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Development and Shortcomings of First Year Legal Skills Courses: Progress at Osgoode Hall

P. J. Brenner

K. A. Lahey

DEVELOPMENT AND SHORTCOMINGS OF FIRST YEAR LEGAL SKILLS COURSES: PROGRESS AT OSGOODE HALL

By P. J. BRENNER and K. A. LAHEY*

A. INTRODUCTION

The literature and data on legal education over the last quarter of a century clearly point to a tension between the major objectives of the law school curriculum: doctrine, perspectives, processes and skills. This tension is exaggerated when viewed in the context of the first year curriculum; whereas all four objectives may be realized over a span of three years, any failure to rank and relate these objectives in the framework of a single academic year — the first year — may result in a serious distortion of the programme and interfere with the calculated and efficient achievement of the most important objectives for that year.

For the purpose of this paper, the terms 'doctrine', 'perspectives', 'processes' and 'skills' will be given definitions which may vary from their common usage. 'Doctrine' refers to substantive rules of statute and case law, and includes the law of civil and criminal procedure. 'Perspectives' means traditionally classified nonlegal information which has or can have some input into decision-making, be it on a judicial, administrative, legislative or executive level. 'Perspective course' is distinct from 'perspectives', and relates solely to "Law and _____" courses of an interdisciplinary nature. 'Processes' is a shorthand term for methods of instruction which communicate information on how lawyers actually perform their activities in practice, whereas 'skills' encompasses basic legal techniques ranging from reading a case to giving an oral argument in an academic setting, not in a clinical context.

This paper is concerned with analyzing these four competing objectives in the first year law curriculum in order to develop a job description for teachers of first year courses and thereby permit the identification of priorities in the curriculum. Since there is little correlation between the ideal and the real, however, we shall proceed to a detailed consideration of the failure to give a crucial objective — skills — the treatment necessary for a full realization of the minimum objectives of the first year law curriculum.

In addition, we shall analyze the experiences of one particular school, Osgoode Hall Law School, now of York University, through the high power lens of hindsight in order to make suggestions for the improvement of existing and projected elements of its first year curriculum.

P. J. Brenner and K. A. Lahey are Assistant Professors of Law at the University of Windsor Faculty of Law; they were Sessional Lecturers at Osgoode Hall Law School of York University for the 1974-75 and 1975-76 academic years.

B. MINIMUM OBJECTIVES OF THE FIRST YEAR CURRICULUM

Our concern is primarily with the *minimum* requirements of the first year curriculum; *i.e.*, those objectives which represent the lowest common denominator for any law school, regardless of its perception of its own role. We do not intend to enter the heated controversy over the goals of legal education,[1] although we recognize that according to a given law school's views on that matter, the content, methodology and techniques utilized in the first year may vary.

However, whether a law school intends to choose Pericles or the Plumber or any combination thereof as the prototype graduate, there is a minimum objective of the first year curriculum which every law school must strive to meet: to develop in its students by the end of the first year the ability to learn the law. The first year curriculum is the only year in which there is sufficient uniformity in course work to promote the attainment of this goal, and it is a goal which must be met, if not by the end of the first year, then at least by graduation. For no one graduates from law school "knowing the law"; no matter in what form a graduate employs his legal education, his special ability is the ability to learn the law as it changes, grows or suddenly becomes applicable to a problem.

This ability to learn the law has been previously characterized as "learning to think like a lawyer" or "legal reasoning", but further analysis reveals that these general phrases can be broken down into discreet components and expressed in the form of objectives for the first year curriculum.[2] Broadly speaking, a student entering the second year of law school should have knowledge of a certain body of doctrine as well as a grasp of a particular body of manipulative skills and an understanding of the processes in which a lawyer participates.

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[1] See, *e.g.*, Bergin, *The Law Teacher: A Man Divided Against Himself* (1968), 54 U. Va. L. Rev. 637; Bowden, *Is Legal Education Deserting the Bar?* (1970), 3 John Marshall J. Prac. & Proc. 179; Carrington, "Training for the Public Profession of the Law", in Association of American Law Schools, *Proceedings of the 1971 Annual Meeting* (Washington: A.A.L.S., 1971) at 15-18; Frank, *A Plea for Lawyer Schools* (1947), 56 Yale L. J. 1303; Kelso, *Curricular Reform for Law School: Needs of the Future* (1968), 20 J. Legal Ed. 407; Kennedy, *How the Law School Fails: A Polemic* (1970), 1 Law & Soc. Order 71; Laswell and McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest* (1943), 52 Yale L. J. 203; Prosser, *The Decline and Fall of the Institut* (1966), 19 J. Legal Ed. 41; Twining, *Pericles and the Plumber* (1967), 83 L. Q. Rev. 396.

[2] The following tabulation was prompted in part by each of these sources: Fuller, *What the Law Schools Can Contribute to the Making of Lawyers* (1948), 1 J. Legal Ed. 189; Grills, *The Objectives of a School of Law* (1953), 6 J. Legal Ed. 30; Gross, *On Law School Training in Analytic Skills* (1973), 25 J. Legal Ed. 261; Hogg *et al.*, *Report of the Long Range Academic Policy Committee of Osgoode Hall Law School of York University* (Toronto: Osgoode Hall, 1974); Kelso, *supra*, note 1; Llewellyn, *The Current Crisis in Legal Education* (1948), 1 J. Legal Ed. 211; Llewellyn *et al.*, *The Place of Skills in Legal Education* (1945), 45 Colum. L. Rev. 345; Peden, *Goals for Legal Education* (1972), 24 J. Legal Ed. 379; Prosser, *The Ten Year Curriculum* (1953), 6 J. Legal Ed. 156; Rutter, *Designing and Teaching the First-Degree Law Curriculum* (1968), 37 U. Cin. L. Rev. 7.

1. *Acquisition of Knowledge*

Knowledge of the framework of the legal system as it operates in North America must be acquired in first year. Canadian law students require a specialized knowledge of the framework of Canadian institutions, whereas students in the United States similarly require such knowledge with respect to the American framework. The framework consists of the nature, purpose, function and structure of courts, their role in dispute resolution through the imposition of public means for reconciling private and public interests, together with an appreciation of the differentiated functions of the judge and the jury. The first year programme must also ensure that students are aware of the development, purposes and functions of the common law, the specialized functions of the trial process, the hierarchy of the appellate courts, and the doctrine of *stare decisis.*

An understanding of the nature, purposes and functions of the legislature is also highly desirable. We are not proposing that students should be intimately familiar with the vast body of constitutional law, but rather that in first year, students be introduced to the role of the legislature and the relationship between the legislature and the judiciary in establishing rules of law. Law schools frequently overlook the need for information on the role of administrative boards and agencies in the legal adjudicative process. We would suggest that no first year curriculum be considered complete without some emphasis on the current functions that those bodies perform, and their often ignored impact on the daily lives of most members of society. Finally, the role of the lawyer and the legal profession requires a modicum of attention in the first year of legal study, since first year students should become familiar with the various functions that they will be performing once they graduate.

We now turn to the second aspect of acquired knowledge — that of substantive law. Legal educators accept the notion of a 'building-block' approach to legal education, and as a result the first year is devoted to 'basic' courses. Subject to minor variations, torts, contracts, real and personal property, constitutional law, civil procedure and criminal law are usually included within the ambit of 'basic' courses since they require little previous substantive legal knowledge, although there is some argument for the proposition that even these basic courses should themselves be based on an introductory course in legal history.

One extremely important aspect of substantive law courses which is endangered by the tension between overriding objectives in first year is the perspective element. There is little doubt that decision-making in the legal process is influenced by considerations which are often left inarticulated. Since this nonlegal information has or potentially has some impact on the decision-making process,[3] it is an integral part of every substantive law course in all years including the first year. The material is also important insofar as traditional first year courses often engender apathy, with students

[3] See, generally, Laswell and McDougall, *supra,* note 1.

"channelled into a narrow legalistic perspective"[4] by ubiquitous appellate decisions.

2. *Acquisition of Skills*

The second important pedagogic value to be achieved in the first year of law school may be referred to as the skills element. We have been concerned to demonstrate the necessity for communication of substantive law, both in terms of legal institutions and in relation to bodies of doctrine, but the means of conveying that information is of crucial importance.

Knowledge of law and of the legal framework has to be acquired through a process of teaching, but that very process can be utilized to further the development of legal skills and techniques. 'Analytic skill' therefore becomes an end in itself, and deserves separate attention and elaboration when the objectives of the first year curriculum are being articulated. One cannot assume that simply because legal doctrine is imparted, legal reasoning and its associated skills have been mastered.[5]

What do we mean by the term 'analytic skills'?

North American law schools still rely heavily on the case method of teaching law. Although the exclusive use of the case method has been trenchantly criticised over the years, the case method of teaching remains a central method of instruction in substantive law courses. Casebooks consisting exclusively of extracts from appellate decisions have been replaced by 'cases and materials' books which include significant quantities of nonlegal materials. Thus the scope of the materials covered in the modern casebook has been continuously enlarged.

However, the selected materials must still be taught and learned, and the teaching technique does not necessarily follow from the form or content of the materials used in any particular course. No matter which teaching technique is used, be it socratic or lecture, problem solving or uninterrupted class recitation, students must be able to perform highly sophisticated tasks, the successful completion of which is premised upon an ability to analyze and synthesize decided cases. We are not suggesting that the judicial process can be viewed solely from the viewpoint of case analysis; we are merely pointing out that this analysis is at least necessary to an understanding and appreciation of the development and current state of substantive legal doctrine.

'Analytic skill' can therefore be identified as a composite of the following factors. The first is an awareness of the primacy of fact-finding in litigation. The formulation and expression of rules of law by courts depends on the resolution of conflicting interests within society which arise whenever claims are litigated. Facts must be established by parties seeking relief, and a

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[4] Irvine, *A Proposed Model for the First Year of the LL.B.* (Toronto: Osgoode Hall, 1973) at 18.

[5] See Llewellyn *et al., supra*, note 2 for clear argument to the effect that an effort must be made to impart skills in addition to doctrine.

court can only operate upon and declare (or invent) rules and principles of law after the 'essential facts' are found.

The second is the concept of relevance. Not all facts are of the same importance, and students need to realize that the process of fact-finding as developed through litigation is a process with inherent deficiencies, and also that the necessity for proving certain facts depends upon a prior recognition of the need to establish the essential legal ingredients of a cause of action or defence.

The third is case analysis. Cases have to be read, examined, studied, digested and understood, and it is essential that students be able to identify and distinguish important statements in judicial opinions from less important ones. The concepts of *ratio decidendi* and *obiter dictum* need to be understood and utilized so that cases can be evaluated and used as authority for particular propositions of law. The development of legal rules can be and should be gained from the systematic synthesis and integration of judicial opinions, and the consequent application of those principles and rules to novel and varying fact situations also requires considerable attention.

The fourth factor is approaches to judicial reasoning. The identification and role of policy in judicial decision-making as an explanation for the manipulation of precedent, together with a study of the relationship between the jurisprudential orientation of those decision-makers and the process of decision-making itself is also mandatory in the first year programme.

The fifth is statutory construction. Given the paramountcy of the legislature in law-making and law reform, there is a clear need for the development of skills and techniques in statutory construction in the first year of law school. An understanding of the various approaches to and canons of statutory construction together with their application to problems serves as the statutory counterpart to the techniques of case analysis, and care should be taken to spell out the relationship between the various approaches to statutory construction and the ordinary rules of English grammar and expression.

In addition to analytic skills, the first year curriculum must provide for the development of legal research skills, communication skills and study skills.

Legal research skills are essential to preparation for the practice of law and for that reason have been traditionally offered in the first year program. But legal research is an essential skill for other compelling reasons. Since law schools now carry elective courses which require highly developed research skills in order to write research papers and assignments, the first year is naturally seen as the proper time for development of those skills. And depending upon the nature and scope of the materials used in first year courses, an early acquisition of research techniques enables the student to supplement readings in those courses and to successfully complete research and writing projects required in addition or as an alternative to formal examinations.[6]

[6] This last reason is now of crucial importance at Osgoode Hall Law School of York University, where the Long Range Academic Policy Committee has made recommendations for evaluation of first year students which could have them writing as many as two papers in first semester, in addition to the usual complement of papers in the basic legal techniques course.

Research skills vary in their degree of difficulty. Commencing with the proper use and understanding of citation forms, through a knowledge of the organization of primary sources of reference and an understanding and appreciation of the function and use of secondary sources such as legal digests and encyclopaedias, research skills must be used frequently for effective development.

Communication skills must also be developed as early as possible in the law school. First year students should be able to communicate ideas in an analytic and persuasive form, both in writing and in oral presentation. Consequently, attention should be paid to the development of writing skills in connection with the production of opinion letters, judicial opinions or judgments, inter-office memoranda, briefs or factums and case notes or comments. Verbal communicative skills are enhanced by exercises in formal and informal modes of negotiation and arbitration, interviewing of clients and appellate advocacy, although the former are not usually found within the confines of the first year curriculum.

The last skill which should be developed in the first year of law school may be termed 'study skills'. Study skills include the ability to write useful case briefs, to compile review notes and outlines in preparation for examinations, and to write well-organized and responsive examinations.

3. *Understanding of Problem-Solving Processes*

An early understanding of the problem-solving processes in which a lawyer participates[7] is the third essential class of objectives of the first year curriculum. Stated simply, these processes are twofold: (1) problem-solving through the process of planning, negotiating and drafting legislation and legal documents such as leases and wills, and (2) problem-solving through the process of adjudication before a court or administrative tribunal.

These particular objectives overlap to a great extent with acquisition of knowledge and skills, but are reorganized here in the context of the actual processes of problem-solving in order to emphasize that a student who has mastered mere legal doctrine and manipulative skills without drawing the relationship between doctrine and skills on the one hand, and the uses to which doctrine and skills are put on the other hand, is ill-prepared to benefit from subsequent legal education. With well-planned instruction, these two process-related objectives can be achieved in a short period of time, for we advocate understanding, not mastery, by the end of first year.

C. THE SKILLS GAP

The first year programme usually consists of courses in torts, contracts, property, procedure, criminal law and constitutional law. Sometimes a legal writing course is added, usually without a moot court or appellate advocacy component. In many instances, however, the legal writing course is little more than an attempt to impart a skeletal outline of the library research tools —

[7] See Fuller, *supra*, note 2.

a legal bibliography course. Rather than examine legal writing courses at this stage, we shall scrutinize the usual courses offered in first year in order to determine just what they actually achieve.

Ideally, the use of the case method is justified by its direct relationship to:

> . . . the essential nature of the materials which lawyers must make use of in the performance of practical professional tasks. The basic assumption of the case-method is . . . that the case-method requires the law student to use legal sources in a manner which resembles as closely as possible the use which lawyers make of the same sources in courts and law offices.[8]

Now there are many varieties of teaching by the case method,[9] so that when one speaks of the case method, one is not referring to a style of instruction, but rather to the type of materials used.[10]

Since the case method in all its varieties is currently used in law schools, proficiency in case analysis and synthesis on the part of law students would be assumed to have developed sufficiently and adequately. Yet it was the contention of the 1944 Committee on Curriculum of the Association of American Law Schools that that had not been the case at all:

> [T]he best students have absorbed the benefits indirectly communicated by case-instruction and are ready to go after other and further training, while the less successful, still baffled by the method, are becoming discouraged; only a minority somewhere in the middle is "taking hold" and finding satisfaction.[11]

These comments apply particularly to the case method in first year classes which have larger number of students than many elective upper year courses and seminars.

Traditional teaching objectives and the effectiveness of the teaching methods have altered perceptively over the years. Whereas it could once be said that "[A]ll first-semester courses are really courses in legal reasoning and method, rather than in the substantive doctrines of Torts, Contracts, and Procedure",[12] the same cannot be said now. In fact, the Committee on Curriculum of the American Association of Law Schools doubted whether it could be said in 1944.[13] The virtue attributed to the older and earlier methods of case instruction took the form of:

> . . . simplicity of the thread of teaching, along with which went originally a training in a very few by-products skills at a time, which was a sufficiently *sustained* training to get such skills really *mastered* by all who passed the course.[14]

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[8] Jones, *Notes on the Teaching of Legal Method* (1948), 1 J. Legal Ed. 13 at 18.

[9] Llewellyn *et al., supra,* note 2 at 350.

[10] At one extreme . . . is the pure lecture, which uses the cases in the books merely as illustrations; at the other is the rare but occasional 'teaching of the whole course out of one case' by a majestic and systematic series of hypotheticals. In between is any instructor's individual variant, reached by trial and error, conscious experiment, accident, or temperament, on the basis of the net impact on him of the fourteen varieties of case-method he met while a student and of all the case-books he has made or used. *Id.*

[11] Reported as Llewellyn *et al., supra,* note 2 at 351.

[12] *Supra,* note 8 at 14.

[13] Llewellyn *et al., supra,* note 2 at 353-56.

[14] *Id.* at 353.

One look at the performance of the typical first year class should verify that the teaching methods and the course materials used are no longer capable of producing the sustained training of the nature that Llewellyn had in mind for *all* students.

An important reason for this failing is that the development of the crucial skills associated with case analysis is "left to the discretion of each instructor",[15] which can result in anything from the total duplication of efforts to a complete neglect of the skill by all. First year substantive law courses have also become inefficient in developing the skills of case analysis and synthesis, using cases persuasively, and associated skills, because of the compression of former full year courses into one semester, combined with the concurrent expansion of the content of each of these courses.

Thus teachers must now be more concerned with coverage than with technique and process. Many instructors commence the semester with the intention of proceeding at a leisurely pace through each and every case, or at least, of so proceeding with principal cases; but after the first few weeks, they realize that the course will not be covered unless the process of coverage is accelerated. Then intensive analysis and synthesis are left behind. The socratic method is abandoned and the pure lecture is resorted to in a stampede of content, content, content.

Now it is necessary to cover a little more each year in every substantive law course in order to ensure that students will possess contemporary knowledge of each particular subject. But that is no justification for failing to achieve — or for failing to *attempt* to achieve — one of the most critical objectives of the first year curriculum: skill in reading and using cases as a lawyer reads and uses them. The solution, we suggest, is to provide for a separate skills course which will assist substantially in the development of these and other basic techniques. Such a course would save much time in the first and subsequent years of law school training by freeing other courses from their purported tasks of conveying instruction in those skills.[16]

The objectives associated with the techniques of case analysis are not the only ones which are not met by the current and traditional first year curriculum. Typical of the 'sink or swim' attitude toward first year studies are the attitudes toward basic information relating to the organization of the legal system as a whole. Students are expected to know about the court hierarchy, functions of judge and jury, purpose of legislature, *etc.*, without the benefit of formal instruction or readings set aside to deal with these basic elements. Some courses, such as civil procedure or constitutional law, are capable of being utilized as a forum for instruction and discussion of these matters, but because of other overriding objectives in those courses, basic information is frequently neglected or omitted completely.

Statutory interpretation and a knowledge of how statutes come into force is yet another topic which is usually given insufficient attention by the traditional substantive first year curriculum. Most of these subjects reflect a preoccupation with appellate decisions, frequently at the expense of statu-

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[15] Kepner, *The Rutgers Legal Method System* (1952), 5 J. Legal Ed. 99.

[16] *Supra*, note 8.

tory enactments and instruction in how to read them. The solution is to include these topics in a skills course, thereby permitting intensive instruction and teaching in at least one course where these and other important topics can be given the attention they deserve.

Most law schools provide some instruction in the modes of writing and communication required of a lawyer in his professional role upon graduation in specialized courses dealing with forms of legal communication. Because legal writing is no less than the "principal medium for the expression of, and hence for practice in legal analysis",[17] we suggest that the course to be devoted to the skills of legal analysis also serve as the forum for the development of legal writing and research skills. Of course this should not detract from the pedagogic benefits to be gained should instructors in other first year courses institute opportunities for continuous assessment. Rather, it should operate to alleviate the disadvantages inherent in 100 per cent final examinations.

Finally, we come to deal with the issue of 'perspective' in delineating skills or knowledge not adequately covered by the traditional first year curriculum. It is no easy task to define 'perspective', but it is generally understood to include the notion of instruction beyond the acquisition of a narrow, technical approach to legal materials. In order to achieve the objective of providing such materials, it has often been suggested that a 'perspective course' be established to deal with these matters.[18] These courses usually include readings in jurisprudence and sociology for the purpose of demonstrating the relationship between the workings of the legal system and the historical, political and socio-economic forces which establish and develop the basic institutions of society. Topics often include "Law and Morality", "Law and Economics" and are designed to produce an awareness that the law does not simply consist of a body of technical rules which have developed without reference to any other forces whatsoever.

There is a clear difficulty in incorporating 'perspective courses' as distinguished from 'perspectives' into the first year curriculum. Even by utilizing the case method, any good instructor cannot avoid dealing with these wider matters, at least as they influence the development of particular doctrines of substantive law. The materials used today — the modern casebook — no longer consist exclusively of decided cases, but include reports from various legislative or law reform committees, readings from nonlegal materials and commentary by the author. Even when the casebook used is devoted solely to a consideration of judicial opinion, effective teaching of legal rules cannot be undertaken without reference to nonlegal materials and sources. Competing policies must be discussed as the basis for implementation of legal rules and their subsequent development and alteration.

We suggest that this need for 'perspective' is, in reality, a complaint that substantive courses are focusing on content and coverage at the expense of technique and at the expense of an understanding of the nonlegal elements

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[17] Gross, *supra*, note 2 at 266.

[18] See, *e.g.*, Llewellyn *et al.*, *supra*, note at 390.

in the decision-making process. Whereas it can at least be argued that a knowledge of legal rules can be acquired without the emphasis we have placed on the necessity for teaching legal reasoning in the technical sense, we do not accept that the same can be said for 'perspective'. The latter is properly part and parcel of the learning process, and as such, must be included in the objectives and materials for any substantive course in the tradional first year curriculum.

D. FILLING THE SKILLS GAP: AN EMBARRASSMENT OF POSSIBILITIES

Various types of basic legal techniques courses have appeared in North American law schools over the last twenty-five years. Our analysis measured those courses against the objectives which they should meet, as well as attempting to isolate those factors which affect their formulation, design and success or failure.

The major variations on the theme of the basic skills course have already been mentioned in passing: legal bibliography, legal research and writing, legal method and legal process. Ignoring for the time being the confusing fact that a course billed as Legal Method is often nothing more than a legal bibliography course, and also ignoring the more troublesome fact that even though each of these courses has different objectives, any one of them may be found in a traditional first year curriculum of contracts, torts, criminal law, civil procedure and constitutional law, we shall first turn to a description of what each of these courses does, when properly named.

1. *Legal Bibliography*

Legal bibliography is the progenitor of all basic legal techniques courses, and according to the barometer of curriculum committee popularity, a course which will always be with us.[19] In pure form, legal bibliography has but one objective: to impart to students a knowledge of the function and use of legal research materials.[20] This objective is frequently achieved by means of extraordinarily clever devices.

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[19] Legal Bibliography is a component of all legal research and writing courses, whether it be taught directly or indirectly, and fully 94% of the AALS or ABA approved law schools in the United States have a legal research and writing programme for first year law students. Huffman, *Is the Law Graduate Prepared to do Research?* (1974), 26 J. Legal Ed. 520 at 523.

In Canada, 92% of the 13 law schools teach legal research and writing in some form in first year, but since the legal research and writing component at the University of Alberta Faculty of Law exists only by virtue of a mandatory moot in second term, the percentage of Canadian law schools teaching legal bibliography — either directly or indirectly — is actually 85%.

[20] An illustration of a pure legal bibliography course is taken from the 1973-75 Bulletin of the University of Wisconsin Law School at 15:

> Course acquaints beginning law students with law books and their use; covers local as well as national legal literature; court reports, statutes, codes, digests, citators, loose-leaf services, etc.; one illustrated lecture a week; students are required to use the law library and do a weekly objective exercise comparable to problems lawyers face finding the law.

For example, any one of a number of qualified individuals — the reference librarian, a professor, teaching fellow, law review editor or third year student — rolls a trolley of reference books into the lecture hall. He then holds up a volume from each important set of books and gives a lecture on its function, index, headings, weaknesses and strengths. The students take copious notes on each set so described, and then use those notes in finding their way around the library.[21]

On occasion, a legal bibliography teacher will use an examination — short answer or essay, it does not seem to matter[22] — to further motivate students to internalize the material disseminated in the lecture.

Other ingenious devices for teaching law students how to use the law library include reading assignments in research manuals, guest lectures, library tours, videotapes, slides, charts, mimeographed treasure hunts, tape recordings and programmed learning materials. All of these devices can be effectively combined with a written examination for maximum learning efficiency.

The quality of the standard legal bibliography course which sets it apart from the other types of basic legal techniques courses is the fact that it is a course designed to achieve one objective: familiarization with the organization and function of legal research tools by means of direct instruction. As a course which occupies up to an entire semester of a student's time, legal bibliography is inherently nonproductive; much more than the mere training in the use of law books can be achieved through a more ambitious allocation of efforts and objectives in the course of even one semester.

The course is viewed as nonproductive for an even more compelling reason: legal bibliography is usually taught in too great detail and is usually not put to use soon enough to be of value to the student in legal research and writing exercises. For where legal bibliography is taught for more than two weeks, the course usually degenerates into a series of treasure hunts in the library which give the student a false sense of security as well as a superficial, inflexible knowledge which makes legal problem-solving through effective legal research less likely than if there had been no course in legal bibliography at all.[23]

Nonetheless, several arguments in favour of direct instruction in legal bibliography are put forward by legal educators: the more thoroughly a

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[21] See generally, M. Rombauer, *First-Year Legal Research and Writing: Then and Now* (1973), 25 J. Legal Ed. 538 at 543-45.

[22] But see Blaustein, *On Examinations in Legal Bibliography* (1971), 23 J. Legal Ed. 452 for an argument in favour of essay examinations in legal bibliography, as well as for illustrative short-answer questions guaranteed to frustrate and insult first year students.

[23] Accord, see Kalven, *Law School Training in Research and Exposition: The University of Chicago Program* (1948), 1 J. Legal Ed. 107 at 114; Peairs, *Legal Bibliography: A Dual Problem* (1949), 2 J. Legal Ed. 61; Marple, *The Basic Legal Techniques Course at Catholic University School of Law: First-Year Lawyering Skills* (1974), 26 J. Legal Ed. 556 at 559, 565; *contra*, see Roalfe, *Some Observations on Teaching Legal Bibliography and the Use of Law Books* (1949), 1 J. Legal Ed. 361.

student is made familiar with the mechanical use of legal research materials, the more effective his legal research will be; legal research materials are too complex and too varied for effective student use without some prior knowledge;[24] early instruction in legal bibliography saves the library staff the necessity of answering time-consuming questions relating to the location and use of research tools;[25] bibliographical instruction tends to give students confidence in their initial traumatic research efforts; the confidence students have as a result of bibliographical instruction tends to make them happier.[26]

The arguments of those who are opposed to formal and direct instruction in legal bibliography run along equally obvious lines: instruction in legal bibliography is ineffective because the lectures, slides, tours, manuals, *etc.*, are meaningless outside the context of an actual legal problem;[27] information on legal bibliography goes "in one ear and out the other";[28] if the information is not retained, then it cannot render subsequent original research more effective;[29] instruction in legal bibliography tends to give students a false sense of confidence in their ability to do original research; this false sense of confidence actually renders students less flexible and therefore less effective when they *do* undertake original research;[30] offering a course just because it makes students happy is pedagogically unsound.[31] Therefore any instruction which is not retained is ineffective, giving students a false sense of confidence, and rendering them less flexible. In the long run, merely making them happier is a waste of valuable resources in a law school.

Our position with respect to instruction in legal bibliography is that meaningful instruction in the use of research tools is possible only in the context of original research, albeit of limited scope, and that such instruction will be reasonably indirect because it takes place in the context of original research.

Most, if not all, techniques of introducing law students to the law library

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[24] Roalfe and Higman, *Legal Writing and Research at Northwestern University* (1956), 9 J. Legal Ed. 81 at 83; Moreland, *Legal Bibliography: A Factual Problem* (1950), 2 J. Legal Ed. 489 at 491.

[25] Shestack, *Legal Research and Writing: The Northwestern University Program* (1950), 3 J. Legal Ed. 126 at 127.

[26] Peairs, *supra*, note 23 at 62.

[27] *E.g.*, Marple, *supra*, note 23 at 559, 565.

[28] Roalfe, *supra*, note 23 at 366.

[29] Peairs, *supra*, note 23 at 65.

[30] Hawkland, *Report on an Experiment in Teaching Legal Bibliography* (1956), 8 J. Legal Ed. 511 at 511-12.

[31] Peairs, *supra*, note 23 at 62:

> Whatever the reason for the eccentric student attitude toward law book lectures, it would seem that the subject is with us to stay, if for no better reason than that the students like it and think it is good for them. (This holds at least so long as faculties modify their own judgments of the ultimate value of the rocky uphill roads of the Spartan education, or subordinate them to conform to the results of polls of those who, having no knowledge of what they criticize, must therefore touch upon it with a superior intuition.)

have no impact on the student; in some cases they have a negative impact. There is an unfortunate tendency among those who formulate treasure hunts, library tours, lectures on lawbooks and films on research procedures to cover far more material in too much detail than the needs of the students dictate. More often than not, this deluge of information causes the law students' attitude toward legal research to shift abruptly from an honest desire to master the tools to an urgency to learn everything at once in order to stifle the *fear* generated by these techniques.

The biggest tragedy which arises out of legal bibliography *in vacuo* is the resulting drive for *certainty* which will haunt these students throughout law school. Since one round of instruction did not help them scratch the surface of legal research, they cling to demands for more tours, more lectures, discussions, handholding and a foolproof procedure for research. And the teacher who initiated this chain of responses will lose credibility when he replies that effective legal research requires flexibility and initiative, and that effective legal research cannot be mastered in a semester or a year, or even in three years of law school, but rather that a practitioner is constantly learning more short cuts and new uses of various tools.

This is not to say that legal bibliography cannot be taught effectively by other means. The gripping fear and uncertainty can be circumvented and the same objectives reached by means of indirect instruction. For example, asking students to write a short memorandum on a hypothetical fact situation using two legal encyclopaedias as sources for a case in point, creates an excellent opportunity for students to locate, use and evaluate legal encyclopaedias as a means of finding a 'good case'. Having them use two sources starts students on the all-important process of constantly comparing the usefulness, strengths and weaknesses of competing sources.

The most important by-product of a series of limited research and writing exercises is that the student is not overwhelmed by the entire system and then told to proceed on a step-by-step basis. Rather, he accumulates expertise in a meaningful context until each major source has been used effectively. At that point the student can draw the interrelationships that the films, lectures, tours, and manuals rushed to describe without suffering needless confusion, fear, uncertainty and competition.

2. *Legal Research and Writing*

Legal research and writing courses are frequently chosen to fill the skills gap because of their inherent flexibility. Usually, legal research and writing offers the following components: direct or indirect instruction on the use of the library; an exercise in case briefing; one or more opportunities to research an issue of law and communicate the conclusions in a memorandum of law or a case note; and written or oral criticism of student research, analysis and expression by the grader.

Legal research and writing courses are frequently taught in the first semester, although they are also commonly full year courses. In schools where moot court is a mandatory first year activity for credit, the second

semester of legal research and writing is given over to the research and preparation of a brief or factum and oral argument.[32]

The tremendous flexibility of legal research and writing courses arises out of the fact that they can be taught by regular faculty, teaching fellows, graduate assistants, third year students, or any combination thereof.[33] The number of students per instructor can range up to 300, if necessity dictates, and the course may be given for no credit, or for one, two, three or four hours of credit.[34] If juggling the teaching personnel, number of students per instructor and number of hours of credit for the course fails to bring the course into harmony with the rest of the first year curriculum, then the number and type of assignments can be varied to make the course fit the needs or resources of the law school.

Although there have been courses in existence in various law schools which require only one major research and writing exercise such as a research memorandum, case note or appellate brief,[35] the trend in the last two decades has been to require a number of writing and research exercises along the following lines: case brief, common law research memorandum, statute law research memorandum, judicial opinion, memorandum in support of an interlocutory motion, research and drafting of a legal document or statutory provision, case note or comment, and appellate brief.[36] Of course, only in the programme which carry the most credit are all or most of these writing forms used. The usual complement of assignments is from three to five problems. There is also a trend to limit the number of writing exercises and insist on complete correction and revision of all or some of the assignments until they are 'perfect'.[37]

The teaching technique utilized in legal research and writing courses are of interest because it is one way in which a law school can control the

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[32] See, generally, Rombauer, *supra,* note 21 at 543-45.

[33] *Id.* at 547.

[34] *Id.* at 550.

[35] *E.g.*, the first year research and writing programme at the University of Alberta Faculty of Law consists of a moot in second term, comprised of an appellate factum and an oral argument. If a law school does have such a limited research and writing programme in first year, it usually takes the form of a moot. *Cf.* the Ames Competition at Harvard University School of Law, which is coupled with a noncredit introductory course in which some additional writing is assigned.

[36] Iacobucci, *Legal Research and Writing: A Proposed Program* (1969), 19 U. of T. L. J. 401 at 403.

[37] This emphasis on having students revise their work originated in the 1944 report by the Committee on Curriculum of the AALS, published as Llewellyn *et al., supra,* note 2 at 373-74. See, also, Kalven, *supra,* note 2 at 115. The increasing fervor for 'perfection' is reflected in Moreland, *supra,* note 24 at 61-62.

> There should be a two hour course in legal research and writing embracing a paper which is criticized constructively and rewritten *until it is publishable in form and content.* Constructive criticism and suggestions for revision should be made by the instructor alone, or by him and a 'class' composed of the writer's fellow students who are taking the course. The purpose of this project should be to produce student papers comparable in final form to student contributions prepared for the school's law review . . . . [emphasis in original]

cost of the course and the amount of time faculty members spend on the course. A popular pattern is to have a few large group meetings at the beginning of the year for orientation purposes, and then to hold meetings whenever new assignments are given in order to answer student questions on the procedure and form to be used. Meetings are also held in small, medium or large groups when work is returned. These meetings are devoted to general comments relating to common errors in research, form and style, and are accepted as being more effective in smaller groups.[38]

Another popular pattern for an informal legal research and writing course is to assign each faculty member a *pro rata* share of the first year class. Research problems, corrections and conferences are the responsibility of the individual faculty member,[39] although more ambitious or wealthy schools may have a faculty coordinator who draws up uniform problems and third year students who mark the problems,[40] which leaves the faculty advisors with the limited function of telling a student how to improve his treatment of a problem which the faculty advisor has neither drawn up nor corrected.[41]

There are several highly unique types of legal research and writing courses which deserve individual mention simply to demonstrate the wide range of possibilities for this course. A *caveat* is in order here, however: not all of these courses have been continued, but are mentioned only for informational purposes.

The research and writing component at Harvard University Law School is almost totally embodied in the Ames Competition, a compulsory, non-credit moot court programme conducted by upper year students in first semester. There is no formal instruction on legal bibliography except by way of a Harvard-made film which demonstrates the research process, and the students "learn by doing" an appellate brief. Due to a number of factors, the most important of which are the high quality of the film, the availability of useful research and citation manuals, and the consistent competitiveness of the first year students, the Harvard faculty thinks that the legal research and writing experience gained in this one exercise is a sufficient background for research and writing exercises in the second and third year.[42] The only Canadian law school which follows this model is the University of Alberta Faculty of Law.[43]

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[38] See, *e.g.*, Kalven, *supra*, note 23.

[39] This approach is relatively more popular in Canadian law schools. See, *e.g.*, 1974-75 Dalhousie University Faculty of Law Calendar at 7; 1973-74 University of Alberta Faculty of Law Calendar ss. 103.2, 104.2; 1974-75 University of British Columbia General Calendar at 236; 1974-75 University of Windsor Faculty of Law Calendar at 13.

[40] See, *e.g.*, 1974-75 Queen's University Faculty of Law Calendar at 10.

[41] *E.g.*, Germain, *Legal Writing and Moot Court at Almost No Cost: The Kentucky Experience* (1973), 25 J. Legal Ed. 595.

[42] 1974-75 Harvard Law School Catalog, Official Register of Harvard University at 87-88, 100.

[43] 1973-74 University of Alberta Faculty of Law Calendar ss. 103.2, 104.2.

A second model was employed at Northwestern University Law School from 1950 to 1956. The legal research and writing programme at one point involved the preparation of a number of research memoranda on issues which would be covered in substantive courses about two weeks after the memoranda had been completed. The purpose of this approach was twofold: to allow the students to research problems which were relevant to their first year courses, and to give students prior knowledge of difficult issues in order to avoid spending an undue amount of time on those issues in class.[44]

A third unique approach to teaching legal research and writing was initiated at Rutgers University School of Law in 1971-72. Termed the 'small sections' experiment, each student took one substantive course, either in the first or second semester, which was taught in a small section of twenty students. The small section work involved a substantial number of research and writing exercises set on issues arising out of the substantive course. The legal research and writing exercises — regardless of whether they took place in the first or second semester — were preceded by instruction in legal bibliography by the library staff given during the first two weeks of first year.[45] The small sections experiment was found not to be a successful method of teaching legal research and writing, and a separate first semester course in legal research was resurrected in the following years.[46] The small sections were enlarged to thirty students each and were used for teaching substantive law only.

Another experimental model illustrates an attempt to bring about a total integration of the research and writing component into a first year substantive law course. Taught by William Hawkland in 1954 at Temple University Law School, the experiment involved abolition of the commercial paper casebook and student procurement of all the materials studied in the course. Each student had to locate and brief the 321 cases assigned for the course. And in addition, each student was required to prepare the following materials relating to three assigned cases: a brief of the case; a list of all American and English cases in accord with or *contra* the main case; a statement of the facts and the holding of the court in each of the fifteen most recent cases in accord with or *contra* the main case; a statement of the principles of law for which the main case is used by editors of legal encyclopaedias; a list of all law review articles dealing with the main case; and a statement of whether or not the main case is in accord with or *contra* the Uniform Commercial Code.[47]

In addition to submitting one copy of each of the three reports for comments and marking, the student had to place three copies of each report on reserve in the library, and these reports served as the only other materials

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[44] *Supra*, note 25.

[45] 1971-72 Announcements, Rutgers University, The State University of New Jersey, School of Law at Newark at 21.

[46] 1972-73 Announcements, Rutgers University, The State University of New Jersey, School of Law at Newark at 21.

[47] *Supra*, note 30.

used in this course. And, of course, when the cases were discussed in class, the student who reported on that case was required to participate in the discussion.

This experiment in total integration of research and writing with substantive law was dropped because the students performed at a lower level on their final examination than had the students the year before, although no doubt was expressed as to the merits of setting research and writing exercises in a "total context".[48]

3. *Legal Method*

The titles Legal Method and Legal Research and Writing are frequently used interchangeably, and in fact the position has been taken that legal research and writing cannot be taught effectively without some 'legal method' component.[49]

What is 'legal method'? Insofar as it is distinct from pure research and writing, it is a consideration of those elements of the law which are essential to proper use of authorities in legal writing and oral argument: the common law case system; case analysis and synthesis; manipulation of precedent; modes of judicial reasoning; the relationship between case law and statute law; and statutory construction. Also important to the legal method component of a basic legal techniques course is an understanding of the primacy of facts in litigation, the concept of relevancy and the structure of court systems within pertinent jurisdictions.

The overriding objective of a legal method component is founded on the belief that legal research, and thus legal writing and persuasion, cannot be performed properly without an understanding of simple propositions such as: (1) a court will be bound by the holding of a case only; (2) the holding of a case can be interpreted and applied broadly or narrowly; and (3) the level and jurisdiction in which a case was decided is crucial to an assessment of its value as authority for a position taken by a lawyer or judge.[50]

Just as an attorney who prepares his case without reference to the jurisdiction in which the case will be decided is not serving his client, so a basic legal techniques course which involves legal research and writing without reference to the proper use of authority is a disservice to students.

The problem which many faculties have in determining whether to include a legal method component in the first year curriculum is the extent to

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[48] *Id.* at 513.

[49] Kalven, *supra*, note 23 at 118, 122; Cook, *Teaching Legal Writing Effectively in Separate Courses* (1949), 2 J. Legal Ed. 87; Kepner, *supra*, note 15 at 100; Matthews, *First Year Legal Writing and Legal Method in a Smaller Law School* (1955), 8 J. Legal Ed. 201 at 202, 205-06; Covington, *The Development of the Vanderbilt Legal Writing Program* (1964), 16 J. Legal Ed. 342 at 345; Rombauer, *supra*, note 21 at 540-42.

[50] *Cf.* the three levels of case analysis identified by Llewellyn *et al.*, *supra*, note 2 at 359-61.

which the skills developed through legal method instruction overlap with skills developed in substantive law courses. Thus legal method is covered by means of three major curricular devices: (1) a separate and distinct legal method course,[51] (2) integration of legal method instruction into the basic legal techniques course, regardless of its official title,[52] and (3) an assumption that legal method elements will be developed adequately as a by-product of substantive law courses.[53]

The last approach to giving instruction in legal method is the weakest in the absence of perfect coordination and communication between substantive law teachers.[54] It is absolutely true that analysis and synthesis of conceptually-related cases and statutes is essential to teaching substantive law courses such as torts, contracts, criminal law or property. And it is equally true that too much emphasis on case analysis in a given curriculum can result in a lower level of involvement and learning on the part of students. But it is also true that given the variety of teaching techniques, methodologies and objectives as between substantive law courses in a standard first year curriculum, the chances of students receiving an early and ordered grounding in the elements of law crucial to effective legal research and writing are almost nonexistent.[55]

The second approach to teaching legal method is by means of a separate first year course — mandatory or optional — "designed to introduce the

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[51] See, *e.g.*, Covington, *supra*, note 49.

[52] *Id.*

[53] See, generally, Llewellyn *et al.*, *supra*, note 2 at 345-64.

It should be noted that Llewellyn takes the view that whereas thorough grounding in all of the skills of case analysis and synthesis is best achieved by means of conscious development of those skills in substantive law courses, the fact that any substantive law course has dual objectives of communication of legal doctrine and development of analytic skills should be recognized by testing acquisition of doctrine and skills separately:

> [S]o far as any conscious instruction is devoted to the legal skills proper to flow from case-teaching, the acquisition of the skills concerned in any course should be thus tested separately, course by course, uncomplicated by and unmixed with any other testing which may be needed either in the 'content' of the course or in the student's general ability to handle 'legal problems' mixed in the usual fashion of knowledge and of general skill in analysis and organization of answer. The gains by such separate testing are two, and each is great. First, it gives much sharper information on where further drilling or sharpened method may be needed. Second, it directs the student's attention to the fact that method is as much a part of 'the course' and of his education as is 'the law'. *Supra* at 363.

Cf. Llewellyn's understanding of the development of analytic skills as a by-product of substantive law courses, with the view taken by Iacobucci, *supra*, note 36 at 419, and Roalfe and Higman, *supra*, note 24 at 90, that legal analytic skills are developed as a by-product of legal research and writing exercises.

[54] A high degree of communication and coordination among first year substantive law teachers is the premise from which Llewellyn proceeds in reaching his conclusion that analytic skills should be an important objective of every law school course. Llewellyn *et al.*, *supra*, note 2 at 362-63.

[55] *Supra*, note 8 at 14-15, 18; *supra*, note 15; Alexander, *A Research and Writing Program for Small Schools* (1962), 14 J. Legal Ed. 377 at 378; Covington, *supra*, note 49 at 342-43.

entering student to ideas that cut across course lines."[56] Of course, where the choice is limited to one between no legal method component and a separate legal method course, even if it is only optional, the latter is more advantageous to students. However, it seems to be more difficult to choose between a separate legal method course and a course in which legal method is integrated with legal research and writing, although several factors make the latter choice more logical.

A large number of well-respected law schools in Canada and the United States offer a mandatory, or occasionally an optional, legal method course.[57] These separate legal method courses tend to be taught by regular faculty members,[58] and thus the course tends to take on the attributes of a regular course in terms of class size, teaching techniques, quality and level of student participation.[59]

These courses are improperly designed. The objectives which the courses were designed to meet are not being achieved efficiently.

While a student may prepare for a substantive course superficially, incorrectly, intermittently, or not at all, and still obtain a measure of knowledge from the mere act of attending class, the same is not necessarily true of legal method, where the benefit to the student is proportional to the amount of preparation involved. Whereas a student may elect to read a treatise, law review article or even the assigned material in lieu of attending class, and still get a high mark at the end of the term in a substantive law course, these tactics are less productive in legal method, for it is not the act of reading the materials which develops the necessary skills; rather, it is participation in analytic discussion and dialogue which brings the student to a confrontation with the issues relevant to the study of legal method.

What, then, is the proper design of a legal method course?

In view of the crucial nature of the subject matter of legal method, it is imperative that the course have a status different from that of other courses. It is not a subject for which a student may 'cram' or use borrowed notes. It is a course which demands a high rate of student attendance and a high level of class participation in analysis. Thus it is a course which must be taught in groups small enough to promote individual interaction between student and teacher. Class size must be small enough so that the instructor can at least learn the names of students quickly, and they of each other. It must be small enough to give everyone an opportunity to set out his ideas and to respond

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[56] Covington, *supra*, note 49 at 343.

[57] *E.g.*, Columbia University School of Law, Northwestern University School of Law, University of Chicago Law School, University of Manitoba Faculty of Law, University of New Brunswick Faculty of Law.

[58] Part of the rationale for having regular faculty members teach legal method courses is that since the content of legal method 'cuts across course lines', a faculty member who has taught a substantive course is more competent to isolate and communicate those concepts.

[59] See, generally, current law faculty calendars for law schools listed in note 57.

to questions. In short, legal method requires a seminar format for the effective involvement of all students.

Unfortunately, despite faculty recognition of the importance of a small group setting for the inculcation of legal method skills, corner-cutting renders these small group experiences less valuable than they could be; the overwhelming majority of law schools that teach legal method in the seminar format staff those seminars with irregular faculty members — lecturers, teaching fellows and graduate assistants. Of course, this is done in order to avoid the heavy demand that seminars in legal method would make on faculty resources, and the justification for using inexperienced teachers for this crucial task is that the benefits of the small class size outweigh the detriment of using inexperienced teachers. In addition, the use of irregular faculty members to teach legal method in seminars is especially inexpensive when those teachers are also responsible for legal research and writing in the same course.

But this reasoning is not good enough. Legal method skills were once developed quite efficiently as a by-product of case method instruction by experienced faculty members in substantive law courses.[60] The battle to maintain legal method as a main objective of every first year course was vigorously fought and lost, with the legal method objectives being shunted off into a proliferation of separate courses carrying less academic credit than other first year courses. And now on the grounds that legal method skills are a prerequisite to effective legal research and writing — which is absolutely true — they are being given into the hands of the least qualified faculty members for implementation. By so doing, North American law schools have given legal method and legal research and writing skills the lowest possible priority in the first year curriculum, in the name of expediency.

If law schools were truly conscious of their responsibility to develop an ability to learn the law by the end of the first year of law school, they would at least ensure that students have the benefit of experienced teachers in legal method seminars. While a high degree of technical knowledge of a particular area of substantive law is *not* a prerequisite to the ability to teach legal method, experience in teaching some substantive law course is vital to an ability to isolate and communicate those concepts "that cut across course lines".[61] In addition, excellent law professors are best able to select the most appropriate teaching technique, be it socratic, discussion or lecture, for each set of materials used in a course which now has the burden of correcting the skills deficiencies of substantive law courses as they are currently taught.

Thus the proper design for a legal method course is a seminar format taught by regular faculty members; and the legal method course should incorporate the legal research and writing component of the first year curriculum, utilizing irregular faculty members for the latter function only to the extent necessary. This integration of legal method and legal research and writing is essential, for just as legal method skills are the basis for learning

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[60] See, generally, Llewellyn *et al.*, *supra*, note 2.

[61] Covington, *supra*, note 49 at 343.

legal doctrine, so they are the basis for effective legal research and writing. Full coordination and maximum utilization of the relationship between the concepts of legal method and the processes of legal research and expression will result from the integration of the two components in one course.[62]

The combination method and research course taught in small groups of about twenty students by regular faculty members should not, however, be construed as the only workable model. While it may represent the optimum model, there are several variations on this theme, and many of them have been highly successful.

One important variation which has been in existence at Columbia University Law School since at least 1948 is a pair of courses, one entitled Legal Method and taught by regular faculty to classes of regular size and consisting of the traditional analytic components of case analysis, statutory construction, and the like; and the other titled Legal Method: Tutorial Seminar, taught by the legal method professors in conjunction with associates in law, the equivalent of a lecturer or fulltime teaching fellow. The legal writing seminar places heavy emphasis on incorporating legal method skills into the legal problem-solving process.[63] This variation permits full use of the expertise of experienced faculty, while offsetting the disadvantage of large group work by means of small tutorial sessions taught jointly by the legal method professors and irregular faculty members.

A pair of courses which is quite similar to those given at Columbia, but which falls a little short of the ideal model, is given at the University of Chicago Law School. Elements of the Law is a legal method course which is taught by an experienced professor to classes of ordinary size;[64] the legal research and writing course is an ambitious and intensive course in analytic writing, building on the skills developed in the legal method course, although there is no formal connection between the two courses. Legal research and writing is taught by teaching fellows under the supervision of regular faculty members. The courses have been in existence since 1939, with minor modifications, and have achieved a high standard of teaching and performance.[65]

Four other variations on the legal method model of small groups staffed with irregular faculty exist primarily because of the combinations of regular and irregular faculty employed.

The University of Pennsylvania for many years offered a bifurcated legal method course consisting of several preterm meetings stressing informa-

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[62] An excellent report on the reasons for moving from separate courses in legal method and legal research and writing to an integration of these two components into one basic legal skills course is given in Covington, *id.*

[63] 1974-75 Columbia University Bulletin, School of Law at 20.

[64] 1973-74 University of Chicago Law School Announcements at 16.

[65] See, generally, Kalven, *supra*, note 23.

This description of the course in 1948 was a major influence in the movement toward integration of analysis and exposition, which integration has not yet been fully achieved in a majority of law schools in North America. See, generally, Rombauer, *supra*, note 21.

tion and case reading, and instruction in second term relating to "an analysis of the judicial process in the development of case and statute law".[66] The entire course was taught by regular faculty. Between these two segments was a research and writing course staffed by one faculty member and an array of teaching assistants.[67] In 1971, the legal method course dropped its emphasis on analytic skills and took on a jurisprudential bent, while credit for the writing course was expanded to accommodate more analytic and writing exercises taught by unfettered teaching assistants.[68]

An ambitious legal method program at Syracuse University Law School consists of several segments: one large class meeting a week taught by regular faculty, devoted to case analysis by the case method in first term and to statutory construction in second term; small classes in legal research and writing taught by teaching assistants; and a mandatory moot court program run by third year students.[69]

At Vanderbilt, regular faculty give the legal method and research and writing course, but all faculty members mark the student assignments in their capacity as advisors.[70] At Catholic University Law School,[71] the legal method and legal research and writing components are taught by a collection of two teaching assistants and ten second and third year students supervised by a faculty member, with the work load distributed to maximize the expertise of each type of teacher.

The important element which these variations have in common is a recognition of the fact that regular faculty must be used in combination method and writing courses, but that many of the functions of the combination course can be carried out efficiently by irregular faculty members.

4. *Legal Process*

An important trend in basic legal techniques courses is the development of a legal process component to augment or replace the combination legal research and writing and legal method courses. 'Legal process' is defined for the purpose of this section as an examination of the process of litigation commencing with the facts presented by the clients and filing a statement of claim, through a study of the trial proceedings, notice of appeal and appeal process.

The only valid generalization which can be made regarding the legal process component is that the subject matter of the proceeding studied is directly or indirectly related to the substantive law studied in first year. However, the interest value of the case seems to be more important as a criterion for selection than questions of overlapping or supplementing the topics studied in other courses.

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[66] The course was styled The Judicial Process, 1965-67 University of Pennsylvania Bulletin, The Law School.

[67] 'This' course was known as Legal Method.

[68] 1971-73 University of Pennsylvania Bulletin, The Law School.

[69] See Alexander, *supra*, note 55.

[70] See Covington, *supra*, note 49.

[71] See Marple, *supra*, note 23.

The purpose of a legal process component varies considerably. In some schools, the study of the legal process comprises a small part of the basic legal techniques course at the beginning of the year and is used as a general introduction to the study of law. Where a study of the legal process is used as an introduction to law, the student plays a passive role, acting as a recipient of information conveyed by means of films, dramatization of the various phases of the judicial process by faculty, practitioners, or latter year students, or documents which have been drawn up for the case. On occasion, the documents of an actual case are given to students over a period of weeks to acquaint them with the forms of communication used by the legal profession.

For example, the Harvard group work program, initiated in 1949-50, utilized a 'file' device, with documents added to the file in logical progression for informational purposes. The student role in this activity consisted of reading and discussing the documents, viewing a live enactment of the trial by faculty and upper year students, and writing a short appellate opinion.[72] This legal process component eventually became integrated within a conglomerate basic legal techniques course entitled Problems in Legal Practice and Method and the legal process component of this course was designed for introductory and informational purposes, as an orientation to the study of law.[73]

A less popular use of the legal process component requires the student to play an active role in the documentation and dramatization of a case. The student is involved in interviewing clients, drafting a statement of claim, conducting negotiations, representing his client in a mock trial, drafting a notice of appeal and factum and engaging in oral argument. This is the approach to legal process employed in Basic Legal Techniques at Catholic University Law School.[74] The objectives of this form of the legal process component are fourfold: (1) to provide orientation to the study of law; (2) to provide a 'realistic' setting for legal research and writing exercises; (3) to increase student motivation and thereby improve performance; and (4) to provide meaningful opportunities for drafting exercises, a difficult type of exercise to incorporate into the first year curriculum.[75] In addition, a stated objective is to prepare first year students for clinical educational activities in the second and third years of law school.

While the motivational benefits of the legal process component are significant, especially in view of allegations that the teaching methodologies

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[72] See Cavers, *The First Year Group Work Program at Harvard* (1950), 3 J. Legal Ed. 39 and Cavers, *The Model Trial at Harvard: A Teaching Tool Adaptable for Use by Other Law Schools* (1956), 9 J. Legal Ed. 345.

[73] 1967-68 Harvard Law School Catalog at 46-47.

In the academic year 1973-74 this course underwent drastic revision, which included the abolition of the twenty-four year old legal process component and greater emphasis on legal method and written and oral work in an undefined 'workshop' scheme. Perspective elections ranging from constitutional law to 'suburbs and cities' were offered to round out the curriculum. See 1973-74 and 1974-75 Harvard Law School Catalog at 107-09.

[74] See Marple, *supra*, note 23.

[75] *Id.* at 556.

in law schools are too limited and repetitive to maintain student involvement for three consecutive years, there are serious drawbacks to wholesale adoption of this format for inculcating basic legal techniques. The first drawback is that even when the student plays an extremely active role in the simulation of a case, instruction in legal bibliography, legal method and legal research and writing must be given. None of those skills — except legal bibliography, as discussed above — are self-generating. They must be taught as intensively as ever, even in conjunction with legal process. Thus legal process is an added undertaking, and if it is not to take time and attention away from the other basic legal techniques, the amount of time devoted to the skills course must simply be expanded.

The second disadvantage of this clinical approach to development of skills is that whereas practical legal experience is not a necessary qualification for teaching legal method or legal research and writing either for regular or irregular faculty, anyone who undertakes to guide students through the preparation of legal documents and the engagement in oral communication forms must either have a modicum of practical experience or be prepared to spend extra time in the preparation of exercises. This qualification in turn leads to the expectation of greater financial compensation for services rendered on the part of participating faculty members.

Of course, this consideration is irrelevant to any law faculty which has surplus funds for faculty salary and services, but such schools are rare. For any other school, an undertaking of the magnitude of a full-dress legal process course which does not fulfill existing needs for training in legal method, research and writing is a misallocation of valuable financial and personnel resources. Increased motivation of students can hardly be said to be worth the price.

However, a small scale legal process component which occupies but a few weeks of the term and in which the students must necessarily play a passive role is invaluable in orienting students to the study of law, giving them an overview of the judicial or legislative process, and defining the basic language of judicial procedure which will permeate most of their reading in first year. A good example of this type of course is Introduction to the Legal Process, given in the first semester at Northwestern University Law School.[76] This course is integrated with a full year legal research and writing course given by teaching fellows in small groups.

The Northwestern University treatment of the legal process component is much more reasonable than that at Catholic University,[77] in view of maximum utilization of all resources. However, even though the motivation for the Catholic University basic legal techniques course does not reflect the soundest

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[76] 1973-74 Northwestern University Bulletin, The School of Law:
An introductory study of the process of trial and appellate litigation designed to assist the student in his understanding of procedural problems encountered in exploring the cases in the basic first-year curriculum. The doctrine of precedent and problems of statutory construction will also be explored.

[77] Marple, *supra*, note 23.

pedagogic reasoning,[78] the components of the course make it one of the most comprehensive skills courses in North America.[79]

E. FACTORS AFFECTING DESIGN OF BASIC LEGAL TECHNIQUES COURSE

While the objectives of "motivation of students" and "training for clinical experiences" should not receive equal weight with the objectives set out in Section A of this paper, the comprehensive scope of a basic legal techniques course does in fact effect achievement of *more* objectives than does any other extant course, and for that reason alone constitutes one of the standards against which law schools should measure their first year skills courses.

However, as long as most law schools maintain some degree of individuality in terms of ultimate role, size of student body, resources and personnel, the same course cannot be offered at all schools, nor in fact should it be. For example, a small law school with sixty first year students will want to staff such a course differently, relying on one faculty member for teaching and on latter year students for personal conferences, marking papers and other tasks. On the other hand, a large law school with 1000 students will be better able to attract and afford qualified irregular faculty members to assist the faculty with those aspects of the course which do not require significant teaching experience, such as marking papers, counselling students and organizing materials and problems.

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[78] The stated objectives of the basic legal techniques course are (1) to overcome faculty dissatisfaction with the traditional legal research and writing course; (2) to increase student motivation by means of a clinical approach to instruction; and (3) to prepare students for clinical education activities in second and third year. *Id.* at 556.

[79] Those components are:

1. legal method (taught by socratic dialogue and discussion)
   a. six case briefs discussed in class
   b. case analysis and synthesis of a line of cases
2. introduction to law (taught by lecture and reading)
   a. history of legislation
   b. differences between statutory and case law
   c. introduction to legislative research
3. legal research (taught by 'doing')
   a. assigned reading in research manual
   b. weekly treasure hunts
   c. research for several memoranda of law, a 'mini-moot' and an appellate brief
4. legal writing
   a. several memoranda of law
   b. document drafting
   c. appellate brief
5. oral argument
   a. 'mini-moot'
   b. moot court oral argument
6. legal process
   a. viewing videotapes of entire litigation process
   b. comparing own documents with model pleadings, interrogatories, *etc.*
7. development of skills used in law school
   a. practice examinations
   b. practice in skills required for latter year clinical activities

When determining the design and scope of a basic legal techniques course, the law school must base its decision on several factors, which, in order to be ascertained, requires a thorough examination of its existing first year curriculum, its currently available and future resources and other miscellaneous considerations.

Perhaps the most important factor is the content of the substantive courses in first year. Our earlier analysis of standard substantive courses taught in the first year of law school demonstrates that the width of the skills gap is inversely proportional to the amount of time and attention devoted in substantive courses to a close examination of techniques of case analysis and synthesis, statutory construction and informational material such as court structure, the functions of the judiciary and legislature, *etc.* Another major consideration influencing the formation of a basic legal techniques course is the type or types of teaching techniques utilized in the substantive law courses. Since the inculcation of most, if not all, of these skills depends on relatively small class sizes, and the use of teaching methods such as small group discussion, socratic dialogue, the problem approach and the clinical approach, a law school with relatively large class sizes and a practice of relying primarily on the lecture method of teaching has a relatively large skills gap.

Similarly, a law school committed to continuous assessment methods in substantive law courses in first year provides more opportunities for the enhancement of communicative skills than does a school whose policy is to insist only on terminal examinations. Where research or clinical assignments for credit are given, the student has some opportunity to practice legal writing or legal techniques skills, and usually also receives a greater opportunity for feedback.

The factors just described are usually adversely reflected in the existing structure of the first year curriculum in North American law schools. It is the lack of order, uniformity and thoroughness with which basic legal skills were developed in substantive law courses which gave rise to the existence of a skills gap and thus to a need for skills courses several decades ago. However, in the unlikely event that a given law school teaches substantive law in small groups, has developed an orderly integration of legal method, research and writing into the substantive courses,[80] and utilizes sufficiently varied teaching techniques and modes of assessment in those courses, then it may well be that the skills gap in that curriculum will be very small and thus a skills course of limited scope would be sufficient.

But that eventuality is highly unlikely for two reasons: first, aside from the Hawkland experiment, there is no record of any attempt to effect a total integration of skills training into a substantive law course taught solely by regular faculty; and second, any current attempt at such integration must, by virtue of the structure of the problem, be preceded by an analysis as is undertaken in Sections A, B, and C of this paper.

Thus, factors relating to manpower availability, financial resources, the

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[80] *Cf.* Llewellyn *et al., supra,* note 23.

school's reputation and the attitudes of its faculty members are the only truly operative factors in deciding which basic legal techniques components and methodologies are appropriate.

These factors include such considerations as the faculty-student ratio, the level of faculty interest in basic legal techniques courses, the proportion of faculty committed to first year substantive law courses, the existence of a graduate programme from which staff may be recruited, the relationship and proximity of the law school to its practicing alumni, and finally, the reputation of the law school. The factors relating to manpower availability are self-explanatory, perhaps with the exception of the reputation of the law school. The school's reputation has a direct bearing on its ability to attract qualified irregular faculty members for skills courses, for even if a school can afford a generous salary, is prepared to accept a teaching fellow or other new graduate into the faculty community and has a genuine commitment to helping 'rookies' develop teaching skill, desirable candidates will give schools with lesser reputations an appropriately low priority. And the qualifications of irregular faculty members are crucial to their success as teachers, even in the limited role envisioned for them in this paper.

Likewise, a school which may be able to attract and afford qualified irregular faculty must also be prepared to interact with, and give suggestions to, new teachers in order to maintain communication and direction in such an important course. A faculty which hires teaching fellows in order to relieve itself of perceived 'drudge work' and which fails to treat those individuals as colleagues will lose many of the benefits of hiring enthusiastic, ambitious and hard-working 'rookies'.[81] Thus a faculty must be honest in evaluating its own motives in hiring irregular faculty for an ambitious basic legal techniques programme; it may be serving its students better by limiting the scope of the course and assigning it to regular faculty members in order to present a course of higher quality.

An overriding factor, at least from the law school's point of view, is its perception of its role in the legal community. While all of the objectives which a comprehensive basic legal techniques course is designed to achieve are vital to the first year curriculum regardless of the ultimate aim of a given law school, the difference being but one of emphasis or degree, a law school may well believe that a particular objective must be ignored, or alternatively, given far more attention than necessary to achieve it, in order to properly present its image to the community and to prospective students.[82]

For example, a school which tries to produce graduates who find their way into academic and political positions may decide to trust its students to develop many of the basic skills on their own in order to incorporate a greater policy content into its entire curriculum, although there is no evidence to the

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[81] See Roalfe and Higman, *supra*, note 24 at 90.

[82] Technique without ideals may be a menace, but ideals without technique are a mess; and to turn ideals into effective vision, in matters of law, calls for passing those ideals through a hard-headed screen of effective legal technique. Llewellyn *et al.*, *supra*, note 2 at 346.

effect that one skilled in basic legal techniques is disqualified from engaging in the policy-oriented decision-making process.[83]

The most important conclusion to be drawn from this survey and analysis of past and present skills courses, however, is that sufficient experimentation with various types of skills courses has been undertaken by law schools in the United States and Canada to set down clear guidelines for future revision of those programmes.

First, the skills gap in the standard first year curriculum has expanded over the last twenty-five years, and in view of the lack of innovative revision of the curriculum,[84] the burden of closing the gap remains with those individuals responsible for the skills courses. Second, attempts to shift the burden of developing all or some of the vital skills to faculty members who are also teaching a substantive law course have failed. In view of the trend to compress one year courses into one semester, plus the expanding subject matter of those courses, any teacher who attempts to achieve the dual and often conflicting objectives of teaching substantive legal doctrine and using course materials to develop orderly and early understanding of legal method will fall short of both objectives.

Third, the constant addition of new courses, programmes and approaches to the entire law school curriculum means that basic legal skills must be developed as early in the three years as possible, and as efficiently as possible, in order to insure that students gain maximum benefit from innovative approaches such as clinical, external and intensive programmes, without having to take time at the commencement of those activities to learn the skills necessary to their performance.

Fourth, the problem of making the basic skills courses meaningful to law students is no longer a significant consideration in formulating the courses, since vast experimentation has resulted in identification of several models which are challenging, complex, and relevant to the law student without detracting from their pedagogical value. Thus clever devices are no longer necessary to motivate or trick students into participating in a learning activity which is 'good for them'.

Fifth, the increasing competence of honours law graduates and the concurrent increase in interest in legal education have combined to form a labour pool of potential irregular faculty members who are qualified to assist in

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[83] As a matter of fact there is political science data to support the hypothesis that there is 'no' correlation between a judge's propensity to solve a legal problem in terms of policy and whether he attended a law school which stressed case analysis or a school which molded the content of its courses around "the policy-oriented decision making process". See Melone, *Legal Education and Judicial Decisions: Some Negative Findings* (1974), 26 J. Legal Ed. 566.

[84] The closest any law school has come to revision of its curriculum is 'rearrangement' of its first year curriculum. See, *e.g.*, Cullough *et al.*, *Curriculum Report Prepared by School of Law, University of Southern Carolina* (1971), 23 J. Legal Ed. 528, adopted by *Osgoode Hall Law School of York University Report of the Long Range Academic Policy Study Group* (1974) [hereinafter referred to as the Hogg Report].

teaching certain aspects of skills courses given by regular faculty members, thereby rendering comprehensive skills courses financially feasible for most schools.

Finally, a workable model for a comprehensive basic legal techniques course has been tested and fine-tuned at a reputable North American law school, Catholic University Law School, thus demonstrating that all of the objectives of a standard first year curriculum are within reach of all schools without doing violence to the perceived role of the law school in the community.

F. FIFTEEN YEARS OF EXPERIMENTATION AT OSGOODE HALL LAW SCHOOL

Osgoode Hall Law School has recognized the need for instruction in legal research and writing for many years, but the scope and structure of the means by which this instruction has been given have changed greatly over time. This section is concerned with a description and analysis of the evolution of the existing program in terms of the objectives and design of skills courses over the last fifteen years.

1. *1960-61 Through 1974-75: The Skills Course*

Early attempts to present a coherent and broad specialist skills course did not materialize, if there were such a plan. Instead, the law school apparently viewed the acquisition of legal research and writing skills as largely unnecessary, although recognizing that first year students required assistance to overcome perceived problems associated with the commencement of legal study.[85] An introductory course preceded the formal opening of first semester, but it was not initially concerned with instruction in legal bibliography or legal research and writing, although subsequently a legal writing component was included.[86] Until 1963-64, this legal writing component was virtually the sole method utilized to teach that skill.[87] First year students were, however, expected to take part in the preparation and argument of a moot court case.

A favourable development occurred in 1963-64 when the legal writing element was broadened in scope and made mandatory for second year students,[88] but in the 1966-67 academic year there were radical changes. In lieu of faculty supervision, three teaching fellows were employed to administer the moot court and legal writing courses, but neither course carried full credit. A perspective or introductory subject entitled The History of Law and

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[85] 1960-61 Osgoode Hall Law School Calendar, Law Society of Upper Canada at 21.

[86] 1961-62 Osgoode Hall Law School Calendar, Law Society of Upper Canada at 31.

[87] In 1960, the only other instruction in legal research was a guest lecture presented by the Chief Librarian of the Law Society of Upper Canada. This was discontinued the following year.

[88] 1962-63 Osgoode Hall Law School Calendar, Law Society of Upper Canada at 21.

Legal Institutions, which had been given to first year students for the previous seven years, was replaced by Judicial Process[89] which dealt with:

> . . . the historical development of the techniques and practices of legal reasoning in the common law courts and of the evaluations of legal institutions; consideration of selected problems in statutory interpretation and precedent; analyses of various philosophical attitudes to the function of courts and the consideration of the scope and limits of law reform in adjudication.[90]

In 1968-69, another perspective course was incorporated into the first year curriculum: Public Law. It was abandoned after one year,[91] when Osgoode Hall Law School affiliated with York University,[92] and further changes were made in the first year programme. Judicial Process, having lasted two years, was abandoned, and second year students were no longer required to take legal writing. For the first time, teaching fellows were responsible for weekly seminars, which were intended to acquaint students with the "range and relevance of legal research materials and to assist in the development of the expressive skills demanded of the lawyer".[93]

Several observations are in order at this point. The initial experience described thus far represented an attempt to increase the amount of attention paid to legal research and writing skills. An introductory course of a few days' duration, even when supplemented by one guest lecture and one moot court exercise, was obviously inadequate to impart legal skills of the nature under discussion. A less heartening development was the decision to leave skills teaching to teaching fellows instead of maintaining a direct faculty nexus, and in addition, the removal of second year students from the legal writing course. The former decision was apparently the result of a resources problem: with the increase in the size of the faculty requiring extra funding, expansion of the scope of the skills course could only be achieved by hiring irregular faculty. Relieving second year students of the legal writing requirement, apart from also finding justification in the endeavour to cut costs, was probably due to the hope that with a more thorough first year skills course in operation, there would be no need to provide the course for latter year students. Unfortunately, the staffing of a larger, more ambitious legal writing programme with inexperienced teaching fellows does not necessarily result in a net benefit when compared with the alternative of staffing the same programme with regular faculty, or even a more modest programme taught by the professorial staff. As we have seen, decisions of this nature are reached as a result of the interplay of many factors, some of which are frequently non-academic in nature. It is at least possible that the major reason for the changes in 1966-67 was not a desire to implement a better legal writing programme, but a need to relieve faculty members of perceived drudge work.

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[89] 1966-67 Osgoode Hall Law School Calendar, Law Society of Upper Canada at 22.

[90] *Id.*, a similar course was offered to third year students entitled Jurisprudence: Judicial Process.

[91] Hogg Report at 93.

[92] See Arthurs, *The Affiliation of Osgoode Hall Law School with York University* (1967), 17 U. of T. L. J. 194.

[93] 1968-69 Osgoode Hall Law School of York University Calendar at 36.

The structure of the skills course was subject to minor variations only until 1974. In the 1971-72 academic year, the course was given four credit hours and formal recognition was given to the fact that the seminars of the last two years had been directed to something more than legal research instruction: "Further, the course will introduce various law-making institutions in Canada with particular emphasis on judicial law-making.[94] Conflict Resolution, a course introduced four years earlier for selected students in the second semester to "focus attention on the ways in which various areas of law converge upon the solution of a social problem selected by the instructor",[95] was retained and taught, under the supervision of a professor, by a teaching fellow.

Introduction to Law was the name given to the legal writing course in 1973, but the content of the course remained unchanged until 1974. By hiring teaching fellows since 1966, instead of continuing direct faculty supervision, the law school had relegated the legal writing programme to a perceived unimportance that the essential nature of the course did not merit. Little attention was thenceforth given by the faculty to the content of the seminars, or to the administration and organization of the specific legal research and writing exercises and the moot court. The teaching fellows, generally recognized as the most inexperienced teachers in the law school, were solely responsible for the course. Although a faculty supervisor was assigned to the programme, he was chiefly concerned with the process of recruitment and hiring of the teaching fellows, and supervision of the annual initial stages of the course;[96] he did not take a daily supervisory role. The seminars began to develop along the lines of the individual teaching fellow's attitudes to legal education, rather than reflecting a consciously thought out and articulated faculty policy.

2. *The Components of the Skills Course*

By adopting the policy of giving the individual teaching fellow or sessional lecturer as much independence as possible within the confines of the basic components of the course — instruction in legal research, introduction to legal written forms and the compulsory moot court exercise — the faculty administration had permitted, indeed encouraged, a diversification in techniques of instruction in these three components, so long as the work load as between sections was kept fairly even.[97]

Thus a variety of methods have been utilized to instruct students in legal research techniques. Many exercises in the form of a fact situation, with a request for a memorandum setting forth the legal position of one of the actors, have been given to introduce students to the legal research tools of

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[94] 1971-72 Osgoode Hall Law School of York University Calendar at 30.

[95] 1968-69 Osgoode Hall Law School of York University Calendar at 36.

[96] In previous years, one of the teaching fellows had acted as coordinator of the course, a task similar to that of a faculty supervisor in other schools. The position is now filled by a regular faculty member.

[97] Each sessional lecturer is responsible for one section, consisting of one-fifth of the first year class, which numbers 350 students.

Canada, England and America. Often these exercises are assigned together with reading material on research sources.

Most of the teaching fellows or sessional lecturers have arranged library tours for their sections conducted by the library staff. These tours are typically held in the first two weeks of the fall term and are designed to acquaint students with the use of the card catalogue and with the location and function of various types of research tools and the law reports. Frequently the tours have proved unsuccessful because too much is attempted at once, but on some occasions several functionally differentiated tours have been given with better results.

There are, of course, various Canadian publications that have been required reading for incoming students[98] for the purposes of introducing, describing and explaining the research tools and research techniques. A shortcoming of the Canadian materials, however, is that there is no Canadian equivalent of Price and Bitner,[99] so that although the available materials pay attention to the research tools and their content, they do not place sufficient emphasis on methods and processes of research. Thus in 1974-75 all the sessional lecturers combined to produce a comprehensive guide to legal research which attempted to cover Canadian, English, Australian, New Zealand and American primary and secondary research sources, together with a citation guide. Some of the lecturers obtained copies of *How to Use Shepard's* and *West's Law Finder* for their students.

The seminars have sometimes been utilized as a forum for discussing problems associated with the use of legal research tools and associated research techniques. There is no standardized procedure in this regard, although an open door policy is maintained in order to encourage feedback from students concerned with the processes of research. Emphasis should, however, be placed on the individual discretion exercised by the teaching fellow or lecturer in connection with particular approaches to legal bibliography and research instruction. The mode of instruction and its content vary considerably from year to year and within a year, from section to section.

Once the simpler aspects of research techniques have been covered,[100] two or three written exercises of a substantial nature are assigned. These are often preceded by instruction in the briefing of cases, which has the dual virtues of preparing students in efficient study methods and enabling them to deal with more demanding research problems. Substantial research assignments are set toward the middle of the fall term, and frequently cause students to research areas of law with which they have had little or no contact. Major emphasis is placed on finding the relevant cases and statutes, although the exercise is necessarily concerned with the accuracy and precision of com-

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[98] *E.g.*, M. Banks, *Using a Law Library* (2d ed., London: University of Western Ontario Press, 1974); and J. Yogis and I. Christie, *Legal Writing and Research Manual* (2d ed., Toronto: Butterworths, 1974).

[99] M. Price and H. Bitner, *Effective Legal Research* (student ed., Boston: Little, Brown, 1962).

[100] *E.g.*, locating and updating cases, finding statutes and regulations, *etc.*

munication. Typically, the student is given a hypothetical fact situation and instructed to prepare an interoffice memorandum, an opinion letter, or a judgment. Assignments are graded and returned, marginal comments being made for the purposes of evaluation and feedback. Sometimes a lecturer has permitted papers or assignments to be resubmitted after the initial effort has proved unsatisfactory, but that is not the general practice.

The compulsory moot court programme occupies much of the spring term. Usually several problems are set at the commencement of the semester and the student must submit a memorandum of law on the issues raised. Problems are frequently devised by the lecturers themselves, but reported decisions by trial or appellate courts are often the basis for the memorandum.[101] Once the memorandum has been corrected and marked, students are required to submit a factum. The moot court program is confined to appellate argument because mock trials have been viewed as being too difficult to organize and manage with first year students. Oral arguments are presented before panels or judges consisting of a lecturer, a professor and a third year student, although the large number of moots renders it difficult to obtain professorial participation in many of them.

3. *The Content of the Seminars*

The content of the seminars varies considerably. Generally speaking, they have been used as a forum to discuss the reading materials developed for the course, but those materials vary from year to year, and recently, from section to section.

A well-defined content for the seminars appeared in 1968-69, when all of the teaching fellows adopted the documents and judgments at trial and on appeal of *Harris* v. *Toronto Transit Commission*[102] as the central materials for the weekly seminar meetings. In addition to the documents, transcript and judgments of *Harris*, the casebook developed that year included extracts from legal encyclopaedias and digests relating to the issues in *Harris*, a short selection of readings on *stare decisis*,[103] statutory construction, and the organization of the courts in England, Canada[104] and the United States.[105]

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[101] In 1974-75, students in section II were encouraged to choose their own topics and to write their problems after conducting preliminary research on the topic. This resulted in a higher level of involvement by the students in the entire moot court experience, and may have favourably affected the quality of the written and oral presentation of their arguments.

[102] [1965] 1 O.R. 662, *rev'd*, [1966] 1 O.R. 763 (C.A.), *rev'd* (1967), 63 D.L.R. (2d) 450 (S.C.C.) [hereinafter referred to as *Harris*].

[103] MacGuigan, *Precedent and Policy in the Supreme Court* (1967), 45 Can. B. Rev. 627, 647-59.

[104] Russell, *The Jurisdiction of the Supreme Court of Canada: Present Policies and a Programme for Reform* (1968), 6 O. H. L. J. 1.

[105] E. Griswold, *Law and Lawyers in the United States* (Cambridge: Harvard Univ. Press, 1965) at 61-90; J. Roche, *Courts and Rights* (1966) at 17-43; Cox, *The Role of the Supreme Court in American Society* (1967), 50 Marq. L. Rev. 575 at 576-78.

Although the use and relative weight placed on different parts of the casebook varied, the materials were generally used "to provide the students with a detailed view of the progress of a civil proceeding and especially to acquaint them with the writings necessary to the process of litigation".[106] The written assignments were integrated with the issues brought out in these materials, hypotheticals being set in other jurisdictions for the purpose of research exercises.[107] Since *Harris* was set in the general area of traffic accidents, seminars were conducted on proposals for reform of automobile insurance and related matters. Negligence cases were used to impart some knowledge of the judicial and reporting processes. Outside lectures were presented in conjunction with these goals[108] and professional cooperation[109] was sought and obtained in generally related fields arising out of the use of these materials.

The teaching fellows of 1971-72 and the following years discontinued the use of the *Harris* materials. Instead, Introduction to Law began to take on much more of a jurisprudential colouring. This alteration occurred despite the enthusiasm shown for the *Harris* materials by some of the teaching fellows in previous years.[110] It is difficult to accurately determine the reasons for the change, but it appears that the alteration in emphasis was attributable to the yearly turnover of personnel in the legal writing programme, together with a lack of direct faculty supervision.

The pedagogic rationalization for the divergence may well have been to provide more 'perspective' in the first year programme, a common feature of North American law schools.[111] Although several perspective courses had been developed and then dropped at Osgoode Hall, the teaching fellows took on the burden of attempting to impart basic but often more complex jurisprudential knowledge in the weekly seminar meetings, as well as administer the legal research and writing programme and the compulsory moots.

In 1972-73 and 1973-74 the teaching fellows combined to compile an Introduction to Law casebook that reflected the new approach. Readings assigned for the seminars ranged markedly in their coverage of 'perspective'. The casebook used in 1973-74 illustrates more specifically the nature and scope of these readings; eleven chapters were developed in the space of two

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[106] D. Thurber, *Curriculum Evaluation: Legal Writing Programme* (1970), at 65. Much of the following information is contained in the comprehensive report of the 1968-69 and 1969-70 legal writing course which was compiled by David K. Thurber, Coordinator of the Legal Writing Programme and submitted to the Academic Policy Committee in 1970 [hereinafter referred to as Thurber].

[107] It should be noted that not all of the written exercises related to *Harris* v. *T.T.C.* See Thurber at 72-135.

[108] In 1968-69, Mr. Justice Keith of the Ontario Supreme Court spoke on the functions of a judge and on the role of counsel. Professor Crawford of the University of Toronto Law School spoke of his work as a law reports editor and gave a brief outline of the history of law reporting.

[109] Professors Parker and Linden participated in some of the seminars given on aspects of insurance legislation and evidentiary problems.

[110] Thurber at 65-66.

[111] See *infra*, note 152.

years to cover topics that are frequently included in a basic latter year course in jurisprudence. Chapter I was entitled "What is Law?"[112] and the following two chapters were similarly broad in scope.[113] Chapter IV reverted to traditional readings on "Court Structure",[114] but Chapter V, entitled "Precedent", continued the trend established by the first three topics.[115] "Statutes and their Interpretation" was the heading of Chapter VI, containing five articles[116]

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[112] E. Hoebel, *The Law of Primitive Man* (Cambridge: Howard Univ. Press, 1954) at 275-76; R. Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale Univ. Press, 1922) at 25-32; R. Redfield, *The Primitive World and Its Transformations* (Ithaca: Cornell Univ. Press, 1953) at 26-27; W. Seagle, *Men of Law From Hammurabi to Holmes* (N.Y.: Macmillan, 1947) at 1-12; J. Swift, *Travels Into Several Remote Nations of the World* (London: Hayward and Moore, 1840) at 426-29.

[113] Chapter II, "Law and Morality", consisted of the following readings: S. Butler, *Erewhon* (N.Y.: Modern Library, 1955) at 102-21; L. Fuller, *The Morality of Law* (New Haven: Yale Univ. Press, 1969) at 245-53; Le Dain *et al., Report of the Royal Commission of Inquiry into the Non-Medical Use of Drugs* (Ottawa: Information Canada, 1972) at 275-83; Alexander, *One Rescuer's Obligation to Another: The "Ogopogo" Lands in the Supreme Court of Canada* (1972), 2 U. of T. L. J. at 98-107, 122-23; Fuller, *The Case of The Speluncean Explorers* (1949), 62 Harv. L. Rev. 616; Weaver, *President Asks For Law to Restore the Death Penalty*, The New York Times, March 11, 1973; *Mad Dogs and M.P.s*, The Last Post (Toronto), March, 1973.

Chapter III, "The Rule of Law and the Legal Order", consisted of these readings: *Roncarelli* v. *Duplessis*, [1959] S.C.R. 121; Dicey, *The Law and The Constitution* (10th ed., London: Macmillan, 1962) at 187-88, 193, 195-96; Goodman, *The Moral Ambiguity of America* (Toronto: C.B.C.), 1966 at 61-73; Lyon and Atkey, *Canadian Constitutional Law* (Toronto: Univ. of Toronto Press, 1970) at 3; Marsh, *The Rule of Law in a Free Society* (Geneva: Int. Congress of Jurists, 1959); Selznick, *Law, Society and Industrial Justice* (N.Y.: Russell Sage Foundation, 1969) at 11-18; Chayes, "The Modern Corporation and the Rule of Law", in Mason, ed., *The Corporation in Modern Society* (Cambridge: Harvard Univ. Press, 1960) at 25-32, 38-45; Latham, "The Body Politic of the Corporation", in Mason, *supra*, at 218; Nader, "Introduction" to Mintz and Cohen, *America, Inc.* (N.Y.: Deal Press, 1971) at *i*.

[114] The readings are traditional and informational, relating to the structure of the courts in Canada, England and the United States. Also included are readings on the selection of judges and the organization of administrative tribunals.

[115] The readings in precedent are of a jurisprudential nature, and the peculiar thing is that there are no cases to which the theory may be applied included in the chapter: Allen, *Law in the Making* (Oxford: Clarendon Press, 1964) at 361-63; Cross, *Precedent in English Law* (Oxford: Clarendon Press, 1961) Derham, Maher and Waller, *An Introduction to Law* (Sydney: Law Book Co., 1966) at 125-31; Frank, *Courts on Trial* (Princeton: Princeton Univ. Press, 1949) at 271-80; Frank, *Law and the Modern Mind* (N.Y.: Tudor, 1935) at 148-53; Gottlieb, *The Logic of Choice* (N.Y.: Macmillan, 1968) at 79-82; Hart and Sacks, *The Legal Process: Basic Problems in the Making and Application of Law* (tent. ed., Cambridge: Harvard Univ. Press, 1958) at 587-88; Cohen, *Field Theory and Judicial Logic* (1950), 59 Yale L. J. 238 at 245-47; MacGuigan, *supra*, note 103; Rheinstein, "Introduction", in Rheinstein, ed., *Max Weber on Economy and Society* (Cambridge: Harvard Univ. Press, 1966) at *xlvii-xlviii*.

[116] Dreidger, *The Composition of Legislation* (Ottawa: Queen's Printer, 1957) at 159-63; Wittgenstein, *Philosophical Investigations*, trans. G. Anscombe (Oxford: B. Blackwell, 1972) at 31e-34e; Llewellyn, *Remarks on the Theory of Appellate Decisions and the Rules or Canons About How Statutes are to be Construed* (1950), 3 Vand. L. Rev. 395 at 399-406; Willis, *Statute Construction in a Nutshell* (1938), 16 Can. B. Rev. 1 at 1-16.

This chapter at least contained a few sections of the *Interpretation Act*, R.S.C. 1970, C.I-23, and a few cases which illustrated the principles discussed in the jurisprudential readings.

and two cases. Chapter VII, "Non-Formal Sources of Law",[117] was followed by a variety of readings concerned with the "Judicial Process and Judicial Decision-Making".[118] The central themes of Chapters IX, X and XI were "Lawyers in a Changing Society",[119] "The Role of Law in a Changing Society"[120] and "Law and Disorder".[121]

Several comments may be made with respect to the Introduction to Law courses in 1972-73 and 1973-74. First, it has been said that "First Year students should not be channelled into a narrow, legalistic perspective".[122] Many critics have commented on the desirability of broadening the content and perspective of first year courses beyond the stultifying approach inherent in the traditional case method techniques of legal instruction[123] to include a broader perspective on the essential nature and development of the law and

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[117] *Devonald* v. *Rosser*, [1906] 2 K.B. 728; Allen, *Law in the Making* (6th ed., Oxford: Oxford Univ. Press, 1958) at 126-43; Bodenheimer, *Jurisprudence* (Cambridge: Harvard Univ. Press, 1962) at 292-324; Plucknett, *A Concise History of the Common Law* (4th ed., London: Butterworths, 1948) at 290-97.

[118] Downie, *Justice Denied* (N.Y.: Praeger, 1971) at 18; Cheffens, *The Supreme Court of Canada: The Quiet Court in an Unquiet Country* (1966), 4 O.H.L.J. 259; Dworkin, *The Model of Rules* (1967), 35 U. of Chi. L. R. 14 at 17-29; Friedman, "Legal Rules and the Process of Social Change", in Friedman and Macaulay, *Law and the Behavioural Sciences* (Indianapolis: Bobbs-Merrill, 1969) at 492; Hamilton, "Southern Judges and Negro Voting Rights: The Judicial Approach to the Solution of Controversial Social Problems", in Friedman and Macaulay, *supra*, at 472; Russell, *How do Judges Decide?*, April 1972 Can. Forum at 6.

[119] Canadian Bar Association Special Committee on Legal Ethics, *Preliminary Report: Code of Professional Conduct* (1973); Arthurs, *Materials on the Canadian Legal Profession* (Toronto: Osgoode Hall Law School, 1973) at 1-20; MacGregor, *The Lawyer and Civil Disobedience* (1971), 5 Gazette 252; Wexler, *Practicing Law for Poor People* (1970), 79 Yale L. J. 1049.

[120] *Lockwood* v. *Brentwood Park Investments Ltd.* (1970), 10 D.L.R. (2d) 143; Schier, *Law and Society* (N.Y.: Random House, 1968) at 127-40; Udall, *The Quiet Crisis* (N.Y.: Avon Books, 1967) at 20; Caldwell, *The Ecosystem as a Criterion for Public Land Policy* (1970), 10 Nat. Res. J. 204 at 205, 209; Disch, "Values for Survival", in Disch, ed., *The Ecological Conscience* (N.J.: Prentice Hall, 1970) at 17-19; Friedman, "General Theory of Law and Social Change", in Ziegel, ed., *Law and Social Change* (Toronto: Carswell, 1973) at 17; Leopold, "The Conservation Ethic", in Disch, ed., *supra*, at 44-45; Sax, "The Search for Environmental Quality: The Role of the Courts", in Helfriech, ed., *The Environmental Crisis* (New Haven: Yale Univ. Press, 1970) at 100-14.

[121] Kropotkin, *Law and Authority* (London: Freedom Press, 1886); Read, *Anarchy and Order* (London: Faber and Faber, 1954); Gottlieb, "Comment [on Dworkin, Taking Rights Seriously]", in Rostow, ed., *Is Law Dead?* (N.Y.: Simon and Schuster, 1971); Quinney, *Crime Control in a Capitalist Society — A Critical Philosophy of Legal Order* (1973), 8 Issues in Criminology 75 at 87; Toffler, *The Future of Law and Order*, July 1973 Encounter 13; Wallace, "Violence, Morality and Revitalization", in Wolff, ed., *The Rule of Law* (N.Y.: Simon and Schuster, 1971); Wasserstrom, *Lawyers and Revolution* (1968), 30 U. Pa. L. Rev. 125 at 128; Wolff, "Afterward", in Wolff, ed., *supra*, Nixon, *Watergate Address of Wednesday, August 15, 1973*, The Times (London), August 17, 1973 at 6.

[122] *Supra*, note 4 at 8. This paper was prepared for the Long Range Academic Policy Committee of Osgoode Hall Law School.

[123] See, *e.g.*, Carrington, *supra*, note 1 at 15-18; Harvey, *The Media is the Message?* (1968) 20 J. Legal Ed. 388; Kelso, *supra*, note 1; Rutter, *supra*, note 2.

its legal framework. We are not concerned here to criticize these attitudes to legal education, whether incorporated as part of the first year curriculum or elsewhere.

The fact remains that by broadening its scope in order to deal with the vast amount of jurisprudential and perspective material described, the Introduction to Law course spread itself too thinly. A dichotomy emerged between the style and content of the legal writing and moot court components on the one hand, and the highly abstract theoretical readings in the seminars, on the other. The content of the readings was criticized as "too vague and elusive" or "too abstract" to be of immediate interest, and it was argued that students were "often programmed to take the course when they lack the background necessary to appreciate the significance of what they are studying".[124]

4. *Legal Method Re-emerges: 1974-75*

The 1974-75 academic year saw a partial departure from the Introduction to Law course taught over the preceding two years. Two sections abandoned the jurisprudential and highly theoretical materials used previously for seminar readings.[125] Instead, the courses attempted to focus on the need to place analytic skills in a process-oriented context.

The year commenced with an introduction to a series of cases designed to develop and sharpen students' ability to analyze and synthesize legal principles in the context of particular legal doctrines as established by those cases,[126] and to discover the concepts of relevance and materiality, both factual and legal, in the evolution of those doctrines. Readings were assigned on court structure, but little if any classroom time was spent expounding upon the basics of court hierarchies, *etc.* The principle of *stare decisis* and the concept of precedent were thoroughly developed through discussion and analysis of these appellate decisions.

Next, a few specialized cases containing split and multiple *ratio* problems were assigned,[127] culminating in an extensive examination of *Penfolds Wines* v. *Elliot*[128] as illustrative of problems arising out of the mechanical application of *ratio* analysis. In one section, some considerable time was

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[124] *Supra*, note 4 at 19. These views were adopted by the Long Range Academic Policy Committee of Osgoode Hall Law School.

[125] There were differences in some of the materials used in the two sections, but the objectives and the methods were the same.

[126] Section II used English and American decisions on assault and battery, and Section IV studied the development of the doctrine of strict liability arising out of *Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 338.

[127] *Folkes* v. *The King*, [1923] 1 K.B. 282; *London Jewellers, Ltd.* v. *Attenborough*, [1934] 2 K.B. 206; *Fairman* v. *Perpetual Investment Building Society*, [1923] A.C. 74; *Haseldine* v. *Daw*, [1941] 2 K.B. 343; *R.* v. *Ashwell* (1885), 16 Q.B.D. 190.

[128] (1946), 74 C.L.R. 204.

spent on the majority opinions in *Furman* v. *Georgia*[129] with the same objective in mind. Virtually all of these cases were dealt with in the fall term.[130]

Students began to undertake assignment work for credit only after the instructor was satisfied that basic skills in case analysis had been mastered. In one section, this resulted in a marked imbalance in the legal writing programme as between the two semesters, with only one credit assignment being set and graded in the fall term.

In the second term, much of the time was spent on the moot court programme and its associated written work. Students were encouraged to formulate their own moot court problems, or to discover suitable decisions from which an arguable appeal could be taken. Since previous research and writing assignments had been aimed to provide research in areas of law largely unrelated to the other first year courses, the moot court problems were often designed to tie in with areas familiar to the students. Torts, constitutional law and criminal law were selected as ideal areas, the latter two courses being taught concurrently in the second semester. Where possible, the judges' panel consisted of professors who were either teaching the particular subject, a problem from which had been selected as a moot court problem, or who were at least familiar with the general area and could therefore participate with minimum effort. Due to the shortage of professors, upper year students who had indicated that they had some expertise with the particular problem were also selected as judges. The course culminated in a series of lectures on statutory interpretation based on assigned cases.

Written work required for successful completion of the legal writing component of the course varied as between the two sections. Two library exercises (both non-credit) were set early in the fall semester, requiring students to become familiar with the use of legal digests, encyclopaedias, and indices to locate and update cases, statutes, and regulations. In the other section, an assignment on the cases discussed in class was given as soon as possible in the fall semester, followed by one or two research assignments which required students to produce an interoffice memorandum as a result of their research. Whether given in the first or second semester, three or four further research assignments followed; these assignments (except on one occasion) had no connection with any of the other first year courses.

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[129] 408 U.S. 238 (1972).

[130] At the conclusion of this period of intensive analysis and synthesis of cases, Section II was assigned jurisprudential reading on precedent and the doctrine of *stare decisis* more for the benefit of the students than as a basis for seminar discussion. It was believed that these readings would enable the students to place their experience with cases into a clearer analytic framework.

These readings include: Castel, *The Civil Law System of the Province of Quebec* (Toronto: Butterworths, 1962) at 218-19; Frank, "Illusory Precedents: The Future: Judicial Somnambulism", in Frank, ed., *Law and the Modern Mind* (N.Y.: Tudor Press, 1935) at 148-53; Friedman, *Stare Decisis at Common Law Under the Civil Code of Quebec* (1953), 31 Can. B. Rev. 723 at 746; Hart and Sacks, "A Tentative Formulation of the Bases of the Doctrine of Stare Decisis", in Hart and Sacks, *The Legal Process* (Cambridge: Harvard Univ. Press, 1958) at 587-88; Llewellyn, "The Leeways of Precedents", in Llewellyn, *The Common Law Tradition* (Boston: Brown, Little, 1960) at 77-91; MacGuigan, *supra*, note 103 at 647-65.

Each section containing approximately fifty students was divided up into three groups which met twice weekly for all of the first semester, and once a week for much of the second semester. The teaching method used was a combination of discussion and socratic, a teaching method not nearly as common in other first year courses as one might expect. As can be seen, the thrust of the course was aimed at the evolution of the traditional techniques of legal reasoning and case analysis. Materials on statutory construction were covered to a far lesser degree, and only after the moot court exercise had been completed in the spring semester. The seminar format proved effective when related to the teaching style used.

'Introduction to Law' as describing the courses taught in these two sections is a misleading title when one bears in mind the previous history and content of the course, and indeed the courses taught by other sessional lecturers in 1974-75. Although both sections were given selected readings on "Law and Morality",[131] this material was the only material that could possibly be characterized as jurisprudential in nature, and was certainly outweighed by the emphasis given to the development of the skills referred to previously. The course may properly be described as a legal method course, in relation to both content and methodology, although little emphasis was placed on the interrelationship between legal institutions and societal processes except insofar as that relationship was used to explain appellate court decisions.

Legal writing courses as such cannot and should not be taught in a vacuum. The processes and techniques of legal reasoning should be understood and, to the extent possible in the first year, mastered before complex legal research is undertaken. This factor was probably the central justification for abandoning the jurisprudential orientation which previous Introduction to Law courses reflected. Where there exists a choice between 'perspective' material and acquisition of basic skills, the latter should prevail, although we accept the idea that the first year curriculum should not require such a choice.

We suggest that the virtue of conducting a legal writing course in conjunction with process-oriented legal reasoning seminars should now be apparent. Legal techniques and skills, novel in their nature, require careful supervision, and research skills cannot be mastered without a sufficient understanding of how statutes and regulations can be used and interpreted, and how cases can be used in support of, or distinguished from, arguable propositions of law. Concepts of legal relevance must also be understood before complex and difficult legal research is assigned.

Many legal writing programmes are implemented without including these other skills as an integral component of formal instruction. The first year curriculum, weighted heavily with case analysis, should provide the necessary

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[131] *R.* v. *Dudley and Stevens* (1884), 14 Q.B.D. 273; *U.S.* v. *Holmes*, 1 Wall. 1; 26 Fed. Cas. 360 (1842); Hall, *General Principles of Criminal Law* (Indianapolis: Bobbs-Merrill, 1947) at 377-426; Fuller, *The Case of the Speluncean Explorers, supra,* note 113.

prerequisite skills, but as we have seen, this assumption is not necessarily correct.

The major difficulties inherent in the implementation of a legal method course are those of assessment methods and manpower availability. Senior faculty members are often loath to teach such a course — indeed, this was probably the major reason for recruitment of teaching fellows and sessional lecturers in the first place. But the skills contained within this type of course are essential skills that all lawyers should possess, and as such, should be taught by those most able to teach them — senior faculty. The traditional assessment methods are also largely responsible for the delegation of the responsibility of teaching a legal method course of this nature to teaching fellows, sessional lecturers, graduate students or even upper year students.

Even where the legal writing course does not contain a legal method component, a great deal of time is spent grading and commenting on assignments. In 1974-75, about eight assignments per student per section were graded. The time spent on grading assignments amounted to approximately four hundred hours for each sessional lecturer, and this time did not include the time spent on adjudicating the twelve or thirteen moots in the second semester. Perhaps it is natural that many faculties do not employ professors for the sole purpose of teaching the legal writing or legal method courses in first year. Certainly the employment of irregular faculty members is far less expensive, but this factor should not be taken into account to the extent that it seems to be when dealing with a necessary and important course.

The Introduction to Law or legal writing or legal method courses that have been outlined above, when left solely in the hands of irregular faculty members, are obviously relatively inexpensive to administer and implement in the law school curriculum. Where teaching fellows or sessional lecturers are recruited, the experience does provide some taste of the academic life. Consequently, the position is seen as a stepping-stone to full faculty appointment, at least by some of those accepting these positions. However, this is not a sufficient justification for assigning a basic legal techniques course to anyone less than the best teachers on the faculty. Fortunately for students at Osgoode Hall Law School, this criticism of the existing course has been partially countered by the implementation of the proposals of the Long Range Academic Policy Study Group.

G. THE OSGOODE HALL LAW SCHOOL EXPERIMENTAL PROGRAMME

In 1974, before the commencement of the academic year, the Report of Long Range Academic Policy Study Group[132] was submitted to the faculty council for implementation. The Faculty Council approved and adopted[133]

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[132] The members of the Long Range Academic Policy Study Group were Professor Hogg, Chairman, Dean Arthurs, Professors Beck, Weisstub, and Zemans, and students Irvine and Varley.

[133] See: Minutes of the Faculty Council of Osgoode Hall Law School, May 14 and 15, 1974.

most of the recommendations[134] made by the Hogg Report, which came into effect in the academic year 1975-76. The committee was established with the purpose, *inter alia*, of "evaluating and reporting upon the basic philosophy of legal education at Osgoode, the academic goals emanating from that philosophy, and suggested policies for their implementation".[135]

1. *Description of Experimental Programme*

The first year curriculum has undergone some major alterations. First, in two of the five first year sections, Introduction to Law has been jettisonned in favour of a scheme of workshops[136] associated with substantive first year courses. The experimental workshops consisted of small groups taught by a professor and a lecturer, and the methodology of the course was designed to place emphasis upon clinical activities:

> [T]hat is to say, the emphasis will be on doing a variety of legal tasks, rather than on assimilating more doctrine. At first, . . . the tasks will be very basic: learning how to use the library through library exercises, learning how to brief cases by writing briefs of cases, learning how to analyze legal problems by writing answers to problems; . . . [leading to] more sophisticated tasks: . . . researching and writing a legal opinion, interviewing, negotiation and drafting of documents.[137]

A major reason for the establishment of the workshops was "that small group work will be more effective if it is tied in with the classroom work".[138] Close cooperation between the personnel responsible for the workshops and all the professors teaching associated courses was expected to result in the selection of assignments, materials and methods so that workshop work would complement classroom work. The moots are similarly associated with second semester subjects. Thus the "concurrent presentation of abstract concepts in the classroom and their practical application in the workshops will make the work more personally meaningful and professionally relevant.[139]

The second major change in the first year curriculum under the experimental programme was that drastic alterations were made to the time structure in the fall term in order to implement the workshop scheme. Three courses were to be associated with the workshops: contracts, torts and criminal law. Thus experimental section I had its workshop associated with criminal law and torts and experimental section II had its workshop associated with contracts and criminal law. The first five weeks of the fall semester were to consist of an intensive immersion in only the two subjects noted above. Teaching was to be divided among a team of four persons in one section and five in the other for the first five weeks of the fall term. During this time each

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[134] We are concerned with the proposals only to the extent that they affect the first year curriculum.

[135] Hogg Report at 1.

[136] *Cf.* workshops at Harvard University Law School, *supra*, note 73; University of South Carolina School of Law, *supra*, note 84.

[137] Hogg Report at 85-86.

[138] *Id.*

[139] *Id.* at 86.

of the substantive subjects was allocated six hours per week, and the workshop four contact hours per student per week. No other subject or course was taught during the initial five week period:

> The early five week block will focus specifically on the techniques required for answering legal problems and will culminate in a practice examination which will be graded and returned and discussed by the middle of the semester.[140]

At the end of the first five weeks, the two associated courses dropped back to three hours per week. The third course (torts in one section, contracts in the other) commenced with six hours per week, and personal property commenced with three hours per week. The workshop was cut back to two hours per week. At the end of the fall semester, examinations were given in all the substantive courses.

Planning for the spring semester followed upon similar lines, except that there was no five week intensive period. Constitutional law, civil procedure, and real property were each allocated four hours per week. The workshops, solely administered by a lecturer, remained at two contact hours per week, and were to be associated with two of the new subjects.

The third major feature of the experimental programme was the creation of an array of perspective courses from which first year students could choose a spring term option.

A stated goal of the new first year curriculum is "conveying broader perspectives on the law". Accordingly the Hogg Report recommended the addition of a number of subjects to provide "perspective" in the spring semester of first year.[141] Only tentative definitions of suitable subjects were attempted by the Long Range Planning Committee, although subsequently the Faculty Council approved several of these subjects.[142] A wide variety of specialized perspective courses were found more suitable than one mandatory perspective course, which the Hogg Report describes as being "too vague and elusive or too abstract to be of immediate interest." The defect was stated to be:

> The single compulsory course makes no allowance for the fact that there are many different perspectives from which the legal system may be viewed; and that the variety in pre-legal experience, temperament and intellect of our first-year class makes any one approach ideal for only a minority. The solution is to offer a choice of perspective courses.[143]

Thus the experimental plan has finally and probably irrevocably solved the problem of the bifurcated first year curriculum in which skills were rent

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[140] *Id.* at 97. The main reason for this early practice examination is to compensate for the previous lack of feedback to students on their progress until quite late in the first semester.

[141] *Id.* at 92, 158.

[142] The perspective courses include History of Legal Institutions, The Judicial Process, Dispute Settlement, Law [Taxation] as an Instrument of Social and Economic Policy, Bureaucracy and Administrative Process, Law and the Western Philosophical Tradition, The Social Foundation of Law, Legal Profession and Law and Poverty.

[143] Hogg Report at 94.

from content: it has trifurcated it in order to reduce the tension which is generated by any curriculum which purports to teach anything more than doctrine.

2. *Criticism of the Experimental Model*

The workshop scheme has one highly favorable aspect: regular faculty members who are recognized as competent teachers are primarily responsible for planning *and teaching* the workshops, with the assistance of one lecturer in each workshop section. Unfortunately, the benefit of experienced teachers will be largely wasted on the workshops, as they will be devoted in the main to ministerial types of instruction, with the emphasis on case and statute analysis being shifted to an associated substantive law course during the first five weeks. However, this format is entirely justifiable in terms of the reasons the Long Range Planning Committee gave for replacing Introduction to Law with the workshops:

> We must focus our curriculum and teaching so that the law is seen as a means by which people achieve their desires, realize their values, avoid unnecessary conflict and resolve conflict which has occurred, though [sic] the application of official power, or mutual consent. In other words, the law is not a closed system obedient to some arcane internal process, but is intimately bound up with the society in which it regulates. The consequence for the curriculum is that in all the courses or seminars legal problems must be placed in their social context, and the legal rules must be studied not as a part of a static system but as part of a process directed to the welfare of a society.[144]

More specifically, the Long Range Planning Committee wished to broaden the teaching methods and type of materials covered by *the other first year courses*, and at the same time, integrate the work done in the workshops with those other courses. The perspective materials presented in the Introduction to Law seminars were thought of as "too vague" and "too abstract", but the workshops were not viewed as the forum to replace Introduction to Law in this respect. The Hogg Report notes that "[T]he literature on legal education in North America tends to be complacent about the typical first-

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[144] *Id.* at 27. *Cf.* Hogg Report at 28:

1. *Analytic skills*: The capacity to analyze legal materials, *i.e.*, to read and understand statutes, cases and other legal materials, the capacity to analyze a problem, *i.e.*, to separate the material facts from the immaterial facts, to survey the problem from many perspectives, to apply relevant legal principles, policies and rules to these facts.
2. *Research skills*: The capacity to find the relevant law by use of the library and to find other information which is needed.
3. *Communicative skills*: The capacity to listen, to argue and to write effectively.
4. *Knowledge of substantive law*: The knowledge of some of the vast body of substantive law, and certainly sufficient knowledge to enable tentative diagnosis of many problems so as to indicate the direction of further analysis and research.
5. *Knowledge of institutional environment*: The knowledge of the role of legislatures, court officials, agencies, and other public or private institutions, their uses and the limits of their effectiveness.
6. *Public Responsibility*: A sense of professional responsibility to clients, to courts, and to the legal system as a whole.

year programme, and occasionally to offer extravagant praise of its manifold virtues".[145]

After listing the objectives that the first year curriculum ought to accomplish, the Hogg Report stated that the time for teaching the skills of case analysis is "clearly at the beginning". Now no objection could be taken to this. However, the proposal to teach case analysis by intensive immersion over five weeks in only two subjects in order "to focus specifically on case analysis and associated skills needed for success in law school. . ." is far too difficult a task for law students to master in that period, and through that method. The Hogg Report itself notes that for many, "the technique comes very slowly". Surely the answer cannot be to concentrate teaching efforts in this respect over the first five weeks? The difficulty that we have with this recommendation is that "the time to acquire these skills is clearly at the beginning" and that "the beginning" is inferentially equated with the first five weeks.[146]

Another complication arises from the fact that half the semester time of sixty hours allocated to each of the two substantive courses associated with the workshops is spent in the first five weeks of the semester. The difficulties previously mentioned as occurring when substantive courses are used to impart basic skills may well develop here as well, especially when half the substantive material of the course could be presented during this period. If indeed, the first five weeks are not spent attempting to cover half of the casebook or other materials, then a consequent disproportionality develops over the next ten week period.

The plan does not call for the acquisition of the skills of case analysis in the workshops. Other legal skills are developed there. One such skill is the acquisition of legal research techniques, and these are related to the work in the two associated substantive law courses. Three criticisms may be in order at this juncture. First, complex legal research techniques should only be attempted after the skills of case analysis have to some extent been acquired. Since research skills are to be imparted in the workshops, whereas the skills of case analysis will develop in the associated substantive courses, there is a danger that the two skills will not be synchronized chronologically. Obviously, there must be a high degree of cooperation between all the personnel involved. Fundamentals of case analysis must precede fundamentals of legal research and writing.

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[145] *Id.* at 83.

[146] The difficulties with this approach as pointed out in Jones, *supra*, note 8 at 26-27 may be summarized as follows: (1) there are few law teachers who can effectively teach legal method five times a week for five weeks; (2) dividing the intensive course among several faculty members is counterproductive in a course "in which careful organization and systematic references back to materials already covered are necessary to a student's progress"; (3) the value of a legal method course is not apparent to a student until he has discovered through experience in substantive law courses the need for such skills; and (4) information on "formal analysis of judicial precedents" is more effectively presented when the student has dealt with a body of case law than after three weeks of law school. Accord, see, *e.g.* Kalven, *supra*, note 23; Matthews, *supra*, note 49 at 206.

Second, and more important, these skills are so interrelated that the separate specialized function of case analysis on the one hand, and legal research on the other, should *not be* performed by two or more different people when the very problem is with satisfactory progress in both. If one person is exclusively concerned with case analysis, that person cannot tell whether that skill has been developed or acquired or mastered when a major method of assessment and evaluation is written assignments, which are graded, corrected and commented upon by another who is by expressed statement concerned exclusively with research skills. Conversely, the person responsible for the development of research skills can only perform his task properly if a great deal of attention is given to case analysis. However, with close and unceasing cooperation, these difficulties can be overcome if each individual is prepared to take responsibility for both functions.

We suggest that the greatest obstacle of all is the notion that legal research can be more effectively mastered when the problem to be researched is related to the content of the associated courses. Research skills are most useful and necessary when the lawyer is confronted by a problem about which he knows nothing *at all.* The more familiar the general area is to the researcher, the less the general need for highly developed research techniques. We are therefore diametrically opposed to the statement that:

> . . . legal writing assignments would be more beneficial if they were related to the substantive work in the classroom. They would then serve the dual purposes of imparting writing and research skills, and of enhancing understanding of the classroom course.[147]

There are, however, some functions that the workshops were to perform that have not been and are not being performed by previous or present Introduction to Law courses at Osgoode Hall. These include interviewing, negotiating and drafting of documents. Just how effectively these objectives can be attained with first year students is problematic, but the inclusion of these subjects is undoubtedly due to the influence of clinical legal methods in North America. Certainly the typical lecturer employed or recruited to teach the more traditional legal writing courses would not usually be equipped to deal with these matters, although as the influence of clinical legal education becomes more pervasive, that difficulty will no doubt diminish.

Apart from the desire to include these clinically oriented objectives for their own sake, their inclusion may also be viewed as an attempt to increase the motivation, interest and performance of the first year student. "The gain which we hope for is that the concurrent presentation of abstract concepts in the classroom and their practical application in the workshops will make the work more personally meaningful and professionally relevant."[148]

Perhaps the most important distinction that arises from a comparison of the plan for the workshops and previous or existent Introduction to Law or legal method courses is that the workshops are staffed with a professor as well as with a lecturer. We agree that basic skills deserve more attention than has been the case with many of the traditional legal writing or legal method

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[147] Hogg Report at 85.

[148] *Id.* at 86.

courses, and according to the extent to which the professors in the associated courses assist in the acquisition of those skills, the scheme is a good one and to a large measure coincides with the desired goals of the first year curriculum and the ideal legal skills course.

One last aspect of the experimental curriculum deserves a critical word, and that is the provision for a mandatory perspective option. Although many Canadian and American law schools have included a course described as a perspective course in the first year curriculum, it is inapt to consider that the majority of courses subsequently selected by the faculty as perspective options conform to the general description of basic perspective subjects or contain basic perspective materials.

The traditional subjects selected as providing perspective were concerned with imparting some basic and rudimentary knowledge of jurisprudence, usually together with some understanding of legal history. The subject matter of the courses was thought of as being so essential to an informed understanding of the philosophical and historical bases of our current legal systems and institutions that it was made mandatory for each student. In other words, there existed a collection of ideas, concepts and processes which every student ought to know before he entered second year. The Hogg Report rejected this idea, with the result that a number of mandatory specialized perspective optional courses were offered in the spring of the 1975-76 academic year.

We have argued that there should be no need to select a course or a choice of courses to provide the perspective element in first year, but rather, if a specialized perspective course is thought desirable, we suggest that there should be only one basic perspective course in the first year curriculum. We accept the justification for the unitary and single perspective course, but not the execution or implementation of that justification by providing for a number of such courses.[149]

The interrelationships of law and morality, of law and historical change, of law and socio-political processes are properly the subject matter of a basic perspective course, if one is to be taught at all. These processes are essentially responsible for the development of particular legal concepts and their corollary legal institutions and political, social and judicial frameworks. Suggestions that there should be a number of specialized courses of limited scope ignore that reality and turn to student motivation to overcome it.

It may well be true that first year students will take advantage of their

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[140] It might be thought inconsistent that we suggest a specialized skills course on the one hand, and argue against a specialized perspective course on the other. The inconsistency disappears, however, when one realizes that a skills course is necessary, first, to impart techniques such as research that are clearly not covered in other first year courses, and second, to develop skills that are not and cannot be adequately developed in already crowded first year courses, such as statutory construction, case analysis and synthesis, and oral and written communication and persuasion.

Perspective materials are properly part of any substantive law course, and the legal development of particular doctrines cannot be properly understood without those materials. Thus the perspective course is at best redundant and at worst a further fragmenting of an already uncoordinated first year curriculum.

prelegal training to select a perspective which they feel is more familiar to them because of their training, temperament or intellect. But that is not the point. Once we recognize that there is a core of jurisprudential or sociological material that should be known and familiar *to each and every student*, the question merely becomes: "How to teach it?" The goal of accommodating the wide variety of interest and experience in the first-year class, we suggest, is one designed to increase initial enthusiasm on the part of the students, which may or may not lead to a better understanding of the perspective material itself, and also to permit professors to ride their own hobbyhorses in first year classes, secure in the knowledge that enrollments are guaranteed.

Also intriguing is the fact that at least one of the new perspective courses chosen was previously given at this law school by the same professor. Judicial Process was previously offered as a compulsory perspective subject to the entire first year class in 1966-67 and 1967-68 and, after two years, "Osgoode . . . abandoned it. . . , convinced that it had been a failure".[150] Why should it prove more successful now? Will it indeed benefit students to possess a specialized knowledge of limited perspective material rather than a necessarily limited knowledge of general, but essential, 'perspective'? How appropriate to the objectives of the *first year curriculum* are these specialized perspectives? We must remember that the issue is not one of perspective or no perspective in the law school, since many of the offerings have similar counterparts in the wholly elective second and third years of the curriculum.

Osgoode Hall is by no means the only law school to select 'perspective' as a worthwhile goal of the first year programme, but it has gone the furthest in deploying a host of specialized courses to accomplish that goal.[151] Of

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[150] Hogg Report at 93.

[151] Even Harvard University Law School, which at first blush has an extraordinarily far-flung array of perspective options for spring term, has a diabolical mechanism for ensuring that a student must really *want* a specialized perspective option before he is allowed to elect it:

> The courses listed below will be offered to first year students on an elective basis in Spring Semester.
> Students may elect *not more than 2 courses for a total of not less than 4 or more than 5 credits.* [emphasis added]
> *Group A: Two Credits*
> Conflicts of Federal and State Court Jurisdiction
> Consumer and the Law
> Environmental Law
> Federal Litigation
> Law Reform in Torts
> Law Technology and the Environment
> Legal Profession
> Theories of Violence
> The Western Legal Tradition
> *Group B: Three Credits*
> Administrative Law
> The Lawyers in Political Settings
> Legal Process
> *Group C: Four Credits*
> *Constitutional Law*
> *Constitutional Law* [emphasis added]

1975-75 Harvard Law School Catalog at 100-01.

course, how successful these methods will be, only time will tell; but we are pessimistic. The criticisms that have been levelled at the single, all-encompassing and compulsory first year perspective can also be directed toward the group of specialized perspectives in the new first year curriculum. They, too, might be "too vague" or "too abstract".

But we repeat and emphasize that the answer is to place the nonlegal or jurisprudential or sociological or perspective material back where it properly belongs in the first year curriculum — in the context of the substantive first year courses. It is no answer to say that a professor cannot "[be forced] to handle his course materials according to the master plan of a curriculum committee".[152] After all, if a curriculum committee has jurisdiction to propose courses which compensate for the deficiencies of the teaching methods of the faculty as a whole, then it certainly has jurisdiction to state as a matter of policy what steps each faculty member must take to correct those deficiencies in his course individually.

3. *The 1975-76 Experiment in Operation*

Having described and evaluated the proposed model, we now turn to a description and analysis of the actual operation of the experiment as of the time of writing.[153] We shall describe the content and methodology used in only one of the two experimental sections, but where appropriate, comparisons with the other will be drawn.

A professor and a lecturer were given responsibility for the workshop associated with torts and criminal law in the first five weeks of the year.[154] Each of the workshop instructors met with the three subgroups twice a week, so that both taught for six hours for the first five weeks. The lecturer devoted the first two weeks to an introduction to the case method and the basics of case analysis; the discussion was to a large part placed in the context of a case briefing exercise. Library research methods were also initially examined in this period. A general description of various research tools was complemented by library tours in small groups together with a film entitled "The Path to Legal Research".[155] Initial instruction in research tools and techniques was assessed by the use of library research exercises given within this period.

The professor, on the other hand, commenced the year by explaining

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[152] Hogg Report at 93.

[153] The experiment commenced in the first semester of 1975-76, but this paper was completed before the end of the year. Accordingly, our description and analysis does not deal with the entire year's experiment.

[154] We are indebted to Professor Brooks and Ms. Boston for time taken by them to inform us of their efforts in and the history of the workshops in Section I. Thanks are also due to Professors Bucknall and Evans, members of the Academic Policy Committee, for allowing us access to the responses of the other teachers associated with the experimental program. Professor Glasbeek, another participant in the program, also made many valuable comments and observations about its utility, and thanks are due to him.

[155] Produced by Osgoode Hall Law School several years earlier.

the purposes of the workshop scheme as outlined in the Hogg Report, and the reasons for the experiment. Stating that the first year curriculum was dominated by an examination of appellate decisions, he then began to describe and analyze the various components of a legal decision, ensuring that students understood the different concepts involved. Attention was paid to the primacy of facts in the litigation process, an explanation of what is meant by a "legal issue", a "cause of action", *ratio* and *obiter dictum*. This discussion was continued in the second and third weeks, where elaboration of some of these concepts, especially the process of fact-finding, was undertaken. Students were provided with their first opportunity to conduct an interview, with the professor acting the part of the client or accused.

At the same time, the lecturer assigned readings and started a discussion of the history of the litigation process, and related these materials to an analysis of the court structure in Canada under the relevant statutes, in the fourth week of the semester. The discussion was intended to relate to materials currently being examined by the professor; he had assigned a torts case to be read before classes, and then commenced a discussion concerning legal reasoning as reflected in the various approaches judges had taken in the context of that case. Since the professor was attempting to demonstrate and explain legal reasoning by reference to the realist approach, he tried to characterize possible or probable motivations for judicial decision-making through accounts of the judges' personal histories. The lecturer found that students were unable to relate their learning experiences in the professor's classes to treatment of the statutory materials associated with court structure; the task was made doubly difficult by the fact that civil procedure was not being taught concurrently.

No classes were given in the workshops in the fifth week. Instead, all students were required to visit the criminal courts, which was followed up in the sixth week by a discussion of what had happened, and the students were required to produce a five page analysis of what they saw during their visit to the courts. The professor assigned materials relating to plea bargaining for classes in the sixth week, with some discussion concerning dispute resolution. These materials were intended to provide additional information about the presentation, prosecution and defence of criminal charges.

In the seventh week, the professor set an assignment on statutory construction for discussion in class, and followed this up in the eighth week by conducting a 'mini-moot' in the workshops. A criminal case was the subject of the 'mini-moot'; each student was allocated ten minutes to argue for or against a particular approach to statutory interpretation in the context of a given case.

The lecturer spent the seventh and eighth weeks discussing techniques of legal research in England, Canada and the United States, and was assisted by a member of the library staff, who presented a basic description of some of the research tools. Emphasis was placed on the purposes of legal research; students were appraised of the notion that there was more to legal research than just ascertaining the relevant authorities. These classes served as a preparation for a major research memorandum.

Materials concerning legal personnel and institutions were the subject of the lecturer's tenth week of classes, and the next three weeks were occupied with discussions on methods of dispute resolution, coupled with a plea bargaining exercise taken from materials in an upper year course in the administration of criminal justice. The professor continued his classes in statutory construction by assigning problems to pairs of students who were required to draft a proposed legislative enactment to overcome or solve various difficulties. The problems involved principles of criminal law.

In the second-last week of the semester, the teachers of the associated courses taught jointly in the workshops while the professor and the lecturer conducted classes in criminal law and torts. The professors who taught those two courses explored some of the underlying principles of their subjects in order to demonstrate the different and frequently confused techniques the law uses to deal with problems in both areas. The final week in the semester enabled the lecturer and a guest lecturer to give advice about examination techniques.

When second semester commenced, the workshops came under the sole guidance of the lecturer. Each subgroup met twice a week, so that the workshops occupied six hours per week, as in the last ten weeks of first semester. The only contact between the workshops and second semester courses was in a sense fortuitous. Some time in the workshops was spent on civil procedure, one of the three courses taught in the second semester, and some of the assignments given to students counted toward their grade in that course. Legal research and writing was also given further attention in light of the fact that the moot court requirement still remains a mandatory component of the workshop grade, and is traditionally conducted in the second semester.

4. *Faculty Evaluation of the 1975-76 Experimental Programme*

In order to recommend to Faculty Council whether the experimental programme should be continued or be extended to encompass all sections in first year, the Academic Policy Committee attempted to obtain the opinions of all the teachers associated with both the workshop sections and the substantive courses. Student opinion was also solicited and examined, although these evaluations were found to be of no real help since students had nothing against which to measure the workshops. Accordingly, we shall describe the advantages and disadvantages thought to have been occasioned by the implementation of the Hogg Report.

It appears from evaluations by the teachers that the main virtue of the workshop scheme was the small group meetings with senior and experienced faculty. This was to be expected; we doubt that anyone would take issue with the notion that a benefit will result from assigning experienced fulltime faculty members to a first year skills seminar. We should, however, qualify this principle by observing that an underlying premise must itself be valid before we can assert that professorial participation in the manner described is beneficial *per se*. That premise is simply that an experienced fulltime faculty member is a better, more effective teacher than an inexperienced irregular faculty member. If that is not the case, then as a matter of resource alloca-

tion, it is uneconomic to staff a skills course with a professor when a teaching fellow or lecturer could do as good a job.

When some of the teachers in the associated courses which commenced at the five week point were asked whether they could perceive any improvement in their students' performance as a result of the workshop experience, *all* of them stated that there had not been any discernible improvement, and one teacher stated that Introduction to Law had, in previous years, performed better at training students in basic skills than had the workshops. One teacher did observe that when he commenced his classes at the five week point, the students were better prepared than they had been at the beginning of the semester in previous years. Of course no comparison was drawn with comparative performances at the five week point in the current and previous year but it can at least be said from the foregoing that the workshops, to the extent that they were envisaged as effecting an improvement in other first year courses, were a failure.

As the faculty failed to institute any mechanism for testing whether students in the workshops *vis à vis* Introduction to Law students had achieved either a greater mastery of other first year courses or of the basic skills of case analysis, legal research and statutory construction common to both the workshops and Introduction to Law, there is no evidence to support the conclusion or assumption that the workshops did or would in fact achieve a higher level of performance of those functions.

On the other hand we may recall that the workshops were established to give instruction in skills other than legal research and writing. The Hogg Report accepted the proposition that there was too much emphasis placed on an examination of appellate decisions in first year, and suggested that the workshops take responsibility for the inculcation of other, more 'real' skills such as negotiating, drafting, counselling and dispute resolution. Therefore it could be argued that it would be unfair to compare the performances of students in the workshops to those of students in Introduction to Law solely on the basis of skills which were given exclusive attention in the latter course, but which received only a portion of teaching and instruction in the former. Such an argument precludes any attempt at a comparative assessment when one recognizes that although both Introduction to Law and the workshops gave instruction in common elements, the workshops went further with respect to the additional skills enumerated above.

However, it must be observed that in terms of actual hours taught, the workshops were responsible for four contact hours per student per week in the first five weeks, and two contact hours per student per week for the rest of the year. Introduction to Law instruction was based on a notional one contact hour per student per week for the entire year, although in 1974-75, two sections required two contact hours per student per week during the fall semester, and one contact hour in the Spring. In any event, a comparison of the actual time students were required to attend classes in the two skills courses demonstrates that students were given far more small-group instruction in the workshops than in Introduction to Law. Therefore it is at least

possible that the workshops could have successfully met all the objectives of the course, insofar as they were identifiable as basic skills and real skills.

There were, of course, other benefits which were said to follow from the workshop scheme. Many of the teachers concerned stated that small group teaching by professors in first year constituted a benefit in and of itself — irrespective of the relative effectiveness of such teaching — because students were given the opportunity to get to know individual professors. Furthermore, students developed confidence in the workshops because of professorial participation, which in turn left the workshops less vulnerable to the pressures usually placed on Introduction to Law due to student perceptions of lecturers as less experienced than relatively senior fulltime faculty members.

Two comments may be offered concerning this benefit. First, the essence of this perceived advantage goes not to the comparative pedagogical merits of the respective courses and their relative efficiency in achieving their objectives, but rather to the issue of how popular the courses are when compared to each other. We suggest that as such, this issue ought not to be taken into account when determining whether a particular course has or has not been successful in achieving its educational objectives on an absolute or comparative basis *unless* it can be said that as a result of the greater confidence which workshops are said to have inspired, students become more stimulated and better motivated and therefore perform on a higher level than would otherwise be the case. There was no evidence that students were either better motivated or more stimulated or, for that matter, achieved a better performance as a result of the workshop scheme.

Second, our earlier statement that professorial participation in the first year skills course constitutes a benefit was predictated on the assumption that the more experienced teacher would be the better teacher. We did not intend to argue that a first year skills course staffed partly or entirely by professors was better than one which was not so staffed simply because it may or may not be viewed as more palatable by students.

If the popularity of a course or subject is seen as a goal in itself, irrespective of the reasons for its greater acceptability, then not only does this serve as an indication that the respective pedagogic merits of the courses are being neglected, but it also raises the question of how to measure popularity when determining the curriculum in first year. We know of no method of assessment or comparison which would enable a judgment to be properly formulated if weight is given to this factor without enquiring into the causes of its presence.

It was also said by a few of the teachers consulted that the links between the workshops and the associated courses resulted in a better understanding of both the legal doctrine covered in the latter, and the techniques or processes taught in the former. We have already observed that almost all of the teachers were of the opinion that no better understanding of doctrine in the associated courses was achieved as a result of the workshops. Conversely, there was no evidence to suggest that workshop performance was improved as a result of intensive immersion in the two associated courses in the first five weeks, although such a judgment is difficult to make. How

can a workshop teacher assess the impact of learning acquired in another course taught concurrently unless a comparison is made with the previously offered skills course in similar circumstances?

In one of the experimental sections, an instructor stated that contrary to the theory behind the workshops, the assignments required in the latter were not generally related to materials being studied in the associated courses. Where, for example, workshop reading was related to associated materials being covered in criminal law, students were unable to appreciate the connection between the courses, and did not relate their understanding of one learning experience to that *in a similar area* in the other. This observation perhaps reflects the view shared by most if not all of the teachers in the workshops that the materials originally designed for the experimental sections could be improved. Naturally it is only to be expected that the organization of, and the readings and assignments given in, the initial year of any novel programme will require refinement and modification; indeed, the Academic Policy Committee assumed that this would be undertaken when recommending the continuation of the workshop scheme. Although some of the set assignments and readings did not, from the teachers' perspective, benefit students insofar as the attempted connection between the workshops and the associated courses was concerned, on at least one occasion an assignment was said to have been better performed than when the same assignment was given a year before, as a result of the workshop teaching.

Both a professor and a lecturer reported that considerable difficulties accompanied endeavours to coordinate the assignments in the workshops with teaching in the associated courses. It was said that coordination in the other section was more easily achieved because the Dean was teaching in the workshop in that section, and that therefore the only effective method of obtaining cooperation was by way of 'decanal edict'. Accordingly, the suggestion was made that should the experiment continue, a senior faculty member be invested with the responsibility and authority to direct the necessary organizational steps upon which proper collaboration depends.

Many teachers thought not only that the experiment had not been proved to be successful in heightening student performance, but also that the structure of the experimental programme caused difficulties that had not been present in previous years. Both an experienced and an inexperienced teacher stated that they had not been able to properly teach their courses in ten weeks as required by the programme. Although it was suggested that these and other professors had not taken advantage of skills and basic knowledge acquired in the first five weeks so as to accelerate the initial learning pace at the commencement of their courses, it was also observed that the workshops had failed to impart a reasonable knowledge of institutional data such as which courts bind which others, how cases get to court, the adversary basis of the trial systems, *etc.* Whereas the professors teaching small groups in the workshops thought that students benefitted by closer contact with a professor in first year, a professor teaching one of the ten week courses found that he had less time to get to know his students than in previous years.

The division of the semester into five week and ten week components

created additional difficulties. One professor complained of exhaustion at the end of the five week period insofar as his own intensive teaching experiences were concerned, and then asked whether, in light of the fact that students were theoretically to be eased into law school by instruction in only two courses as well as the workshop, students who had completed half of his course in five weeks would have a distorted work load at assessment time and perhaps a distorted perspective of the entire course. Although it was suggested that the comparatively light teaching load in the last ten weeks of the semester might compensate the exhausted teacher for the far heavier load in the first five weeks, no answer was forthcoming to deal with the question whether the five week/ten weeks bifurcation had caused difficulties with assessment loads and the overview of a course that students should develop as a result of their studies.

5. *The Future of the Experiment*

Osgoode Hall Law School, in common with most North American law schools, recognizes the need for a basic legal techniques course in first year. The debate is now one concerning the content and structure of such a course, rather than whether it ought to exist, although the two questions are admittedly interrelated. However, the pedagogical values to be achieved must also be considered in the light of other considerations, such as the cost to the institution of staffing the course concerned. In order to determine whether the experimental workshops ought to be continued in 1977-78, Faculty Council should be in a position to evaluate the comparative pedagogic merits of the alternatives. We suggest that this decision cannot properly be taken in the absence of actual assessment of student performance in the workshops, Introduction to Law and the substantive courses. We further suggest that a teacher's observation that a particular teaching experience was 'good' cannot of itself be relied upon to decide the issue, for such an observation does not deal with the comparative educational merits of the courses under examination. It is only if the experiment is found to achieve benefits beyond those occasioned by the less expensive Introduction to Law course that the question can be raised whether, in view of those *additional* benefits, the extra cost of the programme warrants its continuation. To say that the workshops have achieved *some* benefits does not mean that the experiment ought to continue, for it may well be that the benefits actually achieved have merely been duplicated; less expensive courses having also succeeded in their attainment. On the other hand, we agree with the innovation, at Osgoode Hall, of having small group skills courses conducted by senior fulltime members of faculty, on the basis that those teachers should be able to achieve better student motivation and performance than would otherwise be the case. Of course this assumption would be tested as well if the faculty determined to implement comparative assessments.

Certainly the last word has not been said concerning the content, structure and teaching methodology of the archetypal first year legal skills course. We agree with the oft-expressed statement that such a course ought not to be established, except on the footing that other first year courses are not achieving *all* the objectives of a properly organized first year curriculum. The

first year skills course owes its existence to perceived deficiencies in the traditional first year curriculum. If those other courses could be constituted so as to include instruction in the subject matter of the skills gap, the need for a basic legal techniques course would disappear. The history of legal education demonstrates that law schools are more inclined to find a remedy in the skills course than require a fundamental re-examination of the pedagogic achievements of the traditional courses offered in first year. Recent developments at Osgoode Hall reflect a genuine desire to conduct such a re-examination, and the Hogg Report amply illustrates the care and attention that such an effort requires.