heuvel. The Wren/Berring/Vanden Heuvel articles critique the preferred manner of instruction for legal research.

Howland and Lewis's Survey[15]

In 1990 Joan S. Howland and Nancy J. Lewis published the results they obtained from a 1988 survey of law librarians, first year associates and summer associates (herein first year associates and summer associates are collectively referenced as the "Associates") in large law firms regarding the quality and extent of the legal research skills demonstrated by the Associates[16]. "Questions about whether law school legal research programs are effective and whether law school graduates begin their careers with the basic skills necessary to research legal issues led to [the survey]."[17] The survey had four discrete objectives to assess (1) the level of competence of the Associates' basic research skills as demonstrated either during the summer clerkship or their first year of practice, as applicable; (2) the level of expertise demonstrated in the use of electronic data bases such as Lexis and Westlaw; (3) the Associates' attitudes towards legal research and (4) law firm librarian's perception of the effectiveness of the legal research programs of law schools[18]. One

[15] Herein the Howland & Lewis survey is sometimes refereed to as the "Survey".

[16] *See generally*, Howland & Lewis *supra* note 2.

[17] Howland & Lewis *supra* note 2 at 381.

[18] *Id.* at 382.

interesting bias that was present in the survey was its reliance on Big Law[19] – in other words large law firms located in Chicago, New York, Washington D.C., Dallas, Houston and San Francisco. While this bias exists in large part due to the feasibility concerns of conducting the survey, it must be noted that this is not necessarily an accurate representation of all law firms since it specifically excludes the smaller law firms and sole practitioners and concentrated on specific and somewhat unique geographic areas. By selecting the above-referenced cities and by relying on large law firms, the sample thus tended to focus on law schools which, at such time, would have been ranked by *US News and World Report* in the top twenty-five law schools in the country and in many cases the top ten law schools. Specifically identified were law schools such as Duke, Harvard, Georgetown, the University of Virginia and Yale.[20] Reliance on such schools also suggests a flaw in the survey.

Flaws aside, the results of the survey were illuminating. Specifically, the survey confirmed the suspicion of many attorneys, law librarians and members of the community of law faculty. Students and recent graduates, even from the best law schools, were unable to utilize effectively resources or to employ efficient research

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[19] Big Law is a jargon term used in the legal profession to refer to those law firms employing in excess of one hundred attorneys. Such law firms are generally located in large metropolitan areas such as New York city, Chicago, Los Angeles, the District of Columbia and more recently cities such as Atlanta, Dallas and Charlotte. They are also distinct in their hiring practices tending to hire only from Tier I law schools and the top ten percent of the graduating class of such law schools. It should also be noted that with respect to Howland and Lewis' survey Big Law was the ideal candidate due to the fact that it is Big Law which has the financial resources to employ law librarians and provide the space and materials for law libraries. *See also,* Howland & Lewis at 382 ("The average size of the responding firms was sixty-eight partners and eighty-six associates").

[20] *Id.* at 382-83.

strategies. Specifically identified as a concern was the inability of the Associates to design a strategy to attack a problem in an efficient and cost effective manner.[21] The law librarians who participated in the survey attributed this inability to an absence of an understanding of the available resources and the basic principles of legal bibliography.[22] One interesting comment was that the students who were members of a law review generally possessed superior research skills to those who were not members, thus suggesting that practice, experience and exposure play a part in the education and development of legal research skills.[23] When asked to consider the question of efficient utilization of electronic databases, the overwhelming response of the law librarians was that the Associates were unable to employ such resources in an economically feasible manner, they were unable to conceptualize the efficient use or place of electronic resources within the overall scheme of available materials, and they tended to over rely on computer assisted research.[24]

Perhaps the most illustrative point of the survey involved the perceptions of the surveyed law librarians. They suggested that only a small minority of the Associates placed any actual value on research skills[25]. This is an alarming statement considering the importance of finely developed research skills to any practicing attorney. Actual comments from the law librarians suggested this could be attributed

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[21] *Id.* at 383.

[22] *Id*.

[23] *Id.* at 384.

[24] *Id*. at 387.

[25] *Id*. at 388.

to the use of canned exercises in law schools leaving students with the false implication that it is the librarian's or someone else's job to gather the materials[26]. Similarly when asked if law school's research programs were more than adequate, only nine percent of the surveyed librarians responded in the affirmative.[27] Instead they suggested that such courses were taught by unqualified persons, little actual practice of research skills seemed to be required and that there was a perceived lack of importance placed on the course.[28]

The Wren's and Berring and Vanden Heuvel Debate

In 1988 Christopher G. Wren and Jill Robinson Wren ignited a debate with respect to the manner in which legal research instruction in a law school should be conducted. In their first article *The Teaching of Legal Research* they specifically rejected what they asserted was the more common method of instruction, the teaching of legal bibliography.[29] Their premise centered around the concept that legal research is a process and that the teaching of legal research in law schools lacks instruction on the actual process of research thus resulting in law students and attorneys who lack the requisite skills necessary to conduct effective and efficient legal research.[30] They assert that the traditional manner of legal research instruction, which they suggest has dominated law schools for over seventy years, is that of legal bibliography. They define legal bibliography as instruction that focuses "exclusively or almost

[26] *Id.*

[27] *Id*. at 389.

[28] *Id*.

[29] Wren & Wren, *supra* note 4.

[30] Id at 8.

exclusively on describing law books. This descriptive, or bibliographic, approach virtually ignores the legal research process itself – that is the process through which researchers decide how and when to draw on law books in developing comprehensive strategies for researching legal problems."[31] Additional characteristics of legal bibliography include the suggestion that legal research amounts to knowing and understanding the bibliographic characteristics of law books. They also characterized legal bibliography as a "method of instruction that revolves around descriptions of law books or the mechanics of using particular law books".[32] In contrast, the Wrens' define an alternative approach to the instruction of legal research, process oriented instruction. Process oriented instruction is characterized as presenting a series of problem-solving steps part of which such steps includes a "comprehensive explanation of the research process" and emphasizing books as tools.[33]

The Wrens maintain that there are numerous deficiencies associated with the legal bibliography approach. They assert (1) "students in legal research courses are given descriptions of law books without adequate instruction about how or when to use the books", (2) "bibliographic information requires a context to make it meaningful . . . and the necessary context is how someone actually does legal research", (3) "descriptions of law books do not provide" the required orientation, (4) the principal deficiency of legal bibliography is the failure to "explain how to use law books to solve legal problems", (5) legal bibliography "covers the mechanics of

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[31] Id at 8-9.

[32] *Id*. at 9 and 11.

[33] *Id*. at 9.

moving around within a discrete law book or within related sets of law books".[34] They also assert that the treasure hunt activities generally associated with legal bibliography are too narrow and meaningless in the actual sense of teaching someone to do legal research.[35]

The process oriented instruction method, which they advocate, is characterized by the organization of steps required to perform the necessary research, a discussion of such step, and identification of the books and/or materials necessary to complete such step.[36] Instruction looks at the goal the researcher is attempting to accomplish and the appropriate steps to accomplish the desired goal. A process oriented course is characterized by the relationship of the law book to the actual research of the problem.[37] The analogy suggested as appropriate for the process oriented approach is that of the construction of a house.[38] Explain how to construct a house by describing each step of the construction. The Wrens' advocate a three framework approach for the instruction of legal research – framework one centers on explaining those institutions which create law; framework two involves an analysis of the fact pattern, an evaluation of the legal issues suggested by the facts and an establishment of priority among the identified issues for research; and framework

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[34] *Id*. at 10.

[35] *Id.* at 11.

[36] *Id*. at 12.

[37] *Id.* at 15.

[38] *Id.* at 19

three involves a method for students to use in the actual conduct of research in the library.[39]

In 1989 Robert C. Berring and Kathleen Vanden Heuvel responded to the Wrens' article with their own.[40] They defended the legal bibliographic instruction method as the method of choice and suggested that the Wrens' process oriented approach was fundamentally flawed and "will have long-term, negative repercussions."[41]

> Acceptance of their methods will cause the already bleak legal research picture to become a cold and forbidding landscape. Their theories, as expressed in their article and book are dangerous and misguided, and play into the hands of those who think legal research training is a minimalist's enterprise best handled in a cheap and easy manner.[42]

More specifically they take exception with the Wrens' characterization of the legal bibliographic method. Berring and Vanden Heuvel argue that their description of the bibliographic method replete with laundry lists of characteristics was long ago discredited and is not presently used as a method of instruction.[43] Interestingly enough, although they support the bibliographic method of instruction as the method of choice, they do not supply a current definition of bibliographic instruction until they reach their conclusion at which point they suggest that legal bibliography is a

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[39] *Id.* at 33- 37.

[40] Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: Should Students Learn It or Wing It?* 81 LAW LIBR. J. 431 (1989).

[41] *Id.* at 432.

[42] *Id.* at 432.

[43] *Id.* at 438.

combination of the mechanics of the materials with associated problems.[44] While they agree that most legal research instruction is abysmal, they suggest that the problem lies not in the method, but in the paucity of the programs and in the absence of regular faculty members who teach the course or in the use of second and third year law students as instructors.[45] They suggest improvement in legal research will result only when it is viewed as an integral component of the law school curriculum rather than an ancillary skill.[46] They specifically reject what they refer to as the Wrens' minimalist approach and the related assertion that the best way for the student to learn is to purchase the book and read it and such activity be supplemented by several hours of lecture.[47] They further criticize the process approach as omitting instruction as to the proper use of a particular tool and restricting the universe of a student's exposure to those specific materials involved in the particular problem.[48] They also argue that the Wrens' description of the process oriented approach is little more than learning by trial and error (e.g. learn by doing).

In 1990 the Wrens' returned Berring and Vanden Heuvel's volley.[49] Their article was a response to the criticisms leveled at them and a reiteration of their

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[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*. at 439.

[48] *Id*.

[49] *See* Christopher G. Wren & Jill Robinson Wren, *Reviving Legal Research: A Reply to Berring and Vanden Heuvel*, 82 LAW LIB. J., 463 (1990).

criticism of the bibliographic approach and their support for the process oriented approach. They reasserted their conclusion that many legal research instructors are utilizing the legal bibliography method as they have characterized it, disputing the alternative characterization offered by Berring and Vanden Heuvel and reaffirming their assertion that it is still commonly used.[50] The also sought to clarify and to defend their process oriented method of instruction. They asserted that they do not advocate the elimination of "all instruction about law books in favor of simply using them."[51] Similarly they reaffirmed their notion that legal research skills are learned through repetition.[52] They elaborated on the type and amount of bibliographic instruction appropriate for a process oriented curriculum by suggesting that their real objection is to the amount and focus on bibliography information. They asserted that the only bibliographic information needed is that sufficient "to advance an understanding of the legal research process."[53]

Berring and Vanden Heuvel responded with a short article in the same year suggesting that they still disagreed with the Wrens' approach.[54] They reasserted their contention that the process oriented approach advocated by the Wrens was an inferior method of instruction; but ultimately they suggested that enough discussion had

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[50] *Id.* at 464.

[51] *Id.* at 472.

[52] *Id.* at 473.

[53] *Id.* at 475.

[54] Robert C.Berring & Kathleen Vanden Heuvel, *Legal Research: A Final Response*, 82 LAW LIBR. J., 495 (1990).

occurred and that it was up to the interested to decide who was correct. Such article effectively terminated the debate between themselves and the Wrens.

However, other scholars continued to comment on the state of legal research skills within the profession. The general consensus was that legal research was considered to be a skill critical to lawyers[55] and that a need for improved legal research skills demonstrated by law students and newly admitted attorneys was clearly evident.[56] This conclusion is supported MacCrate Report which suggested that "[i]n order to conduct legal research effectively, a lawyer should have a working knowledge of the nature of legal rules and legal institutions, the fundamental tools of legal research, and the process of devising and implementing a coherent and effective research design."[57] Also underscoring the importance of legal research skills and their conspicuous absence within the profession is the increase in the use of Rule 11 sanctions pursuant to the Federal Rules of Procedure for attorneys who fail to research properly the law applicable to their cases.[58] Others proposed that there was a

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[55] *See* Woxland, *supra* note 9.

[56] *See* Matasar, *supra* note 11. (mere passage of the bar exam and graduation from law school does not suffice when attorneys need to understand how to find and apply the law to a series of real facts.); *See also,* Matthew C. Cordon, *Beyond Mere Competency: Advanced Legal Research in a Practice-Oriented Curriculum*, 55 BAYLOR L. REV 1 (2003) (the cry for improved instruction in legal research has coincided with a spirited debate regarding the role of the law school as master of the apprentice).

[57] American Bar Association Section of Legal Education and Admissions to the Bar, Statement of Fundamental Skills and Professional Values, Report of the Task Force on Law Schools and the Professions: Narrowing the Gap (1992).

[58] See, Marguerite L. Butler, *Rule 11 Sanctions and a Lawyer's Failure to Conduct Competent Legal Research*, 29 CAP. U.L. REV 681(Rule 11 sanctions are becoming more prevalent as attorneys fail to conduct proper research often ignoring contrary

distinct suggestion that practical skills were not integral to the law school experience, but rather the purpose of the law school education was to "emphasize teaching students to 'think like lawyers'".[59] Unfortunately the theory taught and emphasized by law professors was disconnected from the reality of the profession. In the eighties and nineties the starting salaries of first year associates sky rocketed and changed the playing field. Where firms had traditionally provided first year associates with a one to two year apprenticeship allowing new attorneys to hone and develop legal research skills, the added salary costs of such attorneys meant that new attorneys were expected to contribute earlier rather than later. Thus, such associates were expected to come in the door with developed legal research skills.[60] The absence of the apprenticeship period underscored the value of legal research instruction in law school.

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authority, failing to cite appropriate analogies, failing to cite any authority supporting their argument or in the apposite, citing contrary authority as authority in support of their argument. The suggestion is that this is the result of poorly developed research skills.).

[59] Cohen, *supra* note 3.

[60] *Id*.

The Questions and Methodology

In order to evaluate the status quo of the present day instruction of legal research, the variables of who is the instructor, the how or the manner of instruction used within the class, the type of grade assigned and the number of credit hours accorded were specifically and separately considered. The who refers to the identity of the teacher and in particular the qualifications of the instructor. A variety of different persons with differing levels of expertise have been suggested as current teachers of legal research. The options include regular members of the law faculty, librarians with juris doctorates, adjunct faculty members, and law students. The question of 'how' considers the manner of instruction employed for education of the student in such skills. Most specifically, it considers if such manner is process oriented or bibliography oriented. Finally, with respect to indication of importance of the skill and/or class, other items considered include the number of credit hours assigned to the class and the grading method of the class be it pass/fail or a traditional letter grade.

Utilizing written descriptions of faculty, courses, programs and grading schemes located on a respective law school's web site; each of the above described variables of who, manner, grading, and credit were evaluated utilizing the technique of content analysis to identify trends in the specific areas of who, manner, credit and grading based upon frequency counts of the designated variables. Specifically considered was whether or not trends among the variables were noted within the top

100 law schools as such schools are ranked by *US News and World Report*[61]. For a complete list of such schools and their associated rankings see Appendix I. Websites of the identified schools were visited and information collected between the dates of September 15, 2003 and October 1, 2003. Also considered was the existence of trends with respect to the above-described variables when such law schools were broken into quartiles or tiers[62] consisting of the following:

Tier I	Law Schools bearing rankings 1 through and including 25
Tier II	Law schools bearing rankings commencing with 27 through and including 50
Tier III	Law schools bearing rankings commencing with 51 through and including 69
Tier IV	Law schools bearing rankings commencing with 78 through and including 97

It should be recognized that an opportunity exists for bias to influence the results in two specific areas. The first is the utilization of the *US News and World Report* ranking system and the second is in the actual coding of the content. It is anticipated that the identification of trends may help resolve the debate over what is the best method of teaching legal research and writing – bibliographic or process; is there a consensus as to who is an appropriate instructor; is there agreement as to the

[61] Exclusive Rankings – Schools of Law, U.S. News & World Reports at http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank_brief.php (web site last visited October 25, 2003). Rankings utilized were released in March of 2003 although the title referrers to "America's Best Graduate Schools 2004".

[62] The use of the word "tier" is a concession to the jargon utilized by the legal profession. Law schools are routinely referred to as a "Tier I", "Tier II" school as a method of indicating the quality of the particular school. A reference to a Tier I school indicates a law school ranked in the top twenty-five law schools.

badges of status as indicated by the method of grading and the amount of credit awarded. A consideration of any trends may illustrate progress (or the absence of any progress) in meeting the goals incorporated in the MacCrate Report and highlight both new and existing methods of instruction and factors in instruction to be considered in the reaching of the ultimate goal – the arming of law students with the practical skills required for the actual practice of law.

The first question focused on the method or manner of instruction employed by a law school's legal research instructor – the "how" question. Returning to the Wren/Berring/Vanden Heuvel debate, the legal education community was provided with suggestions for two distinct methods of instruction. The question that persisted is whether or not one method had seemingly been adopted over the other since the Debate of the early 1990's. A trend supporting the adoption of either the bibliographic or process method in lieu of the other method would support the conclusion that such method is the preferred method of instruction.

As suggested above, with respect to this question and each of the preceding questions, the method of content analysis was employed. Each of the top one hundred law schools as ranked by *US News and World Report* was visited via their website to locate the applicable course description for their first year legal research program. Based exclusively upon the course descriptions contained in the various websites, a law school's legal research course or program was identified and then classified as using one of three distinct manners of instruction – legal bibliography, process or other. It should be noted that the categories were considered to be mutually exclusive. In order to appropriately classify a law school's method of legal

research instruction into one of the three determined manners, the following criteria were pre-determined utilizing the Wren/Berring/Vanden Heuvel articles summarized above.

The process category required the description to suggest an advocating of discussion of steps necessary to conduct legal research and minimal to no emphasis on the mechanics of the materials. All of the course descriptions including the lawyering skills concept were included within this category. Key words such as sequenced, analyze and frame, self-taught or similar words indicated inclusion within the process category. Also included within this category were programs that suggested an emphasis on trial and error or learning by doing.

Programs were placed in the bibliography category when the relevant description suggested an emphasis on the materials themselves and in particular the mechanics of the materials. Specifically included in the bibliography category were programs which defined themselves as legal bibliography. Buzz words and phrases such as familiarity with the tools, content of the materials, analyzing components, pathfinder and other similar words and phrases suggested that the course be classified as utilizing the bibliography approach. It should be noted that as both the Wrens and Barring/Vanden Heuvel advocate a certain amount of practical experience with regard to their method of teaching the mere inclusion of treasure hunts, exercises or problems did not automatically argue for inclusion within the process category. Instead, something in addition was looked for to indicate a preference as to either the process or bibliographic category.

The other category is the default category. Programs that failed to meet the requirements of either the legal bibliography or process criteria as described above were placed into this category. In instances where a program suggested strong elements of both the bibliography and process approach, its discrete components were examined along with the number of credit hours assigned to such components. In the absence of a suggestion as to a clear preference towards either the bibliographic or process approach, these course descriptions generally indicated inclusion in the other category.

The remainder of the questions were drawn from the inferences suggested in both the Survey and the Berring/Vanden Heuvel articles concerning the perceived importance of legal research as a necessary skill. These questions were considered of importance in light of statements such as "[a]lthough frequently ungraded and taught by non-tenure tract faculty"[63]; only "[t]hirty-seven percent of [law librarians surveyed] reported that they felt first-year associates consider legal research skills very important"[64] and "[r]esearch does not seem to be taught by qualified instructors"[65].

The importance questions focus on the status of the instructor, the "who" factor, the "credit" factor and the "grading" factor. With respect to the "who" factor, web pages of the subject law schools were examined for the purposes of identifying the instructor of the legal research class and their qualifications. Results were placed

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[63] Howland & Lewis, *supra* note 2 at 381.

[64] Howland & Lewis, *supra* note 2 at 388.

[65] Howland & Lewis, *supra* note 2 at 389.

into the following categories – unidentifiable, other, adjunct, librarian with law degree and member of full time faculty. Individuals were included as members of the full time faculty to the extent the website indicated that they were a tenured professor, an associate professor or the listing of courses taught referenced other more traditional substantive courses as being taught by such professor. Instructors were included within the librarian with law degree category to the extent they were identified as part of the law library staff and their credentials included a juris doctorate degree. The adjunct category consisted of those instructors who were practicing attorneys and/or were attorneys who were not otherwise a member of the law faculty. The other and unidentifiable categories contained the remainder of the instructors. Specifically, there were a number of schools for whom either the instructor could not be identified or for which there was no information available. These persons were placed into the unidentified category and such schools removed from the total group of schools examined. Persons for whom information was available but which did not meet the requirements of any of full time faculty, adjunct or librarian with law degree were placed into the other category. It should also be noted that the categories were considered to be mutually exclusive. By way of example, librarians with law degrees who were also tenured faculty members teaching other substantive courses were counted within the librarian category despite the fact that they also met the requirements of full time faculty.

The credit factor was directly taken from the information on the law school web pages. Specifically the actual number of credit hours assigned was determined and tabulated or in the alternative, either the absence of such information noted or its

unavailability included. Similarly, the grade factor was determined based upon explicit statements in the course descriptions. Grades were placed into either the pass/fail or the letter grade category. Only courses that specifically stated that they were graded on a pass/fail basis were included within the pass/fail category. Courses with no specific reference to the class grading policy were placed into the letter grade category so long as the overall grading policy of the school suggested that traditional letter grades were used by the school as were courses with direct references to the awarding of letter grades.

The Results and Discussion

The main impetus of this research was to determine the impact, if any, of the Wren/Berring/Vanden Heuvel articles. An excess of ten years has passed since the final Berring/Vanden Heuvel article suggesting that lawyers and scholars must decide for themselves if the Wrens' suggested process oriented approach was a better method of instruction for the education of students in the art of legal research than that of legal bibliography. So the question persists as to if the process approach has gained prominence, the legal bibliography approach retained its foothold or if some other approach has gained acceptance. The results were quite interesting.

Of the original pool of one hundred law schools available for examination based upon the *U.S. News and World Report* rankings, eighteen were excluded for a lack of information resulting in eighty-two schools included in the review.[66] Results for the total eighty-two schools providing information are set forth below in Table 1. A clear preference for the bibliographic method over the process method is indicated. This suggests that the process method of instruction has not gained the prominence that might have been expected from the Debate. The preference for the bibliographic manner of instruction over process was also surprising in light of the suggestion from the Survey that it was those students who were members of law review that demonstrated the best research skills. Such statement seemed to endorse the Wrens' position that practice and repetition are the keys to successful instruction in legal research skills.

Table 1 -- Trends in Manner of Instruction (Total)

Manner	Frequency of Occurrence
Bibliographic	34
Process	20
Other	28

Perhaps of greater interest though is the number of schools that were categorized as using neither the bibliography or process method. Twenty-eight of the eighty-two schools were included in the other category. It should be remembered that the other category is the default category indicating no clear preference as to either

[66] A school was considered to "lack information" if it did not provide a description of its legal research program or course description on its web site, if such school did not provide a website or if such web site was unavailable.

the bibliographic or process choice. One reason for this result is the use of course descriptions to attempt to classify a method of instruction. The course descriptions examined ranged from completely generic such as "this course is designed to develop analysis and research skills" to comprehensive descriptions of the legal research program, the assignments, the teachers, the philosophy and in some cases a syllabus. Thus, one plausible explanation for the large number of responses in the other category is the simple absence of information provided by a course description to classify effectively the manner of instruction. Yet another, and perhaps far more interesting suggestion is provided in those course descriptions which were detailed and comprehensive. Such descriptions suggested no clear preference for either the bibliography or process oriented approach but rather a synthesized approach involving legal research, legal writing and advocacy. One such program description[67] consisting of descriptions for three separate courses is that provided by the University of Maryland

> [I]ntroduces students to . . . sources of authority. Students are taught to read and understand cases by examining the anatomy of a lawsuit and the elements of court decisions. . . .The course teaches students to distinguish among and evaluate various types of legal authority. . . .students learn to communicate analysis of legal problems in a law firm setting using written assignments. . . . working on a well

[67] It should be noted that the program description actually consists of course descriptions fro LAWR 1, LAWR II and LAWR III. LAWR I would seemingly in and of itself fall into the "bibliography category"; LAWR II and III would suggest more of a lawyering skills approach thus suggesting a process approach; however due to the nature of the actual descriptions read as a whole, the program was classified as "other" since it seems to emphasize both the bibliography and process approach equally rather than one over the other. See, http://www.law.umaryland.edu/ (last visited November 9, 2003).

> developed case file students learn to work with facts, develop a theory of the case and use their research to advance their theory.[68]

Considered in its component parts the individual course descriptions could suggest either a bibliographic approach due to the implied focus on the materials or a process approach due to the lawyering skills concept suggested. Considered as a whole, neither approach seemed to dominate especially when viewed in connection with the credit hours assigned to the component parts of the program. Accordingly, this was considered to be appropriate for inclusion in the other category.

Table 2 --Trends In Manner of Instruction for Law School By Tier

Manner	Frequency of Occurrence			
	Tier I	Tier II	Tier III	Tier IV
Bibliographic	11	7	10	6
Process	8	6	3	3
Other	5	8	7	7

When the question of manner is considered based upon Tier I, Tier II, Tier III and Tier IV law schools as suggested in Tables 2 above, the gap between schools utilizing bibliography versus process seems to narrow in Tier II but remains distinct with a preference towards bibliography in each of the other tiers.

One other interesting fact was noted with respect to the process category. Based on the original guide lines for inclusion in such category, course descriptions which included the key word of lawyering skills or described themselves as simulating a law office were included within the process category. Of the twenty programs identified as adopting the process approach, fifteen of those programs were

[68] *Id*.

also noted to be part of a lawyering skills curriculum. This is of interest for two reasons. First it suggests recognition of the MacCrate Report's findings that encouraged an emphasis on the development of the fundamental skills of research, communication, advocacy and the teaching of law students to act like attorneys; and second, it highlights the Wrens' argument of the need for experience and repetition utilizing research skills in real life situations to develop useful research skills. More interestingly, however, these programs include a variety of approaches and skills from that of appellate advocacy, trial advocacy, writing, negotiation and counseling which extend well beyond the more traditional concepts of legal research and writing skills.

The next question examined was with regard to who was teaching the legal research programs. This point was raised in both Survey and by the Berring/Vanden Heuvel articles. The inference was that students allocate importance to legal research based upon the status suggested by the course itself. One indication of such status involved the credentials of the instructor of the class. It was specifically suggested that students would assign a lower status to courses taught by persons who were not members of the regular faculty. Additionally, one suggestion from the Survey was the perception that instructors who were teaching legal research were unqualified to do so[69].

Of the eighty-two possible law schools thirteen schools were excluded for the purposes of this question based upon an inability to locate the necessary information. Thus, a total of sixty-nine schools were examined in respect to this question. The

[69] Howland & Lewis, *supra* note 2 at 389.

inability to determine such information was based upon several factors including the failure to identify an instructor or the absence of any biographical information with respect to a named instructor. The results as are set forth in Table 3 below suggest a clear trend towards the utilization of instructors who are members of the regular faulty as the instructors for legal research classes. When the results were examined based upon Tier of law school no change in the trend was detected. As indicated by the results set forth in Tables 4 a preference for faculty was found in each of the tiers.

Table 3 --Who Teaches Legal Research (Total)

Who	Frequency of Occurrence
Other	13
Faculty	30
Librarian with J.D.	18
Adjunct	8

Table 4--Who Teaches Legal Research By Tier

Who	Frequency of Occurrence			
	Tier I	Tier II	Tier III	Tier IV
Other	3	3	3	4
Faculty	8	7	8	7
Librarian with J.D.	4	4	6	4
Adjunct	1	4	1	2

Two other points of interest were discovered in the examination of the who factor. The first was the use of upper level students. Berring and Vanden Heuvel also raised the utilization of upper level students as instructors as a concern for the lowering of the status of legal research.[70] Perhaps most interestingly, only five of the sixty-nine schools for which information was collected stated that they presently utilized students as teachers in any form. This low number seems to suggest one of

[70] Berring & Vanden Heuvel, *supra* note 40 at 438.

two possibilities. Either the original concern over utilization of students as legal research instructors was invalid or the original concern was valid and schools have moved away from the use of student instructors.

The second point of interest involved the discovery of a bifurcated classification of law faculty. Fourteen of the sixty-nine instructors examined were referenced as being a part of the legal research and writing faculty. This is most interesting in that it seems to attempt to address the status issue suggested by the use of non-regular faculty members as legal research instructors but seems to perpetuate the problem. The bifurcated status between the regular faculty and that of the legal research faculty remains thus reaffirming the impression that there is a hierarchy of importance

As a second indicator of importance of legal research as a course, the number of credit hours assigned to the course was suggested to be of significance. The majority of first year law courses consist of three or four credit hours. Returning once again to the Survey and the Berring/Vanden Heuvel articles, the suggestion is that legal research courses that are abbreviated either with respect to the number of credit hours assigned or which occur as short courses suggest a lack of emphasis. The implication is that students will allocate time, resources and energy to their classes based upon a perceived importance. When faced with the choice of deciding to spend time on a substantive course such as Torts, Contracts, Civil Procedure, Property or Constitutional Law versus that of legal research, students will choose based upon the perceived importance as suggested, in part, by the allocation of credit hours. Information was located for sixty-four of the eighty-two law schools. As suggested

by the results set forth in Table 11, a definite trend in the allocation of four or more credit hours to legal research was noted[71]. Also of significance was the fact that only six of the schools allocated one credit hour to legal research. The combination of these two sets of finding suggests a clear trend towards the allocation of real credit hours to legal research and a recognition that importance is suggested by the assignment of credit hours to a course. The same trend was discovered when the results were viewed based upon applicable tier of law school and can be noted in a review of Tables 5 and 6 below.

Table 5 --Allocation of Credit Hours (Total)

Number of Credit Hours / Year	Frequency of Occurrence
1	6
2	11
3	12
More than 3	35

Table 6 --Allocation of Credit Hours By Tier

Number of Credit Hours / Year	Frequency of Occurrence			
	Tier I	Tier II	Tier III	Tier IV
1	0	2	1	3
2	3	4	2	2
3	2	2	5	3
More than 3	8	8	11	8

The combined offering of legal research and writing classes must be addressed in respect to the number of credit hours allocated a course. Many schools

[71] The number of credit hours was calculated based on a full year of law school. The four or more credit hours included those programs which were described as “year long”; consisted of two or more consecutive classes allocated two or more credit hours apiece or some other arrangement which resulted in a first year law student receiving in excess of three hours of credit for legal research in the first year of law school.

offer legal research as a part of legal writing. Based upon the course description alone it was impossible to ascertain the number of credit hours that would directly attach to legal research as opposed to legal writing. In reality the concepts of legal research and writing are uniquely tied together as it is the combined ability to research the problem and then prepare a written communication of the resolution to the problem that is the desirable result.

Suggested as a third indicator of importance is the type of grade awarded. The suggestion is that students will place the most emphasis or attention where the greatest rewards are to be found. Courses that are graded on a pass/fail basis are viewed to produce fewer rewards than those accorded traditional letter grades.[72] One of the eighty-two schools was excluded for failure to provide information as to the grading policy of the school. The results set forth below in Table 7 clearly suggest a trend to using traditional letter grades as opposed to a pass/fail type of grade in legal research courses..[73] Again, analysis of this same question based upon the associated tiers of law schools did not produce differentiated results as may be noted in Tables 8 below.

Table 7 –Grade (Total)

Scheme	Frequency of Occurrence
Pass/Fail	5
Letter	76

[72] As a general rule law school courses are graded with the traditional letter grades of A, B, C, D or F.

[73] In addition to pass/fail grading schemata, also included in this category were “no credit”, satisfactory and unsatisfactory and other similar grading schemes.

Table 8--Grade By Tier

Scheme	Frequency of Occurrence			
	Tier I	Tier II	Tier III	Tier IV
Pass/Fail	2	1	0	2
Letter	21	20	20	14

With respect to the three questions addressing attributions of respect the who, the grading scheme and the allocation of credit hours, one specific flaw must be considered. The Survey and the Debate contained inferences and perceptions rather than hard data. The absence of such empirical data renders it difficult to access the amount of actual change that has been implemented such as the use of members of the regular faculty as instructors were adjunct members had been previously used or the use of letter grades in the place of pass/fail or an increase in the amount of credit awarded to the legal research course.

Conclusion

In 1990 Berring and Vanden Heuvel issued the following challenge: "[b]y now we have discussed our differences enough and we simply recommend that interested reader read the original piece by Hicks in light of what has been written by the Wrens and us. As Gillette says, 'You make the call.'"[74] This is the first question presented for investigation in this paper. Has any discernable trend developed with regards to the manner of instruction of law students in the area of legal research. In addition to the manner question, the Survey and the series of Wrens/Berring/Vanden Heuvel articles also suggested other areas regarding other components of legal research instruction such as the qualifications of the instructor, the credit allocated

[74] Berring & Vanden Heuvel, *supra* note 49.

with respect to the courses and the grading scheme. Each of these components was also analyzed to determine if any trends existed.

The following distinct trends were identified: (1) a preference for the bibliographic manner of instruction over that of the process method; (2) the use of regular faculty members as instructors over librarians with law degrees, adjunct faculty or other instructors; (3) the preference not to utilize law students as instructors; (4) the allocation of four or more credit hours to the course in the first year of law school and (5) a preference towards awarding actual letter grades for the class. Each of these suggests a positive trend with respect to the original concern identified in either or both the Survey and the Debate.

Several other items of interest were also discovered in the process. With regard to the manner of instruction it was also noted that some programs utilized a manner of instruction that seemed to be a synthesis of the process and bibliographic methods. This method of instruction deserves greater investigation to determine its true popularity and its component features. Such investigation may reveal a better approach than the bibliographic one that was identified as the preferred manner of instruction. Interviews with actual instructors of legal writing programs identified in the other category are suggested as a way to obtain a greater understanding of such programs and to determine why and if they are actually unique. With respect to the number of credit hours allocated to legal research, additional investigation regarding the actual number of hours spent on legal research versus that of legal writing requires additional scrutiny. As previously noted, many legal research courses are combined courses that teach both research and writing. In order to obtain an accurate

picture of the emphasis on legal research, either interviews or a survey of students or instructors is merited. Also a point of interest is the designation of legal research and writing faculty. This suggests a bifurcated faculty and raises the issue of faculty members with inferior status. A survey to determine student, professor and librarian attitudes towards the bifurcated structure is suggested as a method of assessing the status of such faculty members.

The trends identified herein clearly suggest changes in areas identified as of concern in the Survey and the Debate. The question which remains outstanding, however, is whether or not law students are now receiving a better education in the skills of legal research than the 1988 Survey indicated students were receiving at such date. The identification of the positive trends noted above would seemingly suggest that the research skills of law students and first year associates should have improved. However, the prevalence in Rule 11 or similar sanctions for poor research issued by judges suggests that concerns still exist as to the competence of the research skills of new attorneys. In light of such factor and in light of the identification of the positive trends noted in this paper a recommendation for replication of the Survey is made. Finally a survey to of Rule 11 sanctions, the number of years of practice of the attorney and the law school from which such attorney graduated is suggested as a manner of evaluating the success of legal research programs of instruction and the manner of instruction used in such class.

APPENDIX I

Following is a list of the one hundred law schools and their rank as assigned by *U.S. News and World Reports* and published in 2003[75].

Law School	Rank
Yale University	1
Stanford University	2
Harvard University	3
Columbia University	4
New York University	5
University of Chicago	6
University of Michigan Ann Arbor	7
University of Pennsylvania	7
University of Virginia	9
Cornell University	10
University of California Berkeley	10
Duke University	12
Northwestern University	12
Georgetown University	14
University of Texas – Austin	15
University of California Los Angeles	16
Vanderbilt University	17
University of So. Cal	18
University of Minn Twin Cities	19
Washington and Lee	19
University of Iowa	21
Boston College	22
George Washington University	22
University of Notre Dame	22
University of Illinois – Urbana Champaign	25
Washington University St. Louis	25
Emory	27
Boston University	28
College of William and Mary	28
UNC-Ch	28
Brigham Young	31
Fordham University	31

[75] *See supra* footnote 61.

University of California Davis	31
University of Georgia	31
University of Wisconsin-Madison	31
Wake Forest University	36
University of California Hastings	37
Indiana University Bloomington	38
Ohio State University	38
George Mason University	40
University of Colorado – Boulder	40
University of Connecticut	40
University of Utah	40
University of Arizona (Rogers)	44
Tulane University	45
University of Alabama	45
University of Florida (Levin)	45
University of Maryland	45
University of Washington	45
Southern Methodist University	50
Baylor University	51
University of Cincinnati	51
University of Kentucky	51
University of Pittsburgh	51
American University	55
University of Tennessee – Knoxville	55
Cardozo-Yeshiva University	57
Case-Western Reserve	57
Arizona State University	59
Brooklyn Law School	59
University of Missouri-Columbia	59
University of Oklahoma	59
University of San Diego	59
Florida State University	64
Indiana University – Indianapolis	64
Temple University	64
University of Kansas	64
University of Nebraska- Lincoln	64
Illinois Institute of Technology	69
Lewis and Clark College (Northwestern)	69
Loyola Law School	69
Loyola University Chicago	69
St. John’s University	69
University of Houston	69
University of Louisville (Brandeis)	69

University of New Mexico	69
Villanova University	69
Rutgers's State University Camden	78
Rutgers's State University-Newark	78
University of Denver	78
University of Oregon	78
University of Richmond	78
University of South Carolina	78
Catholic University of America	84
University of Miami	84
Seton Hall University	86
University at Buffalo	86
University of Hawaii	86
Northeastern University	89
University of Mississippi	89
Georgia State University	91
Marquette University	91
Mercer University	91
Santa Clara University	91
Seattle University	91
University of Arkansas – Fayetteville	91
Louisiana State University Baton Rouge	97
Syracuse University	97
University of San Francisco	97
Wayne State University (MI)	97