From the Editor: Teaching Legal Research

This issue of the Journal includes an article by Helene Shapo, director of the legal writing program at Northwestern University School of Law. Professor Shapo reports and analyzes the results of several recent surveys on how law schools teach legal writing and research. 1 From the surveys, she notes a long-term trend toward what she terms an “integrated” approach to teaching legal writing, one in which research instruction is provided within the contours of the first-year writing program by writing instructors themselves, rather than in a separate course taught by law librarians. 2 Her article provides an interesting discussion of the problems inherent in traditional separately taught research courses and the advantages of learning research skills within an integrated course. Legal research teachers are only too aware of the artificiality in a course reliant upon classroom show-and-tell lectures and short-answer “treasure hunt” library exercises with no opportunity to use the sources located in a final written product. As a response to the difficulties of the traditional approach, Shapo notes a trend at a number of schools to offer advanced instruction in legal research and suggests that the upper-class curriculum may be the appropriate place for courses emphasizing the development of research skills. 3

Much has been written about how better to train law students in legal writing 4 and research. 5 No clearly superior model has emerged, which probably is appropriate given the varying missions and objectives of American law schools. What is both surprising and troubling in the survey data reported by Shapo, however, is the apparently small and possibly dwindling number of schools directly using the skills of law librarians for legal research instruction in the first-year curriculum. 6 Their professional training and experience

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2. Id. at 720.
3. Id. at 728-29. On advanced legal research courses, see Mills, Legal Research Instruction after the First Year of Law School, 76 LAW LBR. J. 603 (1983); Kauffman, Advanced Legal Research Courses: A New Trend in American Legal Education, LEGAL REFERENCE SERVICES Q., Fall 1986/Winter 1986/87, at 80.
5. Frequently cited articles on teaching legal research include: Rombauer, First-Year Legal Research and Writing: Then and Now, 25 J. LEGAL EDUC. 538 (1973); Sadow & Beele, Library Instruction in American Law Schools, 68 LAW LBR. J. 27 (1973); Mills, Legal Research Instruction in Law Schools, The State of the Art or, Why Law School Graduates Do Not Know How to Find the Law, 70 LAW LBR. J. 343 (1977) (including references to early articles on teaching legal bibliography and research).
should make law librarians more qualified to teach research than writing instructors or others who might be called upon to provide research instruction. The survey data indicates that this expertise is not acknowledged, however, and that the librarians’ role in the first-year legal writing curriculum remains underdeveloped. In light of the current interest in improving law students’ writing and analytical skills, librarians must be concerned with developing ways to teach research effectively within their schools’ overall writing programs. Although one should not underestimate the difficulties of teaching legal research as a separate course, with ungraded assignments and artificial research situations, it is possible to devise an effective program of librarian-taught instruction within the first-year writing program.

At Duke, the legal bibliography instructional program has functioned for a number of years as a successful preliminary to first-year writing assignments. The program is made up of five weeks of classroom and hands-on library instruction and several written research assignments, taught and administered by law-trained members of the library staff. It is offered during the first five weeks of the fall semester and precedes a legal writing course taught by members of the regular law faculty who are responsible as well for a small-section substantive course. Both the legal bibliography and legal writing courses are organized around the small sections. The makeup of each legal bibliography instructor’s course and assignments is largely the responsibility of the individual instructor, who is encouraged to develop a course that anticipates the particular research needs of the writing sections he or she is instructing. There is usually ongoing coordination between the legal research and writing instructors, which provides the potential for flexibility in scheduling and coverage. Sessions can be held throughout the school year as needed for the research requirements of specific writing assignments, and additional sessions can be offered on sources and topics outside those of the core legal bibliography curriculum. Key factors in the success of this program are the potential for flexibility and the extent to which the writing instructors and the legal research instructors coordinate their courses. At Duke, this relationship is fostered by the school’s recognition of the importance of legal research instruction to the writing program. Legal research instructors have law faculty status as a result of their teaching activities.

The major benefit to students of having legal research taught by librarians is the librarians’ expertise in the subject matter. Just as the law school curriculum provides a contracts specialist, not a torts scholar, to teach the first-year contracts course, so should it provide someone with active knowledge of research sources and techniques to teach legal research. Through law train-

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7. For a description of the Duke writing program, see Should Permanent Faculty Teach First-Year Legal Writing? A Debate, 32 J. LEGAL EDUC. 413, 421-23 (1982) (comments of William A. Reppy, Jr.).
ing, experience, or both, the librarian has the best knowledge and understanding of sources of legal authority, finding aids for specific problems, and differences among competing sources and tools. As more students enter law schools with computer experience, they will need informed instruction on the advantages and drawbacks of computer-assisted research and on the differences among systems. As proliferation of sources and tools makes the legal research process increasingly more complex, the need for students to be trained in the relative value of alternative problem-solving approaches will increase. There is no reason to believe that either legal writing specialists or teachers of substantive law have expertise in these areas comparable to that of the law librarian or that they are prepared to give research instruction the emphasis that it needs in a complex information environment.8

Properly designed, the separate, librarian-taught research course also provides some assurance that law students, in their first year at least, are exposed to the variety of sources of legal authority. With the law schools’ traditional lack of interest in statutory issues and analysis in the first year and beyond,9 we cannot assume that most legal writing programs will include research and writing problems calling for students to use statutory or administrative law materials.

The artificial nature of library research assignments in the separately taught course is a difficult problem. After they realize that the “treasure hunt” assignments are not graded and that they will not be asked to apply the sources they find to the resolution of an actual problem, how can students be kept interested in the assignments and the course? The assignments and the lectures can more effectively keep student interest if their approach emphasizes the process of legal research as well as the relationships between law-making bodies and the legal authority being sought in the books.10 Incoming law students may have a surprisingly low threshold of knowledge about institutions of government and their authority to make law. Classroom presentations that discuss how law is made and promulgated, and the current and historical relationships between those processes and legal research will maintain greater student interest in both lectures and assignments than presentations emphasizing bibliographic detail. In schools that do not offer a first-year legal methods or process course, the legal research course may be the only place in the curriculum where these topics are covered formally.

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8. Whether the librarian can provide useful instruction in the initial, but essential, steps of identifying significant facts and issues to be researched may depend on the librarian’s own experiences as a researcher, but it is not clear how relevant such training is in the first-year writing program. See C. Wren & J. Wren, THE LEGAL RESEARCH MANUAL: A GAME PLAN FOR LEGAL RESEARCH AND ANALYSIS 29 (2d ed. 1986).


10. See C. Wren & J. Wren, supra note 8, at 1-19.
One way to promote more realism in "treasure hunt" assignments is to develop them around a factual situation that poses enough analytical challenge to interest the students and is complex enough to require comprehensive research and the use of a variety of sources. Carried out over several weeks of classroom sessions and assignments, this approach can inject life into a set of canned exercises and enables the students to develop awareness of the interrelationships, not only among the sources of authority, but among the bodies that issue the law. Even if the research does not lead to a memorandum or other final written product, the theme approach does provide a measure of continuity to the period of research instruction and does provide an overall problem to be resolved, rather than a series of unrelated drill exercises. The experienced librarian instructor also will find ways to tie the research assignments into what is being covered in one of the first-year substantive courses, or to complement what will be covered in later writing assignments.

Perhaps most important to the development of an effective and successful first-year legal research instruction program is institutional acknowledgment of the librarian's importance as a teacher and contributor to the law school's educational mission. In view of the difficulties faced in gaining such recognition by legal writing instructors and clinicians, obtaining law school acknowledgment of the importance of legal research will not come easily. It will not come at all without librarians believing that that legal research instruction is important enough to be included within the law school curriculum and that the process of legal research is itself a fit subject of study and research. Perhaps academic law librarians have done too little to convince law faculties that the legal research process itself should be recognized as an appropriate area of interest and specialization for academic lawyers and law librarians. The advent of full-text legal data bases has led to a number of creative studies of what is cited in legal opinions, but further studies of how judges and lawyers actually conduct their research are needed now as much as when Morris Cohen called for them in 1969. Scholarly examination of these questions not only will add to our understanding of the research processes of practicing and academic lawyers, but also will provide insight to improve our teaching of legal research in the law schools.

In other academic and research libraries, the growing complexity and expense of new information technologies are working to cause a fundamental change in library services and a new recognition of the librarian's role as an instructor of research techniques. Library instructional programs, which

11. See, e.g., Mann, The Use of Legal Periodicals by Courts and Journals, 26 JURIMETRICS J. 400 (1986); Daniels, "Far Beyond the Law Reports": Secondary Source Citations in United States Supreme Court Opinions October Terms 1900, 1940, and 1978, 76 LAW LIBR. J. 1 (1983); Carro & Brann, Use of Legislative Histories by the United States Supreme Court: A Statistical Analysis, 9 J. LEGIS. 282 (1982).
Once were seen as supplementary to reference services, now are taking on a more central role. The librarian's teaching role, whether recognized or not, always has been vital in legal education, where professional training requires not only that students learn where the reference desk is located, but that they know how to conduct research on their own, both while in law school and once in practice.

Of course, the law schools and law librarians are subject to criticism over how well that mission is fulfilled. An appropriate answer to criticism that summer associates and recent graduates come out of the law schools ill-equipped to do legal research, however, is to provide them better training from persons skilled in legal research, rather than training of a more "anecdotal" sort from persons for whom legal research technique is at best a secondary interest. The developing trend toward more research courses in the second and third year is a welcome one, both because it demonstrates that legal research is a subject of interest and importance to the law school curriculum, and because it will show that legal research is itself an appropriate study for further research and study. Development in that direction, however, should not be at the expense of the law librarian's continued involvement in the first-year curriculum, where a grounding for effective legal research skills can be established for each student.

Richard A. Danner

15. Shapo, supra note 1, at 725.
16. See generally Rauffman, supra note 3.