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Designing and Teaching Advanced Legal Research and Writing Courses

Lucia Ann Silecchia*

"[L]awyers do not know so much more law than other people, but they know better where to find it."

"And why all this emphasis on writing? Because writing is thinking. Thinking on paper. Thinking made visible."

"Since law is an abstraction of ideas, shouldn't it be the primary aim of the writer to express these abstractions so that they will be understood in the same sense as they appear to him?"

"Wielding the written word is the lawyer's prime tool."

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1. This remark has been attributed to King George II. See Frederick Hicks, *The Teaching of Legal Bibliography*, 11 Law Libr. J. 1, 2 (1918). See also Thomas A. Woxland, *Why Can't Johnny Research? or It All Started with Christopher Columbus Langdell*, 81 Law Libr. J. 451, 451 (1989) ("Legal research is not an unimportant skill. It is not something one can get along without: no attorney can go through life only arguing the equities; sooner or later he or she has to find the law.").
4. Hon. Domenick L. Gabrielli, *The Importance of Research and Legal Writing*
These remarks indicate the importance of legal research and writing abilities for those who hope to become competent practitioners. While, undoubtedly, analytical ability is also of paramount importance, knowing how to locate the correct law to analyze, and being equipped with the skills to convey that analysis effectively to others, are prerequisites for functioning as an effective attorney. As more and more law schools have realized the

\[\text{in the Law School Education, 46 ALB. L. REV. 1, 4 (1961).}\]

5. This concern is, by no means, a completely new phenomenon. Even in the early part of this century when the practice of law was simpler, many commented on the need for comprehensive research and writing training and competency. See, e.g., R. A. Daly, Legal Bibliography — An Essential in the Law School Curriculum, 3 AM. L. SCH. REV. 560, 560-61 (1914) (“The best possible way to help a man is to help him to help himself . . . . [T]his knowledge of the proper use of law books may be the key to the door of success to the young man, and the lack of it the cause of failure.”); Mary S. Foote, The Need for College Instruction in the Use of Law Books, 10 LAW LIBR. J. 25, 30 (1917). Foote notes:

[T]here are those who believe that a technique in legal research commensurate with his development along other lines is the crying need of the lawyer today . . . . The best equipped library does a lawyer no good as long as his law reposes on the shelves between the covers of a book.

\[\text{Id.; Edward Q. Keasbey, Instruction in Finding Cases, 1 AM. L. SCH. REV. 69 (1903) ("The law student cannot learn all the law during the two or three years of his legal studies, and it is an important part of his work to learn how to use law books."); Charles C. Moore, Law School Instruction in How to Find the Law, 7 LAW NOTES 64, 66 (1903) ("Books are the tools of the lawyer's profession. Why should not the student be taught which are the best and how to use them . . . . "); see also Robert A. Leflar, Survey of Curricula in Smaller Law Schools, 9 AM. L. SCH. REV. 255, 258-59 (1939) (a survey of forty-five law schools found that twenty-three required a first-year "Use of Lawbooks" course); Karl N. Llewellyn, On What is Wrong with So-Called Legal Education, 35 COLUM. L. REV. 651, 674 (1935). Llewellyn posits:}\]

[An LL.B.] does not indicate that the possessor can use a law library, or find a case in point. It does not indicate that he can draft language that will cover a point, much less that he can see a point to cover . . . . It does not indicate that he can argue, or try a case, or even draw a pleading.

\[\text{Id.; Harry Kalven, Jr., Law School Training in Research and Exposition: The University of Chicago Program, 1 J. LEGAL EDUC. 107 (1948).}\]

Even in the early part of this century, there was debate not only as to whether research and writing should be taught at all, but also as to the most effective way to do so. See, e.g., Kathleen M. Carrick, A Case Study Approach to Legal Research: The Kent State Case, 73 LAW LIBR. J. 66, 68 (1989) (quoting Committee on Curriculum, Harvard Law School, Report of the Committee on Curriculum 63 (Warren A. Seavy, Chairman, June 15, 1936)) (“The use of law books is best learned by using law books for a purpose, not by listening to lectures on how to use them.”). Indeed, just as the problem is not a new one, neither are attempts to solve the perceived deficiencies. See Robert N. Cook, Teaching Legal Writing Effectively in Separate Courses, 2 J. LEGAL EDUC. 87 (1949); Harold Horowitz, Legal Research and Writing at the University of Southern California — A Three Year Program, 4 J. LEGAL EDUC. 96 (1961) (describing three year research and writing program created at University of Southern California Law School over forty years ago); Frederick C. Hicks, Instruction in Legal Bibliography at Columbia University Law School, 9 LAW LIBR. J. 121 (1916); Harry W. Jones, Notes on Teaching Legal Method, 1 J. LEGAL EDUC. 13 (1948); William Roalfe, Some Observations on Teaching Legal Bibliography
importance of these basic skills, much attention has been focused on developing first-year courses that provide an essential background in these skills.

6. Perhaps the most extensive example of the attention such skills are now receiving has been the promulgation of the recent report by the American Bar Association Section on Legal Education and Admissions to the Bar. See ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (1992) [hereinafter MACCRATE REPORT]. The MacCrate Report, among other things, defines "fundamental lawyering skills" to include legal analysis and reasoning, legal research, and communication. Id. at 138-39.

7. Much has been written discussing first-year research and writing programs. See, e.g., Richard I. Aaron, Legal Writing at Utah: A Response to the Student View, 25 J. LEGAL EDUC. 566 (1973); Jack Achtenberg, Legal Research and Writing: The Neglected Orphan of the First Year, 29 U. MIAMI L. REV. 218 (1975); Albert P. Blaustein, On Legal Writing, 2 Persp. 57 (1994); Michael Boten, Rewriting First Year Legal Writing Programs, 30 J. LEGAL EDUC. 184 (1979); Allen Boyer, Legal Writing Programs Reviewed: Merits, Flaws, Costs, and Essentials, 62 CHI.-KENT L. REV. 23 (1985); Norman Brand, Legal Writing Reasoning and Research: An Introduction, 44 ALB. L. REV. 292 (1980); Albert Brecht, Accelerated Legal Research at U.S.C. Law Center, 75 LAW LIBR. J. 167 (1982); Carrick, cited at note 5; Kenneth B. Germain, Legal Writing and Moot Court at Virtually No Cost: The Kentucky Experience, 1971-72, 25 J. LEGAL EDUC. 595 (1974); Peter W. Gross, California Western Law School's First Year Course in Legal Skills, 44 ALB. L. REV. 369 (1980); Hicks, cited at note 5; Louis C. James, Legal Writing at Stetson, 7 J. LEGAL EDUC. 413 (1955); Flora Johnson, Legal Writing Programs: This Year's Models, 8 THE STUDENT LAW., February 1980, at 11; Kimble, cited at note 2; Philip C. Kissam, Thinking (By Writing) About Legal Writing, 40 VAND. L. REV. 135 (1987); Margit Livingston, Legal Writing and Research at DePaul University: A Program in Transition, 44 ALB. L. REV. 344 (1980); David Lloyd, A Student View of the Legal Research and Legal Bibliography Course at Utah and Elsewhere — A Proposed System, 25 J. LEGAL EDUC. 553 (1973); Stewart Macaulay & Henry G. Manne, A Low-Cost Legal Writing Program — The Wisconsin Experience, 11 J. LEGAL EDUC. 387 (1958); Mandelker, cited at note 3; William Marple, The Basic Legal Techniques Course at Catholic University School of Law: First-Year Lawyering Skills, 26 J. LEGAL EDUC. 556 (1974); W. L. Matthews, First Year Legal Research and Writing in a Smaller Law School, 8 J. LEGAL EDUC. 201 (1955); Philip N. Meyer, "Fingers Pointing at the Moon:" New Perspectives on Teaching Legal Writing and Analysis, 25 CONN. L. REV. 777 (1993); Anita L. Morse, Research, Writing, and Advocacy in the Law School Curriculum, 75 LAW LIBR. J. 232 (1982); Marjorie Dick Rombauer, Regular Faculty Staffing for an Expanded First-Year Research and Writing Course: A Post-Mortem, 44 ALB. L. REV. 392 (1980); Sandra Sadow & Benjamin R. Beede, Library Instruction in American Law Schools, 68 LAW LIBR. J. 27 (1975); Helene Shapo, The Frontiers of Legal Writing: Challenges for Teaching Research, 78 LAW LIBR. J. 718 (1986); Ruth Fleet Thurman, Blueprint for a Legal Research and Writing Course, 31 J. LEGAL EDUC. 134 (1981); Harold Washington & Glenda L. Partee, An Instructional Systems Development Application to a Course in Basic Legal Research, 31 HOW. L. J. 67 (1989); Christopher Wren & Jill Robinson Wren, The Teaching of Legal Research, 80 LAW LIBR. J. 7 (1985). It is interesting, but also disturbing, to see that "cost" is identified as a factor in so many of these articles, as they discuss ways to economize the programs. As Professor George D. Gopen points out, "[t]he argument advanced against excessive cost is again a matter of priorities. If a law school truly feels writing is the lawyer's most important tool, why should the improvement of that skill not merit a place in the budget?" George D. Gopen, A Question of Cash and Credit:
However, technological developments in recent years have caused an explosion in the number of legal research resources with which attorneys must become familiar. At the same time, the bar has expressed consistent dissatisfaction with the research...
and writing abilities of law school graduates.9 Taken together,

9. One of the most well-documented and stinging evaluations of the research
inabilities of law students and young attorneys may be found in Joan S. Howland &
Nancy J. Lewis, The Effectiveness of Law School Legal Research Training Programs,
40 J. LEGAL EDUC. 381 (1990). This piece reported the results of a survey the au-
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nors conducted of law firm librarians who described a dismal state of research
competence. The authors report that, "[t]hey felt that seventy percent of the respondents found sum-
er clerks less than satisfactory in their ability to attack a research problem effi-
ciently." Id. at 383.

The Howland and Lewis article was discussed at length in I. Trotter Hardy,
Why Legal Research Training is So Bad: A Response to Howland and Lewis, 41 J.
LEGAL EDUC. 221 (1991). Professor Trotter suggests that the "solution" to poor legal
research training will only come when law firms put greater pressure on law schools
to strengthen legal research training and when state bar examiners put a legal
research component on the state bar examinations. Id. at 224-25. See also Leonard
L. Baird, A Survey of the Relevance of Legal Training to Law School Graduates, 29
J. LEGAL EDUC. 264 (1978) (finding that 55.9% of the attorneys polled believed that
research ability was "of great value" and 61.8% felt that "law school training had
been essential for this skill development"); Donald J. Dunn, Why Legal Research
Skills Declined, or When Two Rights Make a Wrong, 85 LAW LIBR. J. 49 (1993) ("No
one seems happy these days with either the quality of the legal research instruction
provided by law schools or the quality of the legal research being conducted by law
students and recent law school graduates."); Jerome Frank, A Plea for Lawyer-
Schools, 56 YALE L.J. 1303 (1947); Mary Ellen Gale, Legal Writing: The Impossible
Takes a Little Longer, 44 ALB. L. REV. 298, 302 (1980) ("The assumption that com-
petent law students will discover on their own how to research and write in the law
has been amply disproved in practice."); George D. Gopen, The State of Legal Writ-
they associate with professors is tweed; the first with doctors (a tie here) is lots of
money or bad handwriting; and the first with lawyers, written language that is
impossible to understand."); Gary S. Laser, Educating for Professional Competence in
the Twenty-First Century: Educational Reform at Chicago-Kent College of Law, 68
CHI.-KENT L. REV. 243, 243 (1992) ("The legal profession increasingly has recognized
that American law schools do not adequately educate their students for the practice
of law."); James Lindgren, Style Matters: A Review Essay on Legal Writing, 92 YALE
L.J. 161, 161 (1982) ("Lawyers are, among other things, professional writers. Because
they are paid well for their prose, it is reasonable to assume that most of them
write well. This assumption may be reasonable, but it is false."); Llewellyn, cited at
note 5, at 660; Julius J. Marke, How Legal Research Should be Taught, N.Y.L.J.
October 17, 1989, at 4 (describing "general lamentation of law firm librarians that
recent law school students and first year associates are unprepared and lack the
skills to research legal issues, a conclusion, incidentally, that is shared by the
graduates themselves and law school faculty"); Mills, cited at note 7, at 348
("[u]nstruction in these skills was never ideal, is certainly not now and probably has
even less chance of being so in the future."); John O. Mudd, Beyond Rationalism:
Performance-Referenced Legal Education, 36 J. LEGAL EDUC. 189, 190-92 (1986);
Pamela Samuelson, Good Legal Writing: Of Orwell and Window Panes, 46 U. PITT.
L. REV. 149 (1984); Steven Stark, Why Lawyers Can't Write, 97 HARV. L. REV. 1389

Retired Chief Justice Warren Burger has been one of the most outspoken
critics of attorneys' lack of essential skills. See Warren E. Burger, The Special Skills
of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our
Permanent Faculty Teach First Year Legal Writing? A Debate, 32 J. LEGAL EDUC.
413, 413 (1982) ("I have been reading the law student's written product for more
than thirty years . . . . [I]n my time I have not noticed any decline in the ability of
these two trends indicate that advanced legal research and writing training is becoming increasingly important, and that providing such training to law students is one of the most important challenges facing law schools striving for a well-rounded and complete training program.¹⁰

This article explores the issue of whether advanced research and writing courses should be taught at American law schools. It begins by addressing the need for such courses, followed by a discussion as to why an advanced offering should be an integrated course, providing training in both legal research and writing rather than a narrower "legal bibliography" or "legal drafting" course. The article then addresses some of the practical considerations in establishing such a course, such as setting the course's goals and creating a class that supports and builds on the basic research and writing program of the first year. The article then provides a model for such an integrated advanced legal research and writing course, based on a course offered at Catholic University's Columbus School of Law in the summers of 1992 and 1993.

WHY AN ADVANCED LEGAL RESEARCH AND WRITING COURSE?

Today's law students face a vast array of courses with which they can fulfill their credit hour requirements for three years and beyond.¹¹ The work load has increased as the areas of substantive specialties have grown, as clinical and externship programs have arisen to provide students with practical hands-on experience before graduation, and as "skills" courses have developed

the student to write minimally acceptable English. I doubt the existence of a real problem . . . .”).


¹⁰ Such an effort will, most likely, be an institutional benefit to the school as well. See Botein, cited at note 7, at 186 ("[A] graduate's deficiencies are detrimental to a law school's interests; the consistent production of second-rate or at least unsophisticated graduates does not enhance a law school's image."); See Pedrick, cited at note 9, at 421 ("Duke's strong commitment to instruction in legal research and writing has boosted its stature as an institution of legal education.").

¹¹ Developing a course of study from these vast offerings now poses a difficult challenge to law students. See John C. Weistart, The Law School Curriculum: The Process of Reform, 1987 DUKE L.J. 317 (1987) (discussing curriculum development and ways in which recent years have seen explosion of new elements in law school curricula).
each year\textsuperscript{12} in response to student demands.\textsuperscript{13} With all of these


[Concern with lawyering skills and the activities this concern has generated have had a remarkable effect on legal education. Courses in trial practice or advocacy, negotiating, counseling, interviewing, and legal drafting — most of which were once offered on only an occasional basis or offered primarily in the law schools of lesser prestige . . . are now commonplace, even in those law schools that traditionally emphasized almost exclusively the analytical approach to legal education.]

Id.

13. Although beyond the scope of this paper, underlying the increase in "substantive" and "skills" courses may well be the tension inherent in modern legal education: the conflict between the view of the law school as an academic graduate school versus the vision of the law school as a professional school. See James P. Rowles, Toward Balancing the Goals of Legal Education, 31 J. LEGAL EDUC. 375, 377 (1981) ("[L]egal education has been pulled and torn between two principal goals or clusters of goals: teaching of the substantive knowledge upon which the practitioner must draw in his work, on the one hand, and the teaching of law as an academic discipline, on the other."); see also Appellate Judges' Conference, cited at note 12, at 130 ("Underlying any discussion of legal education, however, is the tension between legal education as an academic and intellectual endeavor and legal education as training to practice a profession."); Harry T. Edwards, The Growing Dysfunction Between Legal Education and the Legal Profession, 91 MICH. L. REV. 34 (1992); Bryant G. Garth & Joanne Martin, Law Schools and the Construction of Competence, 43 J. LEGAL EDUC. 469 (1993); John O. Mudd, cited at note 9, at 191-92 ("Much of the history of legal education centers on the tension between those who view law schools as part of the university's scholarly community and those who see them as training grounds for new lawyers."); Timothy P. Terrell, What Does and Does Not Happen in Law School to Prepare Students to Practice Law: A View from Both Sides of the Academic/Practice Dichotomy, 83 LAW LIBR. J. 493, 494 (1991). Terrell asserts:

Practitioners claim that law schools are not doing what they should and could to prepare students to practice law. Students are emerging from law school functionally illiterate . . . . Academics, on the other hand, respond that practitioners have a narrow, short-sighted sense of academic preparation for the legal profession. From a law professor's perspective, practitioners want something more akin to a paralegal than a new associate when they hire a law school graduate.

Id.

Some writers have taken a more novel approach to the question. See, e.g., Drew L. Kershen, Humanities and the First-Year Curriculum in Law School, 34 OKLA. L. REV. 790 (1981). Professor Kershen advocates that the first year be a "humanistic year of law study," that includes courses in "legal history, legal philosophy, jurisprudence, comparative law, sociology of law, anthropology of law, ethics, professional responsibility, and other courses that approach law as a humanity." Id. at 792-93. Professor Kershen's model would defer all "skills" training to the later years of law school.

As law schools strive to fulfill the legitimate demands of both these goals, the offerings made to students naturally increase and students are thus responsible for developing the "flavor" that their education will have. It appears (perhaps as a result of a personal bias) that an advanced legal research and writing course would help advance both goals since the sound development of both skills is as crucial to the public defender, the administrative law judge, the judicial law clerk, the sole practitioner, and the legislative counsel as they are to the legal scholar.
ways in which law students can spend a limited amount of time, an advanced legal research and writing course should only be proposed if it would fulfill a function that is not already addressed in the law school curriculum. With the exception of those schools with a two or three year mandatory writing program, an advanced legal research and writing course is a necessary supplement to the first-year program.

The Need for Advanced Research Training

The importance of good legal research skills to an effective attorney cannot be disputed. Fundamentally, advanced re-

14. See Jill J. Ramsfield & Brien C. Walton, Survey of Legal Research and Writing Programs 2 (1992) (available at Georgetown University Law Center) [hereinafter Legal Writing Institute Survey] (indicating that of 125 law schools responding, seven required one semester of legal research and writing, ninety-six required two semesters, but only fourteen required three semesters, seven required four semesters, and one required more than four semesters). Professor Jack Achtenberg posits that, "[i]deally, a law school would have a full four semester legal communications program taught by regular faculty members." Achtenberg, cited at note 7, at 219. While his recommendation seems valuable for law schools nearly twenty years ago, it is a more compelling proposal now, with the increased complexity of legal communication and information; see also Gale, cited at note 9, at 335 ("Major law schools should expand legal writing and research into a three year program that would give every student a varied, in-depth experience in legal writing, including a major legal writing and research project in the third year of school.").

It is true that schools that lack more extensive offerings explicitly dubbed "Legal Research" or "Legal Writing," may integrate these skills in other "substantive" courses instead. See Joseph P. Tomain & Michael E. Solimine, Skills Skepticism in the Postclinic World, 40 J. LEGAL EDUC. 307, 308 (1990) ("Courses in contract, evidence, civil procedure, and property, although not traditionally associated with skills courses, can employ simulations, role playing, drafting, problem solving, and other techniques freely borrowed from clinicians or skills faculty."). If this is the case, however, consistency and uniformity will be difficult to achieve particularly because the skills component of such courses will, almost always, take a back seat to the doctrinal portion.

15. Although this paper posits that an integrated advanced legal research and writing course is an effective offering, there is a variety of courses currently offered by law schools that attempt to address these basic skills in the upper level. See Legal Writing Institute Survey, cited at note 14, at 8 (indicating that of eighty-seven law schools responding, thirty-four offer legal drafting as an elective, forty-six offer advanced research, fifty-one offer appellate advocacy, forty-nine offer seminars, and twenty-five offer specialized writing classes).

16. See MACCRATE REPORT, cited at note 6, at 157-63 (providing broad and detailed definition of the abilities necessary to be an effective legal researcher). The MacCrate Report identifies the essential legal research skills to be:

3.1 Knowledge of the Nature of Legal Rules and Institutions;
3.2 Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research;
3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design.

Id. at 138.
search training is needed because many of the necessary skills cannot be fully presented in the first year. For example, many law schools' first-year programs do not cover loose-leaf services, legislative history, or administrative regulations. Yet, the ability to use these sources is absolutely essential in many areas of practice. A second or third-year course allows time to address those sources that are omitted or given short shrift in the first year.

In addition, an advanced course is a much more appropriate place to teach the techniques of effective computer assisted legal research ("CALR") with LEXIS and WESTLAW, among other tools. While CALR is an increasingly important resource, and no student should leave law school without being proficient in at least one of the two major systems, the first year is not the ideal time to teach such skills. Learning traditional research methods is a necessary precursor to effective use of CALR. If

17. See Legal Writing Institute Survey, cited at note 14, at 5 (indicating that of ninety-nine schools responding, only forty-five taught legislative history and only fifty-four taught administrative law research.); see also Joseph Kimble, cited at note 2, at 3. Kimble laments:

There's so much that we don't have time to teach, or teach well, in the first-year course. We don't have time to teach legislative history. We don't have time to teach statutory construction. We don't have time to teach the loose-leaf services. We don't have time to do any advanced training on the computer research services. We can barely cover federal statutes and the administrative law sources. It's a shame.

Id.

18. Professor Mills has suggested two other ways in which advanced legal research training can be provided to second and third year students — the use of librarian visits to substantive courses to teach "research methods in the relevant subject areas," and the offering of "a series of noncredit seminars designed to fill in the gaps." Robin K. Mills, Legal Research Instruction After the First Year of Law School, 76 Law Libr. J. 603, 603 (1983). However, as she points out, these have obvious limitations, including obtaining class time in which to conduct such presentations and arousing student interest. Id.


20. The question of whether it is one system or two that students should be trained in is a debatable question. Arguably, in an ideal world, a law graduate would be proficient in both. Some employers have access to only one. Hence, students should be able to perform on either system. The differences in the pricing schemes between the two major systems may make LEXIS more cost-effective in some situations and WESTLAW in others. Perhaps more fundamentally, the different features offered by each system may cause one system to be more effective for particular types of research problems, depending on the nature of the materials sought. Finally, the differences in searching techniques will often make one system more attractive to a user based on a purely subjective preference. However, while ideally graduates should be proficient in both systems, a solid foundation in one with knowledge of the basic features of the other is preferable to providing students with a cursory view of both that leaves them with an in-depth knowledge of neither.

21. The notion of teaching traditional legal research before CALR is not uni-
students lack a solid grounding in the traditional "manual" sources, they will not understand what they retrieve on-line, nor will they be able to make informed decisions as to whether on-line research is more effective. Without experience, students will not be able to evaluate the claims of CALR vendors who conduct much of the computer training in law schools and at law firms. Further, if students do not have sufficient experience in developing their own research plans and strategies, they will not be fully capable of identifying CALR as only a single part of what should be a comprehensive research strategy that includes many different elements.

Yet, while CALR training should be deferred until students have a firmer grasp of the basics, a law school with no train-

versally accepted. Some posit that CALR training should be fully integrated with manual research, exposing students to both methods at the same time. However, I adamantly believe that students should not be given CALR training until they understand the theory and organization behind the traditional tools. Only then will they be able to assess when manual research is superior to CALR — as it still is in a significant number of circumstances, cost considerations aside. It is too idealistic to assume that students who have access to CALR, a tool all too many assume to be the answer to all their questions, will have the incentive to make such a fully informed assessment.

22. See John E. Edwards, Lexis and Westlaw Training Centers: Law School Opportunities, 80 LAW LIBR. J. 459 (1988) for a discussion of the use of "Temporary Learning Centers" run by LEXIS and WESTLAW for CALR training. A thorough analysis of the extensive role played by LEXIS and WESTLAW vendors in teaching CALR can be found in Marilyn R. Walter, Retaking Control Over Teaching Research, 43 J. LEGAL EDUC. 569, 581 n.80 (1993) (indicating that West Publishing Company is involved in teaching first-year students at eighty percent of American law schools, while Mead Data Central does all LEXIS training at fifty-five percent of American law schools, and the majority of the training at an additional thirty-one percent of schools). Professor Walter also discusses in detail the specific dangers of reliance on vendors to provide such legal research training. Id. at 580-84. These concerns, however, are not as compelling in the case of more advanced law students who already have formed their own ideas of how research should be conducted, and may be more willing to question vendors about their claims. Advanced law students are also more likely to have worked at a job in a law office where CALR was not available gratis and, hence, have given some thought to the economic realities of CALR that are often ignored by vendors. Interestingly, the involvement of the vendors in teaching legal research is not new. See Manna Janto & Harrison-Cox, cited at note 7, at 282 ("T[he] push toward research instruction was led by the publishing companies. Between 1902 and 1916, West Publishing Company and, to a lesser extent, Lawyer's Co-operative Publishing Company instituted research/brief writing contests, published texts on legal research . . . in law schools, and offered training for legal research instructors."). See also Woxland, cited at note 1, at 453 (describing legal research training by West vendors).

23. See Steven Alan Childress, Warning Label for LEXIS: The Hazards of Computer-Assisted Research to the Legal Profession, 13 LINCOLN L. REV. 91 (1982) (arguing for use of caution before adopting unrestrained support for computer-assisted research); see also Walter, cited at note 22, at 572-89 (discussing the benefits of integrating traditional legal research methods with CALR).

24. At the very least, CALR training should be deferred until the second se-
ing program beyond the first year is forced to teach CALR as part of the first-year research curriculum. The most that can be accomplished in the first year, without undermining the training in the traditional research methods, is an introduction to the use of CALR. Students then either "wing it" on the job as they use CALR (often at the great expense of the employer or client) or lose the skills they managed to pick up if they subsequently do not use CALR regularly. Neither of these outcomes is advantageous to students. Both can be avoided if students are given an opportunity to develop advanced CALR skills at a point in their training when it is more appropriate. An advanced research and writing course provides such an opportunity.

In addition, such a course can take students beyond the confines of the law library and introduce them to research tools that they will be using in specialized areas of the law. For instance, a corporate attorney should know how to use Standard & Poor's, while a medical malpractice attorney should know how to use the Physician's Desk Reference. A criminal lawyer should understand how to research basic principles of psychiatry, while an environmental attorney should know how to find an expert scientific witness in botany. An international lawyer should be able to access lists of international interest organizations. These sources, which are not necessarily available at the law library, should be

mester of law school.

25. Indeed, students' inability to use LEXIS and WESTLAW efficiently and their general lack of sophisticated skills in using the computer assisted systems is documented. See, e.g., Walter, cited at note 22, at 580-81. Walter cites the results of a study done by Joan Howland and Nancy Lewis, which indicates that:

[SUMMER clerks and first-year associates were neither efficient nor cost-effective users of CALR. Firm librarians attributed these weaknesses to the students' failure to take the time and effort to learn efficient search methods, and to the habits and attitude that students develop when CALR is free of charge . . . . [T]he clerks and associates were unable effectively to integrate CALR and traditional research tools. They relied too heavily on computers.

Id. (citing Joan S. Howland & Nancy J. Lewis, The Effectiveness of Law School Legal Research Training Programs, 40 J. LEGAL EDUC. 381, 387-88 (1990)).

26. For an excellent discussion of the ways in which CALR is taught, see David A. Thomas, Training American Law Students in Computer-Assisted Legal Research, 17 LAW LIBR. 59 (1988); see also Anna M. Cherry, A Measure of CALR Use by First Year Law Students Following Mandatory Training, 83 LAW LIBR. J. 73 (1991); Matthew F. Dee & Ruth M. Kessler, The Impact of Computerized Methods on Legal Research Courses: A Survey of LEXIS Experience and Some Probable Effects of WESTLAW, 69 LAW LIBR. J. 164 (1976); Edwards, cited at note 23; Ray M. Mersky & John E. Christensen, Computer-Assisted Legal Research Instruction in Texas Law Schools, 73 LAW LIBR. J. 79 (1980); Robert J. Munro et al., LEXIS vs. WESTLAW: An Analysis of Automated Education, 71 LAW LIBR. J. 471 (1978); Spencer Neth, Computerized Legal Research in the Law Schools: The Case Western Reserve Experience, 28 J. LEGAL EDUC. 553 (1977); Wren & Robinson Wren, cited at note 7, at 7 (discussing ways in which CALR is taught).
familiar to a minimally competent attorney in each particular field. Yet, a first-year course — lacking the time to cover even the legal resources in sufficient depth and breadth — cannot begin to acquaint students with the range of research materials available outside the law library.  

An advanced course is also the place to introduce certain specialized legal research sources. The first-year program must provide a solid overview of general resources. But, when second and third year students begin to develop an area of particular substantive interest, an advanced legal research and writing course can offer them an opportunity to become acquainted with specialized resources utilized by practitioners in that particular area of law. Specialized resources, such as loose-leaf services and deskbooks, will be invaluable to them in practice.  

Finally, regarding research, the first year of law school is a time when students learn to use each research tool individually. Good programs will attempt to teach students how to use the tools as a part of a comprehensive research plan. Designing a research strategy, however, is a sophisticated process which requires more attention than is available when students are focusing their energy on mastering the individual components of that research strategy. Therefore, if the students learn to use the sources individually in the first year, an advanced research and writing course may assume that a student is familiar with the basic resources, and thus may devote more time to training students to use the resources effectively in conjunction with each other rather than in a vacuum.

27. Anecdotally, I once asked my corporations students how many of them had ever used the general university library; surprisingly few had. I gave them an assignment requiring them to use Standard and Poors, Moody's Manuals, and Dun and Bradstreet Reports among other things, and for many this was their first foray into such non-legal business resources.

28. See Howland & Lewis, cited at note 9, at 384 (commenting on poor specialized research skills, noting "[f]irst-year associates were found to be much more competent in using civil procedure materials than bankruptcy, trade regulation, or securities sources").

29. See Robert C. Berring & Kathleen Vanden Heuvel, Legal Research: Should Students Learn It or Wing It?, 81 LAW LIBR. J. 431, 439 (1989). The authors note that:

Students learn to do only "A to B" research, in which they solve a research problem using tool "A" to find answer "B." Because they never learn how the tools work together or why certain types of information are found in certain types of research tools, students come to assume that tool "A" can only be used in one particular way, for one particular purpose: to reach point "B."

Id.

30. See Howland & Lewis, cited at note 9, at 390. Howland and Lewis comment that:

Summer clerks and first-year associates are woefully ill-prepared to research
The Need for Advanced Writing Training

Just as an advanced course is useful for developing research skills, it is also needed to further cultivate sound writing skills in upper-level law students.31 Most fundamentally, legal writing is an acquired skill for which the old cliché "practice makes perfect" has some truth. If nothing else, an advanced research and writing course provides students with another opportunity to have a supervised writing experience which gives them additional practice in legal writing. Beyond that, however, such a course also gives law students an opportunity to learn more from and build upon their experiences in first-year courses, at summer jobs, and at externships and clinicals. By the time they enter an advanced course, students will have a better sense of which aspects of their writing skills require attention and can benefit more from the guidance that such a course can provide.32

Relatedly, with the decline in extensive writing experience in undergraduate education, the first-year writing course all too often becomes a student's first exposure to professional writing.33 By the time basic writing concepts are covered, there is little time for advanced analysis for all but the most proficient students. An advanced legal writing course allows students to go beyond the basic skills they begin to develop in the first year and allows time to master them.34

the types of issues they are assigned, because they are unable to design effective research strategies, and they do not fully understand the mechanics of even the most basic legal research tools. Summer clerks and first-year associates also do not understand how to integrate computerized legal research services proficiently into the total research process and often conduct searches that are minimally successful and unnecessarily costly.

Id.

31. See MACCRATE REPORT, cited at note 6, at 172-76 (describing the range of communication abilities necessary for effective attorneys).

32. That is, a student whose primary writing difficulty is poor organizational structure will be seeking different skills from the course than the one who has problems with sentence structure, grammar, or vagueness. If the student knows what area requires work before the course starts, he or she is in a better position to seek help in that area.

33. See discussion in note 57. Professor Mary Ellen Gale has pointed out that the lack of sufficient undergraduate or secondary education is more appropriately seen as an impetus for creating a solution to the writing problem rather than as a reason for law schools to be satisfied that their programs are already doing all that is achievable, given the limitations. Gale, cited at note 9, at 301 ("It will no longer suffice to blame the grammar schools, the high schools, and the colleges for graduating the inept; law schools owe themselves and their profession more than a lame apology for failing where others before them have also failed.").

34. See Berring & Vanden Heuvel, cited at note 29, at 441 (describing difficulties in teaching research skills to first-year students). See also Douglas Laycock, Why
Additionally, such a course is an excellent supplement to the traditional ways in which upper-level law students receive research and writing training: membership on law reviews and preparation of seminar/independent research papers. Law review students are usually those students whose research and writing abilities are given the best opportunity to develop fully due to the extensive experience they receive in writing their own case notes and editing the work of others. While such a system of "learning by doing" has its obvious merits, even the students doing the editing and writing for law reviews often have no formal research and writing training beyond the standard first-year offering. An advanced research and writing course will help make them more successful in those tasks and make the law review experience more effective.

the First-Year Legal-Writing Course Cannot Do Much About Bad Legal Writing, 1990 SCRIBES J. LEGAL WRITING 83, 86 (1990) ("We should not kid ourselves into believing that the complaints about legal writing can be addressed in the first year.").

35. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOL AND INTERPRETATIONS, § 302(a)(ii) (1993) (requiring law students to have "at least one rigorous writing experience").

36. Much has been written about the efficacy of law review experience as a way to build research and writing skills. See, e.g., Robert Batey, Legal Research and Writing from First Year to Law Review, 12 STETSON L. REV. 735, 738 (1983) ("Because these efforts are so intense and the participants so talented, law review provides the best educational opportunity in law schools."); Hon. Domenick L. Gabrielli, cited at note 4, at 4 ("Law review experience is an enormously important aid in the development of legal writing and research skills . . . . The value of the law review experience cannot be overemphasized."); Wesley Gilmer, Jr. Teaching Legal Research and Legal Writing in American Law Schools, 25 J. LEGAL EDUC. 571, 581 (1973) ("One knowledgeable commentator expresses puzzlement concerning his observation that law review students are the few who have research skills. Perhaps this is because law review students do substantially more of it, and thereby learn more of it." (citations omitted)); Howland & Lewis, cited at note 9, at 384 (reporting survey results indicating that "more than ninety-three percent of the respondents felt that summer clerks and first-year associates who were or had been members of law review staffs had better basic legal research skills than those who had not"); Mills, cited at note 7, at 346 ("Common wisdom has it that law review students emerge from law school with the best legal research and writing skills because of the amount of research, editing, and cite checking they must do.").

37. While perhaps stating the obvious, it is also problematic that law reviews, naturally, will not accept as members those students whose research and writing skills are poor. Thus, those most likely not to have the benefits of advanced work
Similarly, many students develop their research and writing skills through writing research papers for seminar classes or independent research projects. These experiences provide many students with their most in-depth experience in legal scholarship and academic writing. Yet, the substance of those papers and the legal doctrines discussed within them are the focus of the projects rather than the actual process of research and writing. That is, by and large, seminar papers often focus on the end product rather than on the means taken to that end. This is consistent with the reality that most students take seminar courses to learn the substantive law in a specific field, and that most of those teaching in seminars have a greater interest in the subject matter than in writing style. However, it is the conscious development of effective writing ability that an advanced writing class can provide.

Depending on the format of the first-year course, an advanced research and writing course can expose students to writing projects within different genres. While the typical first-year writing projects are often office memoranda and appellate briefs, an advanced course can accomplish much more by exposing students to the writing of many other types of documents. Along the same line, an upper-level course can give students the opportunity to engage in analytical legal writing dissimilar from the adversarial moot court model of many first-year writing programs. This are those in the greatest need of such a research and writing experience.

38. Compare Achtenberg, cited at note 7, at 223 ("Legal writing undertaken in seminars in the second and third years will be, by necessity, more heavily examined for content than for style and form.") with C. B. Bordwell, A Writing Specialist in the Law School, 17 J. LEGAL EDUC. 462, 462 (1965) (describing a program at University of Oregon Law School in which a writing specialist reviewed case notes written by upper-level students).

39. See Bridge, cited at note 3, at 414 ("Most basic programs in legal writing focus on the first-year staples of the memorandum of law, the moot court brief, and perhaps the client opinion letter."); Barbara J. Cox & Mary Barnard Ray, Getting Dorothy Out of Kansas: The Importance of an Advanced Component to Legal Writing Programs, 40 J. LEGAL EDUC. 351 (1990) ("Usually this [basic] course emphasizes obtaining a standard level of competence in two major legal documents: the interoffice memorandum and the persuasive brief."); Livingston, cited at note 8, at 346 ("In the writing component of the course, the instructors try to teach students how to write two basic types of legal documents — the interoffice memorandum and the appellate brief. Other types of legal documents, such as pleadings, trial briefs, and contracts, are left for upper level courses."); Shapo, cited at note 7, at 727 ("Most courses emphasize the writing of office memoranda and appellate briefs."); Legal Writing Institute Survey, cited at note 14, at 5 (indicating that of 122 schools responding, 121 assign legal memoranda in the first-year legal research and writing course and eighty-two require appellate briefs).

40. See Reed Dickerson, Teaching Legal Writing in the Law Schools (With a Special Nod to Legal Drafting), 16 IDAHO L. REV. 85, 88 (1979) ("It is ironic that current courses in legal writing are badly tilted in favor of litigation . . . .").
can be particularly helpful to those students who do not see their future in litigation.\textsuperscript{41}

**Inherent Limitations of First-year Research and Writing Programs**

Beyond the advantages in the advanced research and writing training detailed above, certain inherent limitations of a first-year course can make an advanced course very useful. First, novice students often do not appreciate the importance of research and writing skills, subordinating their work in those areas to the demands of their other classes.\textsuperscript{42} It is after an experience at a job or internship that many students realize the importance of such skills, seek an opportunity to develop them more fully, and have an incentive that they previously lacked.\textsuperscript{43} An ad-

\textsuperscript{41} See Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 *CORNELL L. REV.* 163 (1993) (discussing ways in which an advanced writing course also assists students in becoming more sophisticated and critical readers). It has been suggested that the development of solid writing skills enhances the development of analytical skills. See Peter W. Gross, *On Law School Training in Analytical Skill*, 25 *J. LEGAL EDUC.* 261, 266 (1973). Gross asserts:

[While law school neglect of legal writing is widely recognized and bemoaned, the impact of this neglect upon analytic skill instruction is much greater than appears generally to be appreciated. Legal writing often is viewed as a separable and peripheral subject . . . . Legal writing is no less than the principal medium for the expression of, and hence for practice in, legal analysis.]

\textit{Id.}

\textsuperscript{42} See Batey, cited at note 36, at 736 (“The overwhelming tendency of first-year students is to consider the series of legal writing problems as a time-consuming diversion from what they perceive as the ‘real work’ of beginning law students: learning torts, property, criminal law, contracts, and civil procedure.”). Cf. Brand, cited at note 7, at 294-95.

\textsuperscript{43} See Berring & Vanden Heuvel, cited at note 29, at 442. The authors assert:

Second-year students are the best candidates for learning legal research . . . .

And the maraschino cherry on the sundae is that they are motivated. Most second-year students have worked in some law-related job during the summer between first and second year; their discomfort at being unable to perform legal research at their jobs is fresh in their minds.

\textit{Id.}; Marke, cited at note 9, at 4 (“[M]any second-year students will have learned from their experience in summer law firm employment after the first year of the importance of legal research in the pursuit of their own careers and will be more anxious to master the skills involved.”); Paul Richert, *Oral Competence Testing in Legal Research Techniques*, 77 *LAW LIBR. J.* 731, 731 (1984) (“All too commonly, first-year law students obtain a clerkship, then discover they forgot or never learned very much in legal research class.”); Woxland, cited at note 1, at 461; Washington & Partee, cited at note 7, at 67 (“Development of legal research skills is an area of expertise that the average law student traditionally resists until the time the skills are needed.”). But cf. Christopher G. Wren & Jill Robinson Wren, *Revising Legal Research: A Reply to Berring and Vanden Heuvel*, 82 *LAW LIBR. J.* 463, 480-91 (1990) (cautioning against seeing the advanced research course as a panacea or as a substitute for a solid first-year course).
Advanced research and writing course allows for that development as students revisit old research tools while learning how to use new ones.

Secondly, there are pedagogical methods that can be used in an advanced legal research and writing course that are much more effective with upper-level students than with first-year students. For example, the use of peer critique is an excellent way of providing students with varied feedback on their writing products, while simultaneously providing more experience in critical reading and editing. These exercises are more useful with advanced students who have a more developed sense of what good writing should aim to accomplish. Advanced students are also more accustomed to critiquing and being critiqued. Hence, they are more likely than first-year students to be active participants in such exercises.

Similarly, requiring students to keep a research journal chronicling their research efforts can be an effective tool for teaching research strategy in an advanced class. Among other benefits, this requires students to be more conscious of their research strategy, and also provides for regular interaction between students and instructors. However, such journals are much less effective with first-year students who may not be able to understand the "big picture" concerns that such journals are designed to explore.

An advanced course also allows students to update the skills that they learned in the first-year course. Such "updating" can be particularly important for students who failed to learn or who may have forgotten the techniques taught in the first year.

44. Closely related is the issue of how much can be accomplished in the year long, first-year course. Many first-year legal research and writing programs, as they currently stand, are quite skimpy and can be built up without creating unreasonable demands upon law students or instructors. However, in the better programs, time limitations do pose a real constraint. Mills states:

The striking thing about these programs is how much they are trying to accomplish in a very little bit of time. Not only are they attempting to provide the students with background in legal analysis, research techniques, citation form and the skills of legal writing, but they are also intended to function as a general introduction to the study of law and serve as an aid to the law school socialization process.

Mills, cited at note 7, at 345.

45. See Howland & Lewis, cited at note 9, at 383 (reporting that their survey results indicate that "hornbooks, treatises, and casebooks seemed to be the extent of many summer clerks' and new associates' knowledge").

46. See notes 133-35 and accompanying text for discussion of journal use.

47. See Gopen, cited at note 9, at 356 ("Even in schools where the first year has some efficacy, students tend to lack reconfirmation of their newly gained skills because of the lack of later writing opportunities."); Marke, cited at note 9, at 4
can also be an opportunity to introduce students to new techniques and methods that were not available or widespread in their first year.\(^4\) This allows them to graduate with a current grasp of the methods and sources with which they should be familiar.\(^4\)

**DETERMINING THE SCOPE AND COVERAGE: INTEGRATING LEGAL RESEARCH AND WRITING TRAINING**

If the decision is made to implement an advanced research or writing course, the second question — and one of critical importance and controversy — is whether that course should be an advanced writing course, an advanced research course, or both. While there is something to be said for isolating these two skills in separate courses, an effective course should provide advanced training in both skills.\(^5\) Doing so will put both skills in context and give students a realistic experience of finding the law and using it in a written product — or, conversely, writing a legal document after having researched the requirements for that document.\(^5\)

Indisputably, there are some reasons to consider a strict “legal

\(^4\) "Usually only the bare rudiments of legal research can be offered in the first year, and unfortunately they are soon forgotten in the second and third year.”); Woxland, cited at note 1, at 456 (“Once the first-year program is finished, the research skills — such as they are — of the vast majority of students . . . are left to atrophy until the new lawyers begin professional practice.”).

\(^4\) Although there are only two or three years between the end of a first-year research and writing program and entry into practice, the fast paced growth of information and technology can make very significant changes in that short period of time. The growth of specialized materials, the constant additions to data bases, and the explosion in the use of Internet as a research tool, to name but a few, have created a research landscape very different than the one that students knew even a few years ago.

\(^4\) See also Ramsfield, cited at note 9, at 132 (“Without steady reinforcement of analysis through advanced research and writing techniques in the second and third years, students may find research and communication techniques atrophying and may leave law school with abilities that have been crippled by neglect. This can be a disaster.”).

\(^4\) See Teaching of Legal Writing and Legal Research — A Panel, 52 LAW LIBR. J. 350, 359 (1989) (remarks of Professor Albert P. Blaustein). Professor Blaustein states:

> [Legal research and legal writing are not two different things — not two different courses. Indeed, there are differences between them . . . . But basically, legal research and writing are titles describing the same educational effort . . . .] (The knowledge of when and how to use law books is indispensable to any kind of legal writing.

\(^4\) Id.

\(^4\) But see Dunn, cited at note 9, at 53-58 (arguing the alternative viewpoint that legal research is neglected in first-year courses that attempt to combine research and writing experience).
research" or "legal bibliography" course without a writing component. If the class hours allocated for the course are limited, thorough training in research may be preferable to a cursory glance through both research and writing. In addition, a strict bibliography class may be easier to staff if a law librarian has an interest in teaching such a research class, but has no interest in conducting writing training. Likewise, if a law school's first-year program provides effective and extensive writing training but weak research instruction, then advanced research coverage may be a more pressing priority. If a law school's specialized substantive programs support offerings in specialized legal research, it might be wise to offer one credit courses in, for example, "International Legal Research," or "Tax Law Research" that are devoted exclusively to legal bibliography in particular fields. Obviously, a skilled instructor in a legal bibliography course can, with well-planned use of "pathfinders" or similar tools, succeed in teaching students how to plan a comprehensive research design without actually creating a finished writing project.

Similarly, there may be particular reasons for devoting an upper-level course exclusively to writing without a bibliographic component. Again, the practicality of credit hours may limit the scope of what can be covered, and a thorough treatment of one set of skills is better than a scanty treatment of both. As indicated above, there will be a benefit in providing an elective

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52. Such "research weak" first-year programs would include those that rely extensively on closed-research writing projects, those that delegate research training to third year students, and those that have omitted a significant number of research skills from the first-year curriculum. See Berring & Vanden Heuvel, cited at note 29, at 438 (discussing the disadvantages of using students as teachers in legal research programs).

53. For an excellent source for course material on specialized legal bibliography see SPECIALIZED LEGAL RESEARCH (Leah F. Chanin, ed.) (1993). Updated annually, it addresses specialized legal research in securities regulation, federal income tax, copyright law, environmental law, admiralty law, immigration law, military law and banking law. See also Kauffman, cited at note 8, at 125-27 (discussing specialized advanced research seminars).

54. Such pathfinders are used in "Advanced Legal Research: Methods and Sources," a course taught by Professor Morris L. Cohen of Yale Law School. Creation of a "pathfinder" requires students to develop a research design for a selected issue and creating a final project that introduces the reader to a range of materials that will provide information about that particular topic. See also Berring & Vanden Heuvel, cited at note 29, at 431; Dunn, cited at note 9, at 68-69 (discussing the "pathfinder" as a research tool). Cf. Wren & Robinson Wren, cited at note 43, at 487-89 (questioning pedagogical value of "pathfinders;" critiquing them as providing "training in legal reference, not in legal research").

55. See Bridge, cited at note 3, at 426-31; Cox & Ray, cited at note 39, at 352; Ramsfield, cited at note 8, at 133 (outlining various forms advanced legal writing classes may take).
course in writing if the first-year research and writing program is weak in writing skills\textsuperscript{56} or if there is a need for remedial writing training for students whose writing skills are not at an acceptable level.\textsuperscript{57} Likewise, a legal drafting course that deals with technical writing of specific types of documents may be an asset to students working in such areas as real estate, trusts and estates, legislation, government contracts, or other areas in which knowledge of specific documents is as essential to good practice as familiarity with the principles of good legal writing.\textsuperscript{58} Simi-

56. Such programs would include those in which there is little or no attention given to rewriting assignments, those in which writing training is delegated to students, those in which few writing projects are required, those in which there is little or no written feedback and instructor conference time, and those in which the writing assignments are all of the same genre (e.g., all office memos, etc.).

57. The question of remedial writing will likely become more urgent as the declining verbal skills of high school and college graduates become a matter of greater concern. See Student Writers Falter at Making Their Point, THE WASHINGTON POST, June 8, 1994, at A3 ("The Education Department said yesterday that its testing of 30,000 fourth-, eighth-, and twelfth-graders found writing deficiencies at all three levels — and in particular in the ability to write persuasively."); see also Survey Faults Writing Skills of Students, THE WASHINGTON POST, November 18, 1994, at A50 ("Teaching good writing has 'fallen through the cracks' in U.S. schools, as students, parents, and educators put more emphasis on math, science, and other subjects."). Concern about the poor language competency of college students is not a completely new phenomenon. See, e.g., Gopen, cited at note 7, at 191. Gopen argues: The law schools direct their complaint to the undergraduate colleges; the colleges pass it on to the high schools. I have not yet asked the high schools, but I suspect they would wag their finger at the colleges and universities that train their teachers. A particularly vicious circle has set in . . . .

Id.; Llewellyn, cited at note 5, at 660 ("I want every law student to be able to read and write. Half of my first-year students . . . . can do neither."). Perhaps one way to address this problem is through undergraduate writing courses for pre-law students. See Arthur T. Vanderbilt, A Report on Prelegal Education, 25 N.Y.U. L. REV. 200, 213 (1950). Vanderbilt asserts:

The complaints most often voiced by the law schools against incoming law students are directed to their deficiencies in English and the social sciences . . . . The complaint as to English goes not only to ignorance of grammar, want of style in expression and a scant vocabulary; it is addressed to the unstocked and undisciplined mind that the feeble vocabulary discloses and the inability to think straight that is revealed by the English used.

Id. See also George D. Gopen, A Composition Course for Pre-Law Students, 29 J. LEGAL EDUC. 222 (1978); Ronald J. Matlon, Communication in the Legal Process: A Pre-Law Course at the University of Arizona, 31 J. LEGAL EDUC. 589 (1981); William R. Roalfe & William P. Highman, Legal Writing and Research at Northwestern University, 9 J. LEGAL EDUC. 81 (1956).

58. There has been a recent proliferation of texts devoted exclusively to teaching legal drafting, reflecting the importance of such skills. See, e.g., Susan L. Brody, et al., Legal Drafting (1994); Scott J. Burnham, Drafting Contracts (2d ed. 1993); Barbara Child, Drafting Legal Documents: Materials and Problems (1988); Robert C. Dick, Legal Drafting (2d ed. 1985); Reed Dickerson, Fundamentals of Legal Drafting (2d ed. 1986); Reed Dickerson, Materials on Legal Drafting (1981); Carl Felsenfeld & Alan Siegal, Writing Contracts in Plain English (1981); Richard Given, Drafting Documents in Plain English (1981);
larly, if the law school has access to the services of a writing specialist who could teach an effective writing course but not a research course, it may be appropriate to consider a course offering that emphasizes solely the writing component.59

However, despite these considerations, the most effective offering, all other things being equal, is an advanced legal research and writing course that integrates training in both of these essential skills. An integrated advanced course provides the most realistic setting for this training.60 A practitioner will rarely con-

ROBERT J. MARTINEAU, DRAFTING LEGISLATION AND RULES IN PLAIN ENGLISH (1991); WILLIAM P. STATSKY, LEGISLATIVE ANALYSIS AND DRAFTING (2d ed 1984); see also Robert N. Cook, The Teaching of Legal Drafting, 4 WEST. RES. L. REV. 299 (1953); Reed Dickerson, cited at note 40; Robert J. Hopperton, Teaching Legislative Drafting in Law School: A Model Course, 19 DUQ. L. REV. 43 (1980); Andrew Lang, Teaching Legal Drafting, 1 J. PROF. LEG. EDUC. 45 (1983); Stanley Robinson, Legal Drafting: Its Substance and Teaching, 25 J. LEGAL EDUC. 514 (1973); Robert F. Williams, Statutory Law in Legal Education: Still Second Class After All These Years, 35 MERCER L. REV. 803, 824-27 (1984).

59. See Lynn B. Squires, A Writing Specialist in the Legal Research and Writing Curriculum, 44 ALB. L. REV. 412 (1980) (arguing that writing specialists unfamiliar with the legal system per se are most effective teachers of legal writing because their lack of knowledge regarding substantive law requires greater clarity and direct reasoning from student writing); see also Blaustein, cited at note 7, at 240 (arguing legal-writing experts should teach legal writing); Bordwell, cited at note 38, at 462 (describing an experiment at the University of Oregon Law School which retained a writing specialist in its legal writing program); Botein, cited at note 7, at 187-88 (describing the benefits of writing professionals in the law school); Gopen, cited at note 7, at 198 (describing the benefits of hiring English professors to teach writing in law schools.); Gopen, cited at note 9, at 356-57 (describing the advantages in Notre Dame Law School’s use of a writing specialist); Legal Writing Institute Survey, cited at note 14, at 21 (indicating that thirty-nine law schools employ a full-time or part-time writing specialist in their legal research and writing programs).

60. See also Ramsfield, cited at note 8, at 123 n.25 ("[L]egal research often occurs during the writing process as gaps in research appear, or as points must be refined. This recursive process is integral to legal thinking, and separating research from writing — even as an introduction gives a confusing message to the potential researcher and writer."); Shapo, cited at note 7, at 726. Shapo notes:

[S]tudents engage in their own research experiences as part of the problem-solving activity their writing assignments require. Thus, they can learn legal research not only for itself, but as part of the analytical process . . . . This process requires the students to define issues, plan research strategies, evaluate the authoritative values of the materials they have found, and engage in further research as their writing reveals analytical weaknesses. Id.; Walter, cited at note 22, at 562 ("We do not have a separate first-year research course. We believe that students benefit from seeing research, writing, and analysis as part of a single process."). But see Dickerson, cited at note 40, at 86-87. Dickerson comments:

Mistreading the need to join form with substance, we have needlessly diluted writing courses by requiring the student to do the kind of time-consuming legal research traditional to courses on law library research, term papers or law review assignments . . . . No course aptly called “Legal Research and Writing” can provide adequate training in legal research.

Id.
duct legal research without, in some way, reducing those findings to some written form. Similarly, very few practitioners will (or should) create a written product that is not preceded by research into the applicable law. Thus, by giving students an opportunity to use both skills together, an integrated course has a realism unachievable through other methods.\textsuperscript{61}

An integrated program provides a context for using the skills learned rather than forcing students to apply them in a vacuum. Thus, if students are introduced to research tools and then must use them to create a written product, they are much more likely to understand how to use those resources than if they used them in the "treasure hunts" and "show-and-tells" that are all too typical in legal research training.\textsuperscript{62} Having students conduct their research with an eye toward a final written product in which they will use the information they have derived from the variety of sources they have consulted will also help put the resources in context. Students will know, for example, what information is necessary to create the written product they hope to achieve. Thus, they will be able to determine the extent to which the research design they have created is complete and efficient.

As a purely subjective matter, a course that combines both sets of skills is also inherently more interesting for both students and instructors. It allows students to be creative in a way that a strict bibliographic course cannot because each student's end result is a completely written document that his or her research

\textsuperscript{61} In a step beyond this integration of advanced legal research with writing, Professor Campbell proposes an interesting concept: integrating advanced legal writing instruction with a law school clinic. See Angela J. Campbell, \textit{Teaching Advanced Legal Writing in a Law School Clinical}, 24 \textit{SEToN HALL L. REV.} 653 (1993). As Professor Campbell points out, such an approach has many advantages. Because their clinic projects have "real world consequences," she posits that students have a greater incentive to perform well. \textit{Id.} at 659. In addition, such courses allow students to consider client satisfaction with the written product and the ethical dilemmas that arise when live clients are involved. \textit{Id.} at 660-61. Professor Campbell also includes an excellent discussion of the difficulty in balancing the legal needs of the client with the educational needs of the student writer. \textit{Id.} at 665-71.

\textsuperscript{62} These have been dubiously dubbed "elaborate steeple chases," "bibliographic treasure hunts," James A.R. Naftziger, \textit{Teaching Legal Research in the United States}, 7 \textit{MONASH L. REV.} 67 (1980), and "search and destroy missions." Wren & Robinson Wren, cited at note 7, at 7. See also Manna Janto & Harrison-Cox, cited at note 7, at 291. The authors state:

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

\textit{Id.}
and writing, together, have produced. Likewise, it provides an opportunity to be innovative and adventurous in designing and following through with a research plan. This challenge is lacking in a writing course that provides all students with the same materials from which to work and does not provide many avenues for individual research or the taking of different leads. To the extent students are given some freedom to select their own research topics, the greater their interest will be.63

Practically speaking, a course that combines both skills also meets a wider variety of student needs. Students are limited in the number of courses that they can take in their law school years. When faced with the desire to include basic substantive courses, specialized classes in an area of interest, clinical programs or externships, and other skills courses such as oral advocacy and client counseling, students may often not be able to take two separate courses to obtain comprehensive training in both research and writing skills. Yet, they may be able to schedule one offering in their second or third year, and thus will benefit from the integrated course. As an additional practical matter, only a course that helps develop both research and writing skills will be completely useful to students who hope that the course will assist them in their work on law reviews or in writing seminar papers.

**PLANNING THE ADVANCED LEGAL RESEARCH AND WRITING COURSE**

If an advanced research and writing course is to be undertaken according to the integrated approach, a number of practical considerations follow. Primary among these considerations is to determine the goals of such a course. In doing this, the two most important questions to be considered are: 1) What is the content and scope of the first-year research and writing program? and, 2) What types of work do most of the law school's graduates perform in their early years of practice?

*Evaluation of the First-year Program*

Regarding the first consideration, an advanced research and writing course should complement the first-year research and writing program — not duplicate it, replace it, be an excuse for

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63. Of course, this need for variety must be balanced with the benefits of uniformity. That is, if students are writing on different topics, the topics should be chosen so they have approximately the same level of complexity and are equally suited for the writing projects assigned.
postponing rigorous training," or be designed without a careful review of the skills covered and omitted in the first year.

At opposite extremes, two dangers present themselves. One danger to be avoided is the "advanced" legal research and writing course that does little more than review and rehash the skills already learned in the first year. An advanced class should exist only to expose students to skills they have not already acquired and should, generally, not be the place for remedial training. On the other hand, the fact that a law school offers an advanced legal research and writing course should not be a temptation to streamline the first-year program on the theory that overworked first-year students can learn certain skills at a more leisurely pace later on in the advanced course. If the advanced course is not required, such a practice will result in having some students graduate without exposure to essential skills that have been deferred.

Even if an advanced course is required, there are still certain basic skills that must be emphasized in the first year. These include all of those skills needed in the first year of summer employment.

Thus, when creating an advanced writing course, the first step should be a careful assessment of what is included in the basic research and writing course. When developing the research aspect of the course, the following questions should be asked and answered about the first-year program:

Which research tools are included in the first-year syllabus? Have

64. See Wren & Robinson Wren, cited at note 43, at 486 ("We consider it unfair to law students to abandon efforts to improve first-year legal research training when the means and methods are available for improvement.").

65. Such a practice will have deleterious effects on both the basic and the advanced class. First-year students may become lackadaisical if they know they will have a second chance to "review" their material when they are closer to graduation and less pressured by other classes. Likewise, advanced students will be justifiably bored if they find themselves using their time and tuition for a "rerun."

66. See Dunn, cited at note 9, at 62-63 ("Nor can an advanced legal research elective be considered the cure-all. Many important electives compete for a student's needs and interests.").

67. Paradoxically, the students who will opt not to take an advanced research and writing course will often be those who are in the most need of such a course — those who did not fare well in the first-year course and do not want to run the risk of a low grade in an upper-level course.

68. Determining exactly what skills are included in this set is not a precise science. However, by the end of their first year all students should be familiar with locating all the primary sources of law on both the state and federal level and should understand how these sources relate to each other. Likewise, they should be familiar with finding and using the basic secondary sources. With respect to writing, they should have had experience writing several different analytical pieces and several different persuasive pieces.

69. At a minimum, a first-year research course should provide solid training in
any methods or sources recently been eliminated from the first-year pro-
gram due to time constraints?

Are there any research tools that first-year instructors believe stu-
dents have particular difficulty grasping and using?70

How are the research skills taught in the classroom, and are they
followed up with review assignments?71

Is any attention paid to the development of research designs and
strategies in addition to instruction in individual resources? How is this
done?

How is CALR introduced, if at all? Who introduces students to
CALR?72 How satisfied are the first-year instructors with students' com-
petence in CALR? How successfully do students, after their first year,
integrate CALR and traditional research methods?

Are students given any opportunity for learning about specialized
legal research particular to substantive areas in which they are interest-
ed?

What percentage of time in the first-year course is devoted to research
training as compared to training in other skills such as writing, oral
argument, professional responsibility, citation form, moot court, client
counseling, etc.?

Who teaches the legal research component of the first-year course?73

federal and state case reporters, the West digest system, federal and state statutes,
federal legislative history, federal regulations, Shephard's Citations, legal periodicals,
treatises, restatements, dictionaries, loose-leaf services and court rules/civil procedure
rules. It should also introduce students to LEXIS and WESTLAW. A good course
should also focus heavily on the techniques of updating the law once it is found.

70. From my experience, the problematic resources tend to be legislative histo-
ries, administrative law, and loose-leaf services.

71. "In the most popular model, students are introduced to library materials
through a series of lectures, show-and-tell sessions and drill exercises." Morse, cited
at note 7, at 255. If this is all that is done to teach research in the first year, more
extensive upper-level attention is clearly warranted.

72. See discussion in note 22 regarding extensive use of vendors in this train-
ing.

73. This question should be designed specifically to see whether the task of
teaching legal research has been delegated to upper-level students. If so, the re-
search training is probably a weak part of the first-year program. Regardless of how
well qualified or well trained they are, senior students simply lack both the legal
research and teaching experience necessary to convey the information as effectively
and accurately as necessary. Furthermore, those students with the best "credentials"
What type of feedback, if any, are students given on their research competence?74

Is there uniformity in the research instruction provided by all the instructors?75

How, if at all, are the research sources reviewed once they are taught for the first time? Are any research projects redone?76

What is the opinion of the law school's library staff as to the competence first-year students display when using the library for research projects? What are students' most frequently asked basic questions?

How do the students' course evaluations reflect their satisfaction with and confidence in their level of research competence?77

What, if anything, is done to assist students whose research skills are weak? How are those students identified?

Is the research component overly slanted toward case law, or does it provide adequate training in researching all primary sources of law on both the state and federal levels?

What is the quality of the instructional materials used in the research component of the course?

A similar set of questions should be asked when reviewing the

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74. See Richert, cited at note 43, at 731 (describing the use of oral research examination to test legal research skills).

75. See Donald S. Cohen, Ensuring an Effective Instructor-Taught Writing and Advocacy Program: How to Teach the Teachers, 29 J. LEGAL EDUC. 593, 596-597 (1978) (describing benefits of ensuring uniformity in research and writing programs).

76. As a corollary, in a program that uses the often derided "treasure hunts," is there any attempt to integrate the assignments with each other so that they build on progress already made? Treasure hunts, by themselves, are no more than a series of unrelated, isolated questions that ask students to find miscellaneous scraps of information without any "real world" context.

77. If possible, in addition to the course evaluations that are written while students are still in the class, a poll of first semester second-year students can help determine their beliefs about their skills after some of them have used them in "real life" settings during summer employment.
legal writing component of the first-year program:

What types of documents do students prepare? Is there variety among the projects assigned? Relatively, do students have exposure to non-litigation centered assignments?

What types of feedback — oral or written — do students receive on their written products? Who is responsible for providing that feedback?

How often, if at all, are rewrites required of written assignments? What type of guidance are students given in the rewriting process?

What is the difficulty level of the writing projects assigned? Are there opportunities for the more sophisticated writers to be challenged?

Are the writing projects integrated with the research assignments or are they all "closed universe" writing tasks?

Are there any services or programs available for weak writers who need more individualized attention than the first-year course provides?

78. See discussion in note 39, describing the limited variety of typical first-year writing assignments.
79. Ann Sinsheimer-Weeks and Susan Reinhart describe typical poor feedback as coming when: Comments usually appeared arbitrary or vague. Sections were marked “good” or “weak” for example, without further explanation. This overly general feedback made it difficult to understand how to improve our writing. Revisions were seldom assigned so there was little opportunity to improve our writing under the guidance of the instructors. Class time was not used to discuss comments and corrections . . . . We received high marks on our paper without fully understanding why.

80. See discussion in note 73 describing concerns with using feedback from students.
81. This is not to imply that, when well designed, closed universe memos do not serve a useful teaching function. I have used them in a first-year Lawyering Skills course where they provided several advantages. Closed universe packets allow students to focus on developing their analytical and writing skills without having to devote significant time to doing research. They also enable a large number of students to work on the same problem without draining library resources. Finally, they are an excellent vehicle for controlling the skills that will be taught since instructors dictate the boundaries of the task and include information in the packet that highlights the source materials with which the instructor hopes students will become familiar. The problem with the closed universe packets arises when they are overused. This denies students the opportunity to have the realistic experience of completing their own research and writing as they must do in practice.
82. This question is essential in determining what type of students will be seeking out the advanced class and whether there will be students enrolling as a
What is the quality of the instructional materials used in the writing component of the course?  

Are the assignments long enough to allow students space to develop their analysis fully?  

Are there any writing projects that the first-year writing instructors have recently eliminated or are reluctantly not adding due to time constraints?  

Beyond the first-year program, are there any other writing requirements for students to fulfill such as journal membership, appellate brief writing or a seminar paper?  

How do the students' course evaluations reflect their satisfaction with and confidence in their level of writing ability?  

How well do first-year students write during their examinations?  

With this information, it will become easier to develop an advanced legal research and writing program that effectively builds on the first-year program and provides a useful opportunity for students to develop those skills more fully. Naturally, the more ambitious and comprehensive the first-year program is, the more advanced the upper-level course can be because those teaching and designing it can assume familiarity with a broader range of better developed skills.  

way to "catch up on" skills they did not develop in the first year. Obviously, a class that includes these students as well as those seeking to develop already solidly developed skills can leave both groups dissatisfied.  

83. This question should be asked not only of the text material used to teach writing style and organization, but also of the problems used as the hypotheticals on which students must write. Are they well developed? Are they progressively more complex? Do they allow students to explore several issues? Is the difficulty level appropriate?  

84. Similarly, it can be asked if any assignments have been pared down or simplified in the interest of instructor or student time constraints.  

85. A corollary question, to which the answer will nearly universally be negative, is whether there is any consistency in what students must do to meet their writing requirement?  

86. See note 77 discussing the use of student evaluations.  

87. Although not as critical, those designing the course might also want to assess what types of summer jobs and/or term time employment/externships students engage in and whether these provide any substantive research or writing training.
Evaluation of Graduate Employment

In addition to looking to the first year when planning an advanced course, it is necessary to look to the other end of the law student's career: entry into the work force. While an advanced research and writing course's syllabus — like that of any course — should not be entirely driven by the demands of the local market, research with local practitioners, judges and alumni may be helpful in highlighting the particular skills that will be most useful to a specific law school's graduates. Some questions to keep in mind include:


- In what research and writing tasks do local employers find students to be most deficient?

- What types of writing samples do employers typically seek from students?

- What research and writing skills do recent alumni wish they had developed more fully before entering the workplace?

- Are there any particular sources — such as agency materials, local authorities, etc. — that are of special concern?

- In the opinion of practitioners, how do the law school's graduates compare to their peers from other law schools in terms of their research and writing abilities?

Practical Considerations

If these two sets of questions are asked carefully, the results should be very helpful in creating a preliminary outline of the skills to be covered and the projects to be included in the advanced legal research and writing course. With that preliminary

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88. Relatedly, are there any particular areas of practice that tend to attract the law school's graduates and which may require research ability of a particular type? This concentration will often be driven by the presence of "tracks" or specialties in the law school's curriculum or by the areas in which the law school may have a particular reputation.
Mandatory or Optional?

One threshold question is whether the advanced course in legal research and writing will be a required course or an optional elective open to upper-level students. Obviously, requiring the course has the advantage of ensuring that the law school’s graduates all have a higher level of training in these skills than their counterparts at schools that provide only a one year program. Knowing that the course will be required of all students also makes interface with the first-year program more fruitful because there can be long-term planning and coordination between the two programs. It also will almost always ensure that student writing is critiqued by more than one person—a helpful way to assist students in developing their own styles.

Equally obvious, however, are the difficulties with making the course mandatory. Staffing the class with available instructors is the most obvious concern; finding qualified instructors to teach the course may place a drain on the resources needed to maintain a quality first-year program and cause the advanced research and writing faculty to be unavailable for teaching other courses. Other factors are involved, too. Each course that is required eliminates an opportunity for students to take desirable electives, including, of course, other skills courses. Obviously, it will have an impact on the level of enrollment in other courses and on the scheduling of classes. Thus, this decision must be

89. For another listing of factors to weigh when planning advanced research courses, see Mills, cited at note 18, at 604.
90. This advantage becomes even more compelling for those schools in which the primary first-year feedback comes from upper-level students rather than from professional instructors.
91. The first-year program should always remain the law school’s primary responsibility because it is in a unique position to acquaint students with those skills they will need for successful writing of their exams, useful employment after the first year of law school, meaningful externships early in their second year, law review and moot court participation, and academic research. It also provides a common experience for the first-year students that is difficult to replicate in the later years.
92. The MacCrate Report alludes to an advantage in giving students some flexibility in selecting their skills courses. “The variety of single unsequenced offerings and the existence of sequences enhance students’ opportunities to acquire skills at the time and in the manner most suited to their learning styles, and provides for learning through repetition and a ‘building block’ approach to skills education.” MacCrate Report, cited at note 6, at 237.
93. See Cox & Ray, cited at note 39, at 352 n.5. Cox and Ray argue that the advanced course should be elective, and state, “[w]e believe that having students
made carefully.  

Class Size

The size of the class is a key factor in determining how much instructor contact time there can be, how many written projects may be assigned, the promptness and quality of written feedback, the level of students' interaction and participation in class, and the demand on librarian assistance and library resources during the semester. While balancing these needs for a relatively small class is much easier, the reality is that classes such as these are ordinarily over-enrolled and very popular. Hence, too low a cut-off will deny many students the chance to take the class. A class that is too small will also limit students' ability to learn from each other. An ideal number of students would seem to be between fourteen and eighteen per section.

choose to take the course increases the likelihood that they will be dedicated to improving their writing and motivated to do the extensive work required in the course. Requiring students to take the course may reduce their motivation.  

94. In an ideal situation, I would favor making such a class mandatory. This recommendation is largely based on knowledge of the limitations inherent in many first-year programs, on anecdotal comments from students suggesting that they wish the course were mandatory, and on the need to give students some further in-depth writing experience — particularly one that is well supervised and not necessarily litigation oriented.

95. See discussion in note 97. See also Kauffman, cited at note 8, at 128 ("[A] dvanced legal research courses have uniformly proven to be popular with students when measured by student demand.").

96. Of course, this ceases to be a terribly significant problem if there are many other valuable writing experiences into which students may opt as alternatives to an inaccessible advanced legal research and writing course. Given that this is likely not to be the case, however, enrollment cut-offs will be a significant issue.

97. Both times I taught "Advanced Legal Research and Writing" at Catholic University, enrollment was limited to sixteen students. This turned out to be an ideal number because it made the class large enough to have students working on a wide range of projects and to make in-class small group exercises beneficial. At the same time, it was small enough to have students submit some course work for evaluation once or twice per week while allowing me to return everything within a day or two after it was submitted. See Legal Writing Institute Survey, cited at note 14, at 7 (reporting that of seventy-six law schools responding, forty-six indicated that there are between eleven and twenty students for each faculty member of upper-level courses). But see Berring & Vanden Heuvel, cited at note 29 at 447, in which the authors noted:

[A] t Boalt, the course is offered in a lecture format with unlimited enrollment .... While we agree that research seminars are a wonderful idea, we think there should be at least one advanced research course offered in the lecture format. Although the problems associated with trying to give students enough attention in a large class are sometimes enormous, the ability to do and to evaluate research should not be limited to a few extremely interested students.

Id.
Staffing

Deciding who will teach the course is yet another threshold question, and the answer will depend on the instructors available at individual law schools. However, with very few exceptions, this is a course ill suited to being taught by adjunct instructors who will not have the time to commit to the intense interaction such a course requires. It is even more poorly suited for employment of the student teachers often involved in first-year programs. Such students are, as second and third years, the very population the course is designed to assist. Regular full-time instructors teaching in the first-year research and writing program may be a possibility to consider, but only if doing so will not increase their workload and make them ineffective in the first-year program, which should remain their primary concern. Regular faculty with an interest in the area may also be a resource to consider as are full-time law librarians who are interested in the writing aspects of the course, and clinical faculty.

Integration of Research and Writing

The major advantage of including both research and writing in the same advanced course is to allow students to use both skills at the same time and to integrate their work on both tracks. If that goal is to be achieved, the course must be planned so that there are opportunities for research and writing skills to be combined throughout the semester’s assignments. Hence, a major structural decision will be determining how the assignments will

98. See generally Legal Writing Institute Survey cited at note 14, at 7 (indicating that in the eighty-four law schools responding, upper-level research and writing courses are taught by legal research and writing instructors in thirty-three schools, full-time faculty in fifty-four schools and adjunct faculty in thirty schools); see also MACCRATE REPORT, cited at note 6, at 246 (indicating that in 1989-90, advanced research, writing, or drafting courses were taught by full-time permanent faculty in 52% of respondent law schools, by part-time faculty in 26% and full-time not permanent faculty in 22%); Kauffman, cited at note 8, at 127 (addressing the issue of staffing advanced research courses).

99. But see Cox & Ray, cited at note 39, at 355-56 (arguing that teaching advanced writing classes makes basic writing instructors better teachers of beginning students).

100. See Manna Janto & Harrison-Cox, cited at note 7, at 281 ("Because they have devoted their professional lives to mastering legal bibliography and to refining research skills, librarians are uniquely qualified to teach legal research."). But see Shapo, cited at note 7, at 724-25 (describing the decline in the number of law librarians teaching legal research courses in law schools).

101. See discussion in note 61, describing integrated writing/clinical course.
be designed so that the skills taught in the research component are put to immediate use through writing and, conversely, so that the writing component requires that students' writings build on their research findings. Such integration should be one of the key guidelines for developing the problems to be used.

Projects

Decisions on the genre of assignments to be accomplished during the course will closely follow the decision on how research and writing should be integrated. Some options include pathfinders, case notes, bibliographies, briefs, short articles, judicial opinions, legal documents, office memoranda, statutes, pleadings, contracts, opinion letters, and a host of other products. Indeed, texts have been specifically designed for use in advanced legal writing courses. Such texts provide further suggestions for types of assignments. The projects that are chosen, however, must effectively combine research and writing and provide students with an opportunity to see the "big picture" by requiring that they create a research design and plan an outline for a major written analysis, or, preferably, do both at the same time. Given the increase in specialized resources, ideally there should be enough flexibility in the type and subject matter of the projects assigned so that students will be able to obtain detailed exposure to sources in the particular substantive areas in which they are most interested.

Grading System

How the advanced legal research and writing course is to be graded is another concern. In a significant number of schools, the basic first-year legal research and writing course is graded on a scale different from the other traditional courses. This has the advantages of reducing competitiveness in what can be a stressful time, encouraging collaboration when appropriate and instructor participation when needed, allowing for greater flexi-

102. See note 54 and accompanying text discussing the use of pathfinders.
103. See notes 121-28 and accompanying text. The final section of this article describes an advanced legal research and writing course at Catholic University and demonstrates how such a case note can be an effective project for such a course including the steps that can be taken during the semester to ensure that the research and writing processes are effectively intertwined.
105. Legal Writing Institute Survey, cited at note 14, at 3.
bility, freeing instructors from the onerous task of assigning precise grades, and taking into account the experimentation that students will, of necessity, be doing in their research and writing class.\textsuperscript{106}

However, a "unique" grading system has disadvantages that are equally obvious. The "incentive factor" of a graded course is not present if the grade does not carry the weight that grades in other courses do. In addition, an inconsistent system for grading further distinguishes the legal research and writing course from other academic responsibilities — a distinction which the students and faculty teaching in other fields could interpret to mean that the class is less worthy of serious attention. Hence, a decision regarding the grading of the advanced offering must be made. It seems clear that advanced research and writing classes should be graded on the same scale and by the same standards as any other upper-level course (or seminar, if the writing course more closely resembles the law school's seminar offerings). With the advanced courses, the \textit{advantages} of a different grading system are far less compelling than they might be with a first-year course, while the \textit{disadvantages} are likewise less troublesome.

\textbf{Rewrites}

A crucial component of any advanced course must be the constant exchange of feedback between the instructor and the student. In a research and writing class, this is more effectively accomplished through rewrites or repeated drafts of key documents in the course. Only in this way will students have a reason to review the instructor's comments carefully and use them to improve their writing.\textsuperscript{107} Thus, the assignments should be constructed to ensure that instructors review, comment on, and critique the students' work at regular intervals and require students to respond to that critique in a revised written document.

\textsuperscript{106} Given that first-year legal research and writing courses are often perceived as having a "socialization" function in addition to the educational one, such a goal can, perhaps, be better achieved without the pressure of grading.

\textsuperscript{107} I have also found that, in both basic and advanced research and writing classes, the process of writing a second draft after the first draft has been critiqued is often what spurs students to come to discuss their writing with the instructor on a voluntary basis. These discussions are, almost always, even more helpful to students than the limited written comments they initially received. This does not happen in the same way where students do not have to respond to the written comments by applying them to a later draft.
Course Materials

Selecting course materials for the advanced legal research and writing course is a difficult task, largely because many of the most popular research and writing texts appear primarily geared for first-year students and have a litigation slant to them as well. Thus, students will likely be familiar with much of the material covered in such texts if they are used. To give both research and writing the detailed attention they need in an advanced course, it is almost always wisest not to seek a single source that will provide coverage of both. For the research component of the course, How to Find the Law appears to be the logical choice. While ill-suited for use in a first-year course, this detailed tome provides a thorough discussion of research methods and sources that suits an advanced study of the material. Supplemented with readings about specialized research sources and updated with materials on new developments since its publication in 1989, the text covers research materials well.

Finding appropriate coverage for the writing portion of the course is a more difficult task, and a decision on that issue can, most likely, not be made until the genre of the writing projects has been determined. Logically, a text that addresses those documents is one to consider, as is one that provides solid instruction in writing style and technique.


110. I used How to Find the Law in my Advanced Legal Research and Writing course both times it was taught, and the text received a positive response from students.

111. I did not select a text for the writing portion of my seminar course but, rather, created many of my own materials and encouraged students to read excerpts of several different texts that discussed various aspects of their writing. I also required students in the course to purchase William Strunk & E.B. White, The Elements of Style (3d ed. 1979) to consult as a guide to proper writing style.
Class Format

An advanced legal research and writing course does not lend itself well to a strict lecture format. Hence, consideration should also be given to the classroom methodology used in the course. While the research portion may be more lecture-intensive, some alternative techniques to use include student presentations on their research progress, student peer critiques of their classmates' papers, and small group analysis of sample writings or research designs.\(^{112}\)

Style and Substance of Instructor Feedback\(^{113}\)

The type of feedback that students receive from the instructor in an advanced legal research and writing class will greatly affect the benefit the student gains from the experience. Hence, some thought must be given to ensuring that they receive steady feedback that begins early in the semester when they are beginning the early stages of their planning. Providing this feedback may be more difficult in the advanced class than in the first-year course because the advanced project may be of a longer term and not lend itself as easily to frequent, discrete submissions that can be critiqued and returned. This problem may be similarly exacerbated by the research component of the course because it should not focus on the use of discreet research tools as much as on the overall design and plan of the researcher's effort. Evaluating research on that level is a more difficult task.

ADVANCED LEGAL RESEARCH AND WRITING: A MODEL\(^{114}\)

Planning the Course and Setting the Goals

Clearly, an advanced legal research and writing course may take many forms, and its style will be affected by the myriad factors discussed above. The following model, however, may be helpful to those planning or revamping such courses.\(^{115}\)

\(^{112}\) Interactive classroom techniques borrowed from clinical education may be effective in such a course as well.

\(^{113}\) In addition to instructor feedback, peer feedback may also be a valuable addition to an advanced course.

\(^{114}\) This model is based on an experimental "Advanced Legal Research and Writing" course I taught at Catholic University's Columbus School of Law in the summers of 1992 and 1993.

\(^{115}\) I will be happy to provide a copy of the course syllabus and/or any course materials I generated for the course. Please contact me at Catholic University if you
The Advanced Legal Research and Writing course I taught was a two-credit course, graded numerically, as are other upper-level courses. Successful completion of the course satisfied students’ “writing requirement,” and enrollment in the course was limited to sixteen.

In planning the course, the goals for the research component were to expose students to the widest possible range of research materials and to help them become fully capable of creating their own research plans for complex projects. For the writing component, the goal was to provide students with the guidance they needed to refine the writing skills they already possessed so that they would become confident in their ability to express their legal ideas in writing.

are interested in a copy of any of the materials described in this article.

Both times the course was offered, it was offered during the seven week summer session. Hence, it met twice a week for two hours per class. If a course such as this is given during a standard fourteen or fifteen week semester, this schedule would be replaced by one requiring one weekly two hour session.

The law school's writing requirement stipulates that:

Each student must, after the first year, take at least one writing course for credit. This requirement can be satisfied by successful completion of an approved course or seminar in which a major portion of the grade is based on a research paper, including a course in directed research. The paper should be the result of substantial original research and should demonstrate both analytical thought and careful organization.

The initial description of the Advanced Legal Research and Writing course as it was given to students is as follows:

This limited enrollment seminar provides an opportunity for advanced training in the methods and sources of legal research and an opportunity to complete a legal writing project with close supervision and training in developing strong legal writing skills. The course will begin by reviewing in greater detail the basic research tools and focus on creative use of these tools in complex legal matters. It will then introduce more advanced research tools that students are likely to encounter in various types of legal employment. Using these skills, students will prepare a written case note. The note will be on a case that is being reviewed by the Supreme Court chosen by the student from a collection of cases chosen by the instructor. In preparing that note, students will develop their research skills and also receive guidance on advancing their legal writing skills. The primary goals of the course are to make students fully competent in the research tools they will need to be competent practitioners and to help them become more effective legal writers. A major component of the course is individual attention to students including small class size, regular conferences with the instructor, and frequent feedback on student work product.

Successful completion of this course will satisfy the law school's writing requirement.

Lucia A. Silecchia, Course Description: Advanced Legal Research & Writing, Summer 1992.

See Roger W. Andersen, Stating Objectives for a Legal Writing Course, 30 J. LEGAL EDUC. 358 (1979) (indicating the importance of setting goals in legal research and writing courses).

These goals were set with careful consideration of the work students had
After considering the options for assignments, a case note on a pending Supreme Court case was selected as the major project that students would create in the course. The case note seemed a good choice for such an assignment because it was a lengthy and intense writing experience that most students had never undergone. It also was unlike anything they had written in the first-year Lawyering Skills Program and it was not a litigation oriented project. The case note also provided an opportunity for extensive research because it required students to consult a variety of sources to develop their analysis. Using pending cases also gave students some experience with going to court and reviewing court records, including briefs and petitions for certiorari. In addition, because the Supreme Court each year hears cases on a variety of subjects, students were able to choose a case on an issue that interested them and that would expose them to specialized research sources. Finally, having students con-

all done in their required, two semester, first-year "Lawyering Skills" course. The Lawyering Skills program at Catholic University is an ambitious and comprehensive one, so students came to the advanced course with a solid foundation in research and writing. Research is taught to first-year students over the course of both semesters and includes training in federal and state statutes, case reporters, case digests, treatises, encyclopedias, administrative regulations, citators, legislative history, legal periodicals, annotations, and court rules. In the spring semester, students are trained on LEXIS and WESTLAW which they can use for their spring writing projects. First-year students are also given many writing assignments to complete, with rewrites of the major writing projects required. In the fall, they write a short diagnostic writing sample, a client advice letter, two office memoranda (one closed research, one open research) and rewrites of both memoranda. In the spring, they write a demand letter, a pleading (either complaint, petition or indictment), a motion, a memorandum of law in support of or in opposition to the motion, a rewrite of that memorandum, and an appellate brief. In addition, they receive training in client interviewing and counseling, plan discovery strategy, complete a motions hearing, and do an appellate oral argument. The Lawyering Skills Program is taught by five instructors: four full-time, and one part-time.

121. Students were given a 28-32 page limit for their papers.
122. However, some time was devoted in class to discussing the ways in which the skills they developed were readily transferrable to various contexts, including litigation. Those students with a particular interest in litigation were encouraged to set their paper up in such a way that it was a piece of analytical advocacy.
123. Most of the cases that students wrote about involved the interpretation of a statute and conflicting lines of legal authority about the issue. Thus, students were involved in researching statutes, legislative history, cases, regulations implementing the statutes, etc., rather than dealing with areas that were strictly common law.
124. Because Catholic University is located in Washington, D.C., it was easy for students to go directly to the Supreme Court clerk's office and obtain original court documents to review. For many of them, this was a valuable experience and their first visit to a court clerk's office. Depending on geographic location, assigning cases from a state supreme court may allow law schools in other areas to provide students with the same advantage of such "field research."
125. I also spoke with several students who registered for the course in ad-
centrate all their efforts toward one end product seemed like the ideal way to allow their knowledge to build on itself, to study the interconnectedness of the research they were to do, and to provide continual context for the work they would do all semester.\textsuperscript{126}

Hence, on the first day of class, students were given a list of pending Supreme Court cases,\textsuperscript{127} a quick "blurb" about each case, and citations to the lower court decisions. By the second class, they were required to have selected the one they would work on for their case note.\textsuperscript{128}

**The Course**

As the course began, students were told of the twin goals of the undertaking: to develop both their research and writing competency. The first class also introduced the methodology of the course. The first half would be focused on providing research training. After each class that presented new research tools, students' assignments would be to use those tools to gather information to write their papers. Hence, the first half of the course would be almost entirely research-based, with a focus on collecting and analyzing the materials discovered through the research process and on developing an efficient and effective research plan.\textsuperscript{129} The second half of the course began after students had

\textsuperscript{126} A beneficial side effect was that this approach also gave students an incentive to work steadily throughout the semester since a slow start would mean a hectic end.

\textsuperscript{127} I screened the Supreme Court decisions before selecting the cases from which students could choose because I wanted them to work on cases that would require them to research a variety of sources, could be addressed in the page limits required, were not overly technical or narrow, and presented interesting questions for analysis. I also tried to ensure that there was a variety of subjects in the pool of cases I picked. Although in both years several cases were chosen by more than one student their approaches were so different that this was not problematic.

\textsuperscript{128} To let students begin their research immediately, it is essential that they select their topic right after the first class. Although this does not give them much time to review the cases before making selections, the advantages outweigh the disadvantages. The disadvantages can also be mitigated by circulating the list of selected cases to registered students before classes start, or by placing copies of the lower court opinions on reserve in the law school library so that students can save some research time in the first few days. In several rare instances, I allowed students to change their topic, but the general rule was that the initial choice was also the final choice.

\textsuperscript{129} Due to the summer school schedule, more than half of the class time was eventually spent on the research "half." However, an ideal situation would allocate equal time to both subjects.
gathered nearly all the substantive materials they needed for their note. The second half focused on developing writing skills: from the "big picture" concerns of the outline to the more narrow concerns of grammar and citation form.

Following discussion of these goals, the first class was devoted to an overview of legal research, planning a research strategy, and an introduction to the use of field research and court records. Because of the many resources available in Washington, I also used this class to acquaint students with local research facilities to show them the variety of sources for the materials they needed, including the Law Library of Congress, the Library of Congress, agency libraries, local academic libraries, government document collections, and private libraries.\textsuperscript{130}

The following classes were devoted to teaching legal research using a variety of sources, with the mandate given to students that after each class they use the research tools presented (if applicable) to collect information for their papers.\textsuperscript{131} Thus, the classes were conducted as follows:

\textit{Class Two}

This class focused on constitutional law research, statutes, legislative materials, legislative history, tracking legislation, American treaties, and research strategies for finding and using legislative and statutory materials.

\textit{Class Three}

Administrative and executive publications, agency rules, regulations, and adjudications, tracking regulations, government documents, and research strategies for finding and using administrative materials were covered in this class.

\textit{Class Four}

By this class, students turned to case reporters, tracking cases through the court system and research strategies for finding and using cases.

\textsuperscript{130} In 1992, I also arranged for a class tour of the Law Library of Congress which was well received. Scheduling conflicts in the 1993 course did not allow this.

\textsuperscript{131} Again, careful selection of the cases from which students can choose will help ensure that most, if not all, of the tools will be applicable in some way.
Class Five

This class explored the use of secondary materials, including loose-leaf services, legal periodicals, encyclopedias, restatements, annotations, treatises, newspapers, trade publications, deskbooks, directories, and research strategies for finding and using secondary sources.

Class Six

By this point, students moved beyond the law library to non-legal methods and sources and research strategies for moving beyond the law library. Class six also began a discussion of integrating CALR into a research design, the limitations of the efficacy of CALR, and the differences between LEXIS and WESTLAW.

Classes Seven and Eight

Training on LEXIS and WESTLAW was done in two separate two-hour sessions conducted by LEXIS and WESTLAW representatives themselves at their Washington training facilities. Prior to the sessions, students were assigned readings about both systems and the LEXIS and WESTLAW trainers had been given a copy of the course syllabus so that they were familiar with the way in which CALR was being presented as merely one component of a research design. Finally, the LEXIS and WESTLAW trainers were asked to prepare materials for the students that would track a recently decided Supreme Court case through the various on-line libraries in an exercise that would mirror what the students would be trying to accomplish on their own. The trainers were also asked to devote part of their presentation to administrative materials, because that appeared to be an area in which students had concerns.

132. See discussion at note 22, discussing the disadvantages of having the CALR portion of the course taught by LEXIS and WESTLAW vendors. Although those remain issues to consider even in the context of the advanced class, this was not problematic. By having a class in which students had a neutral discussion of CALR before the actual hands-on training, they were in a good position to evaluate the claims made by the vendors. In addition, students were told repeatedly in the course that CALR was only one part of a research design. So, by the time they got to the LEXIS and WESTLAW sessions they had already completed a great deal of their research. In addition, by having the LEXIS and WESTLAW sessions back-to-back, students were well able to compare and contrast the two systems.
Class Nine

This class introduced specialized legal research materials and strategies for using research tools designed for different practice areas, including specialized data bases. Students had been given a survey several days before this class asking them to indicate their areas of interest. Thus, the class was tailored around those interests.\textsuperscript{133}

Instruction and Evaluation

Throughout the research lectures, two primary concerns were ensuring that students were doing the research effectively as the course progressed, and creating a vehicle for them to receive feedback on their research progress. To do this, students were required to keep “Research Journals,” a tool that proved to be very effective in achieving these goals.\textsuperscript{134} Each student was given a Research Journal on the first day of the course. The Journal contained twenty-five blank forms; the students were required to list, on each form, a resource they had consulted (for example, U.S.C.S., a West digest, a specific loose-leaf service, a periodical index, or a legislative history source), the searches they had conducted in that resource, specific problems with that resource, and the results of their search.

Students were then required to submit these Journals each week, and they would be returned regularly with a three or four page personalized memorandum critiquing their research progress. Each memo would begin with general comments about problems that appeared to be common to all students and suggestions as to where they should be in their research progress. Most of the memo, however, was devoted to a specific critique of the research they had done — responding to the questions they had raised, addressing some of the problems they had found, suggest-

\textsuperscript{133} The options students were given were: tax law, employment and labor law, environmental law, immigration law, securities law, intellectual property law, corporate law, family law, insurance law, criminal law, and international law.

\textsuperscript{134} It also was a helpful way of introducing students to the practical importance of keeping research records in practice so that they can avoid repeating research steps if time elapses between different stages of a project, pass the project on to someone else who will not have to “reinvent the wheel” doing the research, discuss research problems with a librarian intelligently and defend themselves if they are ever accused of doing their research carelessly and not in accord with professional standards. Such a journal may, in fact, be useful as an experiment in a first-year course where evaluation of a student’s research progress is, arguably, an even more important concern.
ing additional searches, proposing next steps or alternative routes in their research paths, addressing ineffective uses of resources and suggesting new ways to integrate the resources. The Journals also provided a good starting point for the early conferences I had with students and were a way to detect quickly those students who were having research problems. Although responding to the individual Research Journals was time consuming, it was also one of the most beneficial elements of the course and helped ensure that no student entered the writing phase of the course without a solid beginning in the necessary research.\textsuperscript{135} To highlight the importance of the Journals, they were counted in calculating the students' final course grades.\textsuperscript{136}

Following a review of overall research strategies, the writing portion of the course was ushered in by mandatory student/instructor conferences. Although many students had already participated in at least one informal conference, this round of midsemester conferences helped students focus their ideas and gave them a chance to discuss any analytical difficulties their cases were presenting. The conferences were also a useful opportunity to discuss the process of ending the research and overcoming the “writer’s block” that afflicted many students — most of whom had never written a paper of the scope required.

While a lecture/discussion format was effective for the research portion of the course, the classroom style became more interactive when the writing segment began. The writing section of the course was taught primarily in three class periods devoted to “Writing Workshops.” The three workshops focused on writing topics that became progressively more narrow. For each workshop, the first hour was devoted to a lecture/discussion of the skills to be addressed in that class.

In Writing Workshop I, students were taught techniques of organizing and outlining. Following the lecture on this topic, students were divided into groups of four\textsuperscript{137} to work with each other and critique each other's outlines. All students were there-

\textsuperscript{135} At times, individual students were also asked to present their research designs to the class by explaining what avenues they had tried and with what results. This often generated useful discussion with others who had either encountered similar problems or developed more effective solutions.

\textsuperscript{136} Students were told in the course syllabus that, “[t]his course will be graded numerically. Eighty-five percent of your grade will be based on your final paper. The remainder of your grade will be based on your research journals and writing drafts; classroom performance will also be weighed in determining your final grade for the course.”

\textsuperscript{137} The groups were designed so that no two students working on the same case were placed in the same group.
fore required to come to class with five copies of their outline to make the discussions possible. To help direct the small group discussions, students were given a "Writing Workshop Workbook" created expressly for the course which provided an extensive list of questions they were to ask as they critiqued each other. Throughout the discussion, the students benefited from the critique of their peers and gained practical experience as editors. They also submitted their fifth copy of the outline to the instructor to receive another critique.

Writing Workshop II was devoted to the narrower discussion of opening and closing paragraphs, persuasive versus objective writing, use of authority, drafting subheadings and paragraphing. Students were required to bring in five copies of a draft opening paragraph, a revised outline of the paper divided by subheadings and three random paragraphs from anywhere in the paper where they discussed a case or a statute. Again, following the classroom discussion of these skills, students worked in the same small groups to edit each other's work, following the suggestions in the "Writing Workshop Workbook." Again, they received instructor comments on their submission.

Writing Workshop III had the narrowest focus of all three. Its goals were to address sentence structure, grammar, citation, usage, style, clarity, and the use of quotations. Students were asked to bring with them two pages pulled from anywhere in their paper. They were encouraged to select those pages that were complex and contained multiple citations. The classroom discussion, group critique, and instructor feedback again assisted students in honing these writing skills.

By the end of the three writing workshops, students had received the critique of five readers on various aspects of their writing. They were also directed to supplemental readings about good writing and encouraged to use their "Writing Workshop Workbook" to assist them in self-editing. The weeks following the workshops also became a time for many student/instructor conferences as students sought feedback on their papers. Although a rough draft of the full paper was never required, many students used the conferences as a time to receive feedback on more extensive portions of their draft than were possible in class time.

The final writing class was devoted to a discussion of editing and proofreading skills, as well as a research checklist to ensure

138. Because students were working in groups with others who lacked detailed substantive knowledge about their research topics, they were particularly benefitted by the need to ensure that what they wrote was intelligible and logical to a lay reader.
that the research presented in the paper was complete and current. Students then had five days between the last class and the paper due date in which many of them fine-tuned their final product and sought additional individual conferences.

If time permitted, early submission of a full paper draft for critique would have been beneficial for students. Likewise, more attention to specialized research methods and non-legal resources would, most likely, have been helpful as well. Finally, providing a longer period of time to write between the research and writing sections would be a wise use of time, if more were available.

However, overall the course appears to have been effective in achieving its goals, while also being very rewarding to teach. By integrating research and writing as part of the same project, students were required to use these skills in tandem as they would in practice. By selecting the case note, students were given a project of proportions substantial enough to allow them to use a variety of research methods, while practicing the writing of a sophisticated piece of legal analysis. By using the Research Journals, students were taught about research as a process and given an opportunity for extensive critique on their research abilities and strategies. Through the Writing Workshops, students were given the opportunity for multiple critique and editing practice. And, through the continued emphasis on both research design development and rewriting, students were taught that research and writing are processes, and that the means to the end are critical in determining the end itself.

CONCLUSION

As the life of the law becomes more complex, and as the written word comes to dominate the spoken word, the need for practitioners to be adept in these twin skills has never been greater. Law students today must enter their profession prepared to practice their craft with the competence and confidence that can only come from preparation, practice and patience. Devoting only the first year to teaching these skills is no longer sufficient, if it ever was.

Many approaches to meeting this need are available to law schools. Creating an advanced legal research and writing course

139. Throughout the course, the processes of updating and validating research were stressed repeatedly. However, it was at the course's end that they appeared to have the most context. It was also in these final weeks that some students made a return visit to the Supreme Court clerk's office to see if there had been any additional filings in "their" case.
is one response that can solve this need and fill a growing niche in the law school curriculum.