LEGAL WRITING: A HISTORY FROM THE END OF THE CIVIL WAR TO 1930

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I. Introduction

This article traces the history of the teaching of legal writing, including research and communications skills, in the American law school from a period of the end of the Civil War to 1930. During the Civil War, many law schools closed down temporarily or operated with tiny student bodies.[1]

This article continues the story, covering a period that includes the "Langdellian revolution" that most historians consider to be the birth of the modern American law school.[2] Contrary to popular belief, which tends to blame Langdell's introduction of the case method for an overnight decline in the teaching of legal writing and also a decline in the status of those teaching it, the teaching of legal writing and practical skills was especially robust during this period. Law schools developed "practice courts" that expanded upon or replaced earlier faculty-led "moot courts" that had been the main way in which legal writing had been taught.[3] The new century brought an even greater

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[**] Dean and Professor of Law, Valparaiso University School of Law. I would like to thank the Legal Writing Institute for providing a forum for this type of scholarly work and our many legal writing colleagues who attended our presentations at the LWI Biennial Conferences in 2014, 2016, and 2018 to discuss this particular article and the larger project of which it is a part. Thanks once again to my good friend, colleague, and co-author Jeff Jackson for his persistence in making this long-planned project of ours a reality.

[1] *See* Jeffrey D. Jackson & David R. Cleveland, *Legal Writing: A History from the Colonial Era to the End of the Civil War*, 19 LEGAL WRITING 191, 227–28 (2014).

[2] *See, e.g.,* ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 35–43 (1983).

[3] *See infra* Parts II–IV.

increase in the number of courses dedicated to legal writing and other skills, as well as new materials for teaching them.[4] Although the teaching of legal writing and other labor-intensive skills was under pressure during the latter part of the 1920s due mainly to the expansion of courses in the law school curriculum, the teaching of legal writing by law professors was still strong as the 1930s began.[5]

Our story begins as the Civil War comes to an end.

II. The End of the Civil War and the Rise of the Practice Courts

During the Civil War, legal education, and the teaching of legal writing, suffered terribly.[6] However, with the end of the Civil War, law schools began to pick themselves up and return to business. The experience of the previous era from the 1840s and 50s had established that the best business model for law schools combined both theory and practice.[7] Therefore, the law school curriculum included courses that today would be called "doctrinal," such as Contracts, but also courses that stressed practice and legal writing, such as moot courts and classes such as Pleading.[8] When the law schools began to admit students after the Civil War, this was the format to which they returned.

This lesson was not lost on the new university law schools that began operations in the late 1860s and 1870s. Those fledgling law schools also adopted this formula, especially with regard to using moot courts to teach legal writing.[9] From Boston University to the St. Louis Law School (now Washington University of St. Louis)[10]

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[4] *See infra* Parts V–VI.

[5] *See infra* Parts VII–IX.

[6] Jackson & Cleveland, *supra* note 1, at 227–28. During the Civil War, attendance at many northern schools declined precipitously as students left to fight. Harvard's class was cut from 103 to 87 students, and Yale was left with only 16 to 17 students. Many southern law schools, including Cumberland, William & Mary, and the Universities of Mississippi and Georgia, closed down entirely as their students and professors left to fight for the Confederacy. *Id*.

[7] *See id*. at 216-27 (detailing the structural changes and lessons of that era).

[8] *See id*. at 226.

[9] *See, e.g.,* JULIUS GOEBEL, A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 61 (1955) (detailing moot courts at Columbia during this period); ELIZABETH GASPAR BROWN, LEGAL EDUCATION AT MICHIGAN, 1859–1959 670–86 (1959) (same for Michigan).

[10] *See* Historical Timeline, WASH. U. IN ST. LOUIS SCH. OF LAW, https://law.wustl.edu/about/our-history/historical-timeline/.

students in these moot courts drafted writs and pleadings to bring cases before faculty judges, where they were argued.[11] Vice-Chancellor Emil McClain of the University of Iowa noted that the moot court "furnishes excellent exercise in studying the points of law involved in preparing the pleadings, making briefs of authorities, and arguing law questions."[12] Charles Claflin Allen of St. Louis reported that: "In one sense [moot courts] might be said to be the most important [part of instruction], since they serve to condense and bring into active use the knowledge acquired by the class room."[13]

The use of moot courts to teach legal writing and oral advocacy remained the standard throughout this period. When the University of California's first law school, Hastings College of Law, was founded in 1878, moot court was compulsory.[14] In addition, much of the curriculum of the third year of school was devoted to exercises in preparing pleadings and drafting instruments.[15]

The expansion of the teaching of writing skills beyond the moot court arena accelerated in the 1880s and 1890s with some schools establishing more elaborate "practice courts" either as a supplement to, or a replacement for, their previous moot court programs. These practice courts were more formal than the traditional moot court programs with more faculty involvement and a more regimented schedule.[16]

One of the most comprehensive programs in the era was at the University of Michigan, which inaugurated a practice court in 1893.[17] The school announced that "[o]ne of the strong objections to studying law in a law school, has been that the schools could not teach anything but theory. This objection will be thoroughly met by this practice court."[18] By the next year, the practice court had been expanded, and Professor Thomas Bogle, a former county attorney from Kansas, had been appointed as the first "chair of practice."[19]

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[11] *See* George R. Swasey, *Boston University Law School*, 1 GREEN BAG 54, 59 (1889); Charles Claflin Allen, *The St. Louis Law School*, 1 GREEN BAG 283, 291 (1889).

[12] Emilin McClain, *Law Department of the State University of Iowa*, 1 GREEN BAG 374, 384 (1889).

[13] Allen, *supra* note 11, at 291.

[14] THOMAS GARDEN BARNES, HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY 104–05 (1978).

[15] *Id.* at 105.

[16] *See, e.g.*, *Law School Notes*, 2 MICH. L.J. 328, 328 (1893) (describing Michigan's practice court).

[17] *Id.*

[18] *Id.*

[19] *Law School Notes*, 3 MICH. L.J. 291, 292 (1894).

Under Bogle, the practice courts at Michigan had two different components. The first, which emphasized pleading and writing, consisted of a statement of facts provided by a member of the faculty. Students were required to select the proper forum and form of action, and then draw up the proper pleadings. This was followed by a public hearing at which the pleadings would be critiqued and revised "until they [were] satisfactory."[20] The students would then brief the questions of law and argue the case before the faculty.[21] The second component of the practice court was more akin to a trial advocacy class. Students in that course tried cases selected by the faculty through all phases of a jury trial.[22]

Other schools in the East and Midwest followed this practice. Northwestern,[23] Detroit,[24] Dickinson,[25] and the University of Pennsylvania[26] established practice courts during this time period based on the Michigan model.

Kent Law School (now Chicago-Kent), which had begun operations in 1888, went one step further. It instituted a "school of practice" in 1893.[27] A report stated that:

> This [school of practice] should not be confounded with the moot courts which form a feature of the work of all law schools. . . . [E]ach student will be required to pursue a systematic course of instruction in the preparation of all kinds of legal papers such as are likely to engage the attention of the practitioner, such as contracts, bills of sale, mortgages, bonds, deeds, leases, wills, powers of attorney, affidavits, motions, pleadings (both at law and in equity), orders, decrees, bills of exceptions, and papers for the organization of corporations. In other words, it is their intention that the students shall be taught the law by practising it.[28]

The school of practice at Kent also taught the preparation of briefs for trial.[29] The practice school was a "senior year" course for two hours

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[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See Editorial and Comment*, 4 N.W. L. REV. 195, 195 (1896) [Note: This predates the University Law Review].
[24] *See Law School Notes*, 4 LAW STUD. HELPER 308, 308 (1896).
[25] *See Law School Notes*, 5 LAW STUD. HELPER 188, 188 (1897).
[26] *See id.* at 101, 102.
[27] *The Kent Law School*, 1 LAW. STUD. HELPER 215, 215 (1893).
[28] *Id.*
[29] *Kent Law School of Chicago*, 2 LAW STUD. HELPER 58, 59 (1894).

a week, and was considered an important part of the school's mission to make its students "practical, as distinguished from merely theoretical lawyers."[30]

III. The "Langdellian Revolution" and Legal Writing

The late 1800s also saw the beginning of what would be seismic changes to the teaching of legal education. During this time period, Christopher Columbus Langdell would introduce the case method to Harvard Law School, a mode of teaching that would eventually revolutionize the teaching of law in the modern American law school.

Langdell's hiring was one of the first acts of Charles Eliot after becoming President of Harvard College in 1869.[31] Langdell's main innovation was the "case method," which regarded law as a science that could be taught through the use of cases rather than text books.[32] As an engine to power this method, Langdell settled upon the misleadingly named "Socratic method," which substituted student analysis of the cases under questioning from the professor for the previously prevalent lecture system.[33] The case method would soon become "the" method of legal education.[34]

There is a tendency among writers of the history of legal education to blame Langdell for the decline in prominence that legal skills training would experience during the next century. However, while it is true that Langdell's revolution would eventually have negative consequences for the teaching of legal writing's place in the law school curriculum, Langdell shoulders entirely too much of the blame for this development.

There are three charges that are often levied against Langdell by those who would blame him for the loss of prestige for the teaching of legal writing. The first is that he held the practice of law in low regard

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[30] *Id.* at 58–59.

[31] *See* Stevens, *supra* note 2, at 35–36 & 44.

[32] *See* Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 531–33 (1991).

[33] *Id.* at 532; William C. Heffernan, *Not Socrates, But Protagoras: The Sophistic Basis of Legal Education*, 29 BUFF. L. REV. 399, 401–02 (1980) (noting that the "Socratic Method" was not actually anything like the method of questioning used by Socrates).

[34] *See* Bruce A. Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic "Abomination," 1890–1915*, 46 HIST. EDUC. QUARTERLY 192, 192 (2006) (reporting that 40% of American law schools had adopted, and 24% had partially adopted the case method by the beginning of World War I).

and therefore shunned practical subjects such as legal writing. A second charge based almost solely on his use of the so-called "Socratic method" is that Langdell believed in ancient rhetoric's preference for speaking over writing, and therefore was hostile to the teaching of legal writing. Finally, Langdell is also accused to have been motivated, above all, by the driving desire for law's acceptance by a university academy enamored of science as opposed to natural law; a legitimate academic subject rather than a trade. Under this theory, the teaching of legal writing was too "tradesman-like" to fit within his curriculum.

However, while these charges make Langdell out to be a convenient villain, the actual evidence does not bear them out. First, there is simply no evidence that Langdell was personally hostile to practical training or that he believed that speech was preferable to writing in legal work. In fact, very nearly the opposite has been shown to be true. Langdell was an enthusiastic and able participant in Harvard's moot courts during his time as a student.[35] Langdell stated that, compared to lectures he heard as a student, "'it was the moot cases which were to me the most alluring and instructive, and it was by them I made the greatest progress.'"[36] In his Wall Street law practice following graduation, Langdell was best known for his proficiency in "crafting the extensive written brief that was beginning to displace the weight of oral argument in complicated cases arising from large and intricate commercial transactions."[37] Langdell's disenchantment with law practice was caused not by his rejection of the profession but rather by his commitment to it.[38] His practice experience occurred in the shadow of Tammany Hall, the political machine that controlled politics and judges in New York during this time period.[39] His experience in this environment taught him that

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[35] *See* CHARLES WARREN, HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA Vol. 2 176-77 (1908) (discussing Langdell's performance in moot court and his brief-writing prowess).

[36] Bruce A. Kimball, *Young Christopher Langdell, 1826–1854: The Formation of an Educational Reformer*, 52 J. LEGAL EDUC. 189, 230 (2002).

[37] BRUCE A. KIMBALL, THE INCEPTION OF MODERN LEGAL EDUCATION: C. C. LANGDELL, 1826-1906 42 (2009).

[38] "Specifically, Langdell maintained that the just working of the legal system relies on the effectiveness of the legal profession which depends on lawyers' expertise derived from their academic achievement in law school. These relationships among professional education, expertise, practice, and virtue presented a new understanding of professional legitimacy that was highly contested." *Id*. at 2.

[39] *See* OLIVER E. ALLEN, THE TIGER: THE RISE AND FALL OF TAMMANY HALL 54-62 (1993) (chronicling the near-total control the political machine had over judges and juries in New York City during this era).

success in the practice of his day seemed less a matter of merit (skill in the practice) than a matter of family connection or financial and political corruption. He wanted to reform legal education in order to redeem the practice of law—which he valued—from these undeniably problematic forces.[40] His resistance to hiring experienced practitioners was directly related to his rejection of the kind of practice they represented. He wanted instead to create a new and better practicing bar, a meritocracy in which success depended on knowledge and skill.[41] Nor is there any inconsistency between a belief that lawyering skills are important to the practice of law and a belief that legal doctrine is scientific in nature.

In fact, skills training continued and actually increased at Harvard during the early part of Langdell's tenure. During the 1870-71 school year, not only were the moot courts still in operation, but Langdell began the tradition of assigning mock cases in his Pleading class, with each case containing a statement of facts.[42] Groups of students, two to a side, would then be assigned to prepare pleadings against each other on those facts until the case was ready for a decision. Langdell then held court each Friday to hear the cases and render decisions on them.[43] That same year, two other cases were given out to the students in Professor Holmes's Equity Pleading class as well, with "the whole School, or as many as chose, drawing a bill, answer, or other pleading, as the case might be, upon the facts given out, and handing it in to the Professor."[44]

It is undeniable, however, that Langdell as the Dean of Harvard presided over an era in which the moot courts at Harvard, and indeed any practical training at all in that law school, ceased to exist. However, the culprit was not Langdell and his methods so much as other factors that went along with it, some unique to Harvard, some not.

One problem that seems to have been unique was the prominence of the law clubs, which were run by students.[45] These clubs, which had been in existence since 1825, were part study group, part social group, part debating society, and part moot court.[46] Among the activities,

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[40] Kimball, *supra* note 36, at 42–83.
[41] *Id.* at 224.
[42] WARREN, *supra* note 35, at 375.
[43] *Id.*
[44] *Id.* at 375–76.
[45] *See id.*at 319–331 (describing the law clubs during this period).
[46] *Id.* at 319. Often, the members of each club came from the same undergraduate institution. For instance, it appears the Kent Law Club was formed of former Yale students. *Id.* at 320.

club members engaged in the preparation, debate and argument of cases, including those cases that were due to be argued in their moot court class.[47] Due to the popularity of these law clubs, students expended more energy in preparing those cases and less in the "official" moot courts.[48]

A second factor unique to Harvard at the time was its position relative to the large corporate law firms that rose to prominence in the late 1800s. These firms began to recruit lawyers from Harvard due to, among other things, the three-year legal curriculum Langdell had established.[49] The firms were also willing to teach these young lawyers who had been trained in the case method the skills that they lacked in practice, and thus allowed Harvard to "outsource" its practical training to an extent that was not possible for other schools.[50]

The curriculum championed by Langdell at Harvard also had a deleterious effect on the moot courts there, although, again, an unintended one. In 1869, the course of instruction at Harvard was haphazard: Students pursuing instruction for the bar were encouraged to take courses in Common Law, Equity, Admiralty, Commercial Law, International Law, Constitutional Law, and Jurisprudence in their two years, but otherwise were at liberty to "elect what studies they would pursue according to their own view of wants and attainments."[51] However, after Langdell became Dean in 1870, he championed a regimented three-year course of study that included eight required courses and seven elective courses. In any given year, the faculty as a whole taught fourteen courses, and by 1880 were giving twenty-nine hours of classroom instruction as compared to ten hours before 1870.[52] The end result of this regimentation is that students had less time to devote to any particular course, and the members of the faculty were spread thinner in their teaching duties. Because moot courts were so labor intensive on the part of both students and professors, they became much harder to support.[53]

The second impact of curriculum development was that, beginning in 1869, graded final examinations were instituted in all of the courses except for the moot court.[54] Because most moot court

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[47] *Id.* at 320.
[48] *Id.* at 328.
[49] *See* Kimball, *supra* note 36, at 265–66.
[50] *Id.* at 266–67.
[51] WARREN, *supra* note 35, at 344–45.
[52] *See id.* at 379–418.
[53] *See* KIMBALL, *supra* note 37, at 267.
[54] *See id.* at 210–14 (describing the introduction of graded exams at Harvard).

classes were ungraded, they became the courses to lose out in the allocation of students' time.

The effects of these changes occurred rapidly at Harvard. By 1879, the moot courts were suspended due to the "additional amount of instruction assumed by the several Professors, consequent on the establishment of the three years' course."[55] The truth is, however, that participation in the moot courts had been dying out in the wake of the new curriculum. When Langdell noted in his 1879 report that "some of the Faculty having long doubted the utility of retaining [the moot courts]," it was as much an admission of defeat as a statement of belief on Langdell's part.[56] While the moot courts were resurrected in 1880, they were eventually discontinued again in 1889, when the total enrollment of the school jumped from 225 to 262 and the moot courts became too difficult to administer.[57]

IV. Accepting Harvard's Curriculum, but Keeping Practical Education

Other schools that adopted a larger curriculum faced similar problems, although they weathered them better. At Columbia, where the curriculum was reorganized in 1878 to include a number of extra courses but hardly any more instructors, the moot courts fell into decline because, as one student wrote, "a student is not called more than three times in a year; is not required to act unless he chooses; [and] receives no individual criticism . . . .This system is discouraging to the student as well as in a manner demoralizing."[58] Columbia tried to remedy this situation by employing an instructor to give practical training in research and the preparation of motions, but when that instructor retired in 1887, the duty fell to recent graduates who were appointed as "prize fellows" every year. This system met with only

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[55] WARREN, *supra* note 35, at 413.

[56] *See id.* (quoting from the Annual Report from 1879–80). Kimball wrongly attributes the quote to reflect Langdell's belief in the value of the moot courts, but neglects to include the whole quote. *See* Kimball, *supra* note 37 at 267.

[57] *Id.* at 267; *see* DANIEL R. COQUILLETTE & BRUCE A. KIMBALL, ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY 615 (2015) (providing enrollment numbers). The idea that the moot courts were discontinued because of enrollment is suggested by the Harvard Law School Board of Student Advisors. *See History of the BSA*, HARV. LAW SCH. BD. OF STUDENT ADVISORS, https://orgs.law.harvard.edu/bsa/history/. Coquillette and Kimball also blame the teaching loads caused by the number of students. COQUILLETTE & KIMBALL, *supra*, at 472.

[58] GOEBEL, *supra* note 9, at 99.

limited success, and was abandoned in 1897.[59] It would be five years before Columbia would try again.[60]

Other leading law schools developed strong practice programs to go along with their expanded curriculum. The 1899 meeting of the American Bar Association's Section on Legal Education featured a presentation on the state of moot and practice courts.[61] At the time, systems featuring extensive practice courts in which the students, with faculty instruction, drew up the pleadings and argued the case were in place at schools such as Michigan, Georgetown, and Vanderbilt, among many others.[62] The professors at those schools enthusiastically supported the practice courts as essential to the curriculum.[63]

At the same time, however, this meeting also revealed cracks in the practice court system. Professor Francis B. James of the University of Cincinnati told of the demise of the moot court system at that school, and expressed frustration about whether it could be revived.[64] Professor Edward Harriman of Northwestern lamented that the students there took little interest in the moot courts, preferring instead to spend their time working in law offices.[65] He also waxed pessimistic on the whole practice court experience, arguing that he thought a voluntary club court system might be better than a compulsory one.[66]

A common theme at the meeting was that professors at many law schools were unwilling to make practice courts a required part of the

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[59] *See id.* at 171.
[60] *See infra* notes 85 to 88 and accompanying text.
[61] *Proceedings of the Section of Legal Education*, August 28, 1899, 22 ANN. REP. A.B.A. 493, 494–518 (1899).
[62] *See id.* at 505–16. Other schools who reported favorably on their programs at the meeting included Wisconsin and the St. Louis Law School. *Id.* at 510-11.
[63] *See id.* at 508-14. Professor Floyd R. Mechem of Michigan stated that "we have no course that is regarded as so valuable." *Id.* at 509. Professor A. E. L. Leckie of Georgetown stated that the moot court was successful in "giving the students much practical knowledge both as to the method of procedure and the principles of the law." Professor John Dickinson of Vanderbilt stated that the students regarded the practice court as a "valuable part of their work." *Id.* at 514.
[64] *See id.* at 500–01.
[65] *Id.* at 501.
[66] *Id.*

curriculum.[67] In addition to Professor Harriman, whose sole argument in that regard was that "I think that the compulsion can hardly be more than encouragement,"[68] others expressed a sense of resignation on the subject. Professor John Gray of Harvard noted that the moot courts there were "not very successful" perhaps because "[m]oot courts used to be compulsory, but there were so many excuses that we have given up the compulsion."[69]

A second concern raised about the practice court system was the burden that it put on the professors teaching it. Professor Gray stated that to make practice courts a success "is pretty hard work for a professor, who has to get up the evidence on both sides."[70] Emlin McClain, the Chancellor of the law school at Iowa, argued that a solution to this would be to have "someone on its teaching force who can give a large amount of time to such work" as it was "preposterous to expect a man who has his full regular work to do every day to give the moot court the attention which it needs and which is essential to its success."[71] E.W. Huffcut, the Dean at Cornell, noted that his university had done just that, by hiring Professor Henry Redfield to teach practice courses.[72] Huffcut stated that the school also hired an assistant, so that the next year "we shall have two men whose entire time is taken up in the teaching of practice and in the examination of practice papers and in the hearing of practice cases."[73]

Dean Huffcut also addressed the need for such practical education, echoing statements that would seem familiar to many professors today:

> I feel convinced that the law schools in these days are bound to provide a sufficient amount of practice work so that the students may go forth without being absolutely at sea as to what they are to do and how they are to do it. There is now very little opportunity outside the schools for students to learn that sort of work before they are admitted to the bar.[74]

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[67] *See id.* at 500–01 (remarks of Professor Francis James of Cincinnati), 501–02 (remarks of Professor Edward Harriman of Northwestern), 503 (remarks of Professor John Gray of Harvard).
[68] *Id.* at 501.
[69] *Id.* at 502–03.
[70] *Id.* at 503.
[71] *Id.* at 513.
[72] *Id.* at 516.
[73] *Id.*
[74] *Id.* This lament about law schools needing to provide practical training seems perpetual. Both the ABA-commissioned MacCrate Report in 1992 and

V. The New Century

By the early part of the 1900s, the practice court system was heavily under pressure, as schools rushed to adopt the new formalized curriculum. Clear lines of demarcation had begun to emerge. Harvard had given up her courts, and Columbia's were in decline.[75] Although Langdell had been sad to see Harvard's moot courts go, the same could not be said for his successor as Dean, James Barr Ames, who reported that Harvard "deems it unwise to attempt to teach practice in a law school."[76] This became the standard Harvard refrain during the period, as noted by its *Centennial History* published in 1918:

> There are those who claim to be able, through practice courts, to teach a student as well as he can be taught in an office. The Harvard Law School, while admitting that this can be done, has always taken the position that it would be done at too great an expense, since it would involve the use of time that could much more profitably be spent in learning the science of law. The belief of the School is that law can be studied as a science and in its entirety only in a law school, while practice may be more quickly and effectively learned outside the school. The precious hours of instruction should therefore properly be devoted to other learning.[77]

Harvard was not alone in this view. Dean James Parker Hall of the University of Chicago argued in 1903 that although a well-conducted moot court course might be valuable to students in a large majority of schools, he did "not think that a law school of high grade which offers more courses in substantive law than can be taken in three years

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the 2007 Carnegie Report emphasize the responsibility of law schools to provide practical training and the extent to which they fail in that regard. *See* WILLIAM L. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 87-88 (2007) (The Carnegie Report); AM. BAR ASS'N SECTION OF LEGAL ED. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 260-68 (1992) (The MacCrate Report).

[75] *See supra* notes 55 to 63 and accompanying text.

[76] Clarke B. Whittier, *Some Inaccurate Statistics on the Teaching of Pleading*, 2 AM. LAW SCH. REV. 345, 348 (1910).

[77] HARVARD LAW SCHOOL, A CENTENNIAL HISTORY OF HARVARD LAW SCHOOL, 1817–1917 83–84 (1918).

should encourage its students to spend any of their school hours in trying mock jury cases."[78]

However, the practice courts were resilient, and some schools that had previously abandoned the practice were persuaded to have another go, following the models established at Cornell and Michigan. In 1902, and in spite of Professor Harriman's pessimism, Northwestern hired a full-time professor, Levi H. Fuller, to take charge of its new practice court.[79] The school touted Fuller's experience in practice court work, as well as his activity in touring law schools studying "the newest and best methods of conducting such work."[80] His hiring announcement also noted that Fuller would "receive a large salary."[81] Cincinnati also reversed its decision to abandon faculty-led moot courts, adding them back into the curriculum in 1905.[82]

Columbia also launched a revival by hiring Professor Henry Redfield from Cornell in 1902.[83] Redfield took control of the floundering moot courts and merged them with instruction in pleading and practice.[84] Unfortunately, this system was not successful, and the moot courts ceased to be part of the curriculum in 1909, although Redfield continued to teach writing as a part of Pleading and Practice courses throughout all three years of study until 1916.[85]

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[78] James Parker Hall, *Practice Work and Elective Studies in Law Schools*, 1 AM. LAW SCH. REV. 328, 331–32 (1902–06).
[79] *Topics of Interest*, 10 AM. LAW. 254, 270 (1902).
[80] *Id.*
[81] *Id.*
[82] *See* LAW DEPARTMENT OF THE UNIVERSITY OF CINCINNATI 1905–06 15 (1905), https://babel.hathitrust.org/cgi/pt?id=uiug.30112111482573;view=1up;seq=169.
[83] GOEBEL, *supra* note 9 at 177.
[84] *Id.* at 179.
[85] *See id.*; COLUMBIA COLLEGE OF THE CITY OF NEW YORK LAW SCHOOL ANNOUNCEMENT 1909–10 15–22 (1909), https://babel.hathitrust.org/cgi/pt?id=uiug.30112111490188;view=1up;seq=151. This remained true even though Columbia hired future Supreme Court Justice Harlan Fiske Stone as Dean in 1910. Stone was of the opinion that law schools should confine themselves to the teaching of the principles of common law and equity, rather than practice, which could be picked up after graduation. *See* GOEBEL, *supra* note 9, at 226. Stone led a reorganization in the 1916–17 school year which reduced the Pleading and Practice Court to three credit hours in the first semester of the curriculum, and assigned a different professor to teach it. *See* COLUMBIA COLLEGE OF THE CITY OF NEW

Yale Law School, under the deanship of Henry Wade Rogers, also had a practical bent during this time. In 1903, with the intention "that students would acquire as thorough a knowledge of practice as can be derived in a law school," Yale launched a practice court program.[86] This program, which was one credit hour each semester and ran throughout the second and third years, was delivered in conjunction with the teaching of Procedure.[87] In addition, a first year lecture course instructed students on legal research.[88]

By 1910, the practice courts were still the normal method of teaching legal research and writing, although the number of hours devoted varied considerably. For example, students at Dickinson, where the curriculum was almost entirely practice court, received an estimated 576 hours a year (the equivalent of 18 credit hours a semester) in practice court instruction and presentation, while students at Illinois received 24 hours a year (the equivalent of one and one half credit hours in total for the year).[89] The national average was 101 practice court hours (the equivalent of just over six credit hours a year).[90]

YORK LAW SCHOOL ANNOUNCEMENT 1916–17 16 (1916), https://babel.hathitrust.org/cgi/pt?id=uiug.30112111490188;view=1up;seq=374.

[86] BULLETIN OF YALE UNIVERSITY LAW SCHOOL 1903–04 18–19 (1903), https://babel.hathitrust.org/cgi/pt?id=chi.71626567;view=1up;seq=183.

[87] *Id.* at 15–16.

[88] *Id.* at 15.

[89] Whittier, *supra* note 76, at 347.

[90] *Id.*

VI. The First Legal Writing Textbook

While the practice court was still a prominent feature of law schools in the early 1900s, how well these practice court courses actually taught legal writing became a topic of debate. From 1902 to 1907, articles appeared in the *American Law School Review* lamenting the inability of law students to write, and advocating the teaching of, research and brief writing as a part of the law school curriculum. A particularly scathing series of articles appeared in that publication in 1904.[91] The first, ominously entitled "Is the Average Candidate for Admission to the Bar Prepared to Pass a Satisfactory Examination on Brief Making?," contained the opinions of members of the board of law examiners from fifteen states. Their answer was a unanimous "no."[92] One of the more pointed comments came from a member of the board of law examiners from Iowa, who opined that "I doubt the ability of a very large percentage of the young men admitted to the bar of this state to make briefs upon any question of law which would be of value in the submission of a case to any of the courts."[93]

This article was followed by a second, which contained letters from faculty members of law schools across the country.[94] With very few exceptions, these faculty members stated their belief that students were unprepared, and that more practical training was desirable.[95]

Finally, a third article asked the question "[s]hould the subject of brief-making be taught as part of the regular curriculum in a law

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[91] *See, e.g.*, *Is the Average Candidate for Admission to the Bar Prepared to Pass a Satisfactory Examination on Brief Making?* 1 AM. L. SCH. REV. 231, 232 (1904).

[92] *Id.*

[93] *Id.* Other comments were similarly dour. A member of the board of law examiners for Nebraska wrote that "I am of the opinion that not more than 10 per cent. of those who present themselves for examination to the bar commission in this state could pass a satisfactory examination on the subject of case finding and brief making." *Id.* at 231. A bar examiner from Michigan pegged the number of students who would fail such an exam at 80%. *Id.* at 232. A bar examiner from Massachusetts wrote simply that "Candidates for admission to the bar know nothing about this very important work." *Id.* at 233.

[94] *Instruction in Brief Making*, 1 AM. L. SCH. REV. 278 (1904).

[95] *See id.* at 278–83. Letters were published from faculty at Georgetown, Chicago–Kent, Harvard, Western Reserve (which later merged with Case Institute of Technology), University of Pennsylvania, Cleveland, Maryland, Buffalo, Drake, Louisville, Illinois, George Washington, Michigan, National University School of Law (which later merged with George Washington), Indiana, St. Louis, North Carolina and Virginia. *Id.*

school?" and contained letters from judges of various state and federal courts, all of which suggested that a course in legal research and writing be added to the law school curriculum.[96] Its author, Alfred F. Mason, editor of the *American Law School Review*, lamented that, in the then-current law school curriculum:

> It is not unnatural that the judge or the practicing lawyer should be surprised when told that certain law schools are giving from six to thirty hours instructions on such subjects as Parliamentary Law, Roman Law, Administrative Law of European States, Comparative Jurisprudence, International Relations, etc., and then send their graduates forth to engage in practice without having had as much as one hour of class instruction on the proper way to brief a case, or to run down the law from a given statement of facts.[97]

It is possible to take a cynical view of Mason's efforts to encourage the teaching of legal writing in law schools. Professor Maureen J. Arrigo-Ward notes that Mason was at the time a lecturer in legal bibliography at the University of Minnesota Law School, and thus admittedly "not unbiased in his opinion of the value of legal research and writing."[98] Perhaps more importantly, Mason was employed by West Publishing, and therefore had an even stronger motive.[99] Seen through this lens, Mason used his position as editor of the *American Law School Review* to highlight the need for instruction in subjects such as legal writing and research in order to provide a market that West would then be able to fill.[100]

In 1906, Mason and a group of other legal educators published what is generally recognized as the first book on legal research and writing: *Brief Making and the Use of Law Books*.[101] Its authors were a fairly prestigious group: In addition to Mason, William Lile was the Dean of the University of Virginia School of Law; Henry Redfield, who

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[96] Alfred F. Mason, *Brief-Making in Law Schools*, 1 AM LAW SCH. REV. 294 (1905).
[97] *Id.* at 295.
[98] Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs,* 70 TEMPLE L. REV. 117, 130 (1997).
[99] *See* Frederick C. Hicks, *The Teaching of Legal Bibliography*, 11 LAW LIBR. J. 1, 2 (1917) (discussing Mason's role as part of West Publishing's marketing).
[100] *See id.*
[101] *See* WILLIAM M. LILE, HENRY S. REDFIELD, EUGENE WAMBAUGH, ALFRED MASON & JAMES WHEELER, BRIEF MAKING AND THE USE OF LAW BOOKS (Nathan. Abbott ed. 1906).

had been the Practice Court instructor at Cornell was by this time Professor of Law at Columbia, Eugene Wambaugh was a Professor of Law at Harvard; and James Wheeler was a Lecturer of Law at Yale.[102] The collection was edited by Nathan Abbott, then the Dean at the fairly new Stanford University School of Law.[103]

As a legal writing book, *Brief Making and the Use of Law Books* was surprisingly comprehensive. At 490 pages, including an index, it covered many of the topics that a legal writing and research text covers today. Professor Redfield discussed the preparation of a brief on appeal, including its purpose, content, and suggestions for preparation.[104] He also included a sample brief.[105] The next section of the book, written by Eugene Wambaugh, provided instruction on distinguishing between binding and persuasive authority, reading case law and interpreting statutes.[106] Alfred Mason then discussed the different sources of both primary and secondary authorities, including codes, session laws, court rules, reporters, textbooks, and digests.[107] The fourth section, written by Yale's James Wheeler, discussed how to find the law using these sources, with an emphasis on the American Digest Classification Scheme.[108] While his section of the book was somewhat bloated by his provision of a short synopsis of every major and minor category in the digest system, he also provided sixteen exercises for students to perform, along with the steps necessary to find the answers.[109] The book then concluded with

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[102] *Id.* at 1.
[103] *Id.*
[104] *Id.* at 5–38.
[105] *Id.* at 39–65. The Sample Brief was the petitioner's brief from *Gonzales v. Williams*, 192 U.S. 1 (1904), which argued that a citizen of Puerto Rico was not an "alien immigrant."
[106] *Id.* at 66–118.
[107] *Id.* at 119–72.
[108] *Id.* at 173–336.
[109] *See id.* at 326–36. For instance, the first exercise asked the following:

(1) A contractor agreed to build a house in accordance with plans and specifications furnished by an architect and to the satisfaction of the architect. The materials furnished and services rendered by the contractor were in substantial compliance with the contract, but by mistake slightly wider clapboards were used in the gables of the house than were specified, and some of the boards used in the floors were wider than called for. The usefulness and value of the house were not diminished thereby, and the difference in cost was less than $50. The last payment, amounting to $1,525, due under the contract, was not made. Can the contractor recover the payment?

Wheeler directed the students to the following authorities:

an appendix providing the abbreviations for every law publication then in existence in the United States.[110]

Early reviews were positive. The American Lawyer argued that

> [the] charge is well-founded that the law school does not properly equip the student in the investigation of authorities, in brief making, and in law classification . . . . It is apparent therefore that the present work is much needed. It blazes a new trail and should be examined with careful attention by the faculties of the law schools.[111]

The Columbia Law Review noted that although the book was pitched to law students, "[i]n many respects . . . it should be of real value to lawyers of considerable experience. The book not only contains much practical advice but also much information that is not otherwise accessible."[112] Even the Harvard Law Review was effusive in its praise: "Pedagogics is nothing if not an optomistical [sic] science. If we could share the optimism of the cult, it would not be extravagant to predict that with the appearance of this work the days of bad brief drawing were over."[113]

In addition to the publishing of *Brief Making and the Use of Law Books*, West Publishing dispatched associate editor and educator Roger W. Cooley as a "traveling lecturer" to deliver a course in brief making and legal research based on the book.[114] In the 1906–07 academic year, Cooley visited the University of Michigan, University of Wisconsin, University of Chicago, Northwestern, and the Detroit College of Law, conducting classes of a week to ten days in length.[115] In 1907–08, Cooley added John Marshall, Indiana, Cincinnati,

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11 Century Digest; topic, Contracts; V, Performance or Breach; (J) Substantial Performance; section 1353; Building Contracts; column 1619.

American Digests for 1897 and subsequent years: topic, Contracts; V, Performance or Breach. Bimonthly Advance Sheets, American Digest, issued since publication of the last Annual Digest, same topic and subdivision.

9 Cyclopedia of Law and Procedure; topic, Contracts; IX, Discharge; Discharge by Performance; 3, Strict and Substantial Performance; page 601.

Text–books on Contracts, chapters or subdivisions on performance or discharge, and cases cited.

[110] *Id.* at 337–459. Although listed as a co–author, Dean Lile provided only a three–page introduction to the book. *Id.* at 1–3.

[111] *On the Making of Books*, 14 AM. LAW. 28, 31 (1906).

[112] *Book Reviews*, 6 COLUM. L. REV. 474, 481 (1906).

[113] *Books and Periodicals*, 15 HARV. L. REV. 628, 637 (1905–06).

[114] Hicks, *The Teaching of Legal Bibliography*, *supra* note 99 at 3.

[115] *Notes and Personals*, 2 AM. L. SCH. REV. 78, 86 (1907); *see* Hicks, *The Teaching of Legal Bibliography*, *supra* note 99 at 3.

Pittsburgh, Dickinson, the University of Maryland, and the University of West Virginia, in addition to others.[116] In all, Cooley lectured at 20 schools that year, and soon was lecturing at 30 schools a year.[117]

A second edition of *Brief Making and the Use of Law Books* was printed in 1909. Edited by Cooley, who also updated and refined the part of the book on "How to Find the Law" originally written by James Wheeler, the second edition added a section on preparing trial briefs.[118] This section was written by Professor Edson R. Sunderland, who taught practice at the University of Michigan and was responsible for much of the work of the practice courts there.[119]

VII. Expansion from 1910–20: Toward a More Comprehensive View of Legal Writing in the Law School Curriculum

By 1910, the teaching of legal research and writing in American law schools was a mixture of old and new, with instruction in the practice courts being supplemented by additional instruction provided by West Publishing through Cooley and other travelling lecturers using Cooley's lectures.[120] However, although Cooley's lectures were valuable, his course was short and limited in scope. It became clear that more was needed in order to properly prepare students, and law schools responded by increasing the amount of practical training and providing more systematic instruction on legal writing.

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[116] *Notes and Personals*, 2 AM. L. SCH. REV. 237, 242 (1908).
[117] Hicks, *The Teaching of Legal Bibliography, supra* note 87, at 3.
[118] *See* WILLIAM M. LILE, HENRY S. REDFIELD, EUGENE WAMBAUGH, EDSON R. SUNDERLAND, ALFRED MASON & ROGER COOLEY, BRIEF MAKING AND THE USE OF LAW BOOKS, V, 207–218 (2d Ed., Roger W. Cooley ed., 1909).
[119] *See id.* at 207; Edson R. Sunderland, *Art of Legal Practice*, 7 MICH. L. REV. 397, 405–09 (1908–09) (detailing the practice court process at Michigan).
[120] *See* Hicks, *The Teaching of Legal Bibliography*, *supra* note 99, at 3-4.

A. The Integration of Practice Courts and the Classroom

The University of Michigan became a leader in integrating the practice courts with classroom teaching. Even though the school had adopted a wide curriculum with an array of electives, including such classes as Admiralty, Patent, and Irrigation (yes, Irrigation) law, it still placed a heavy emphasis on practice and writing. During the first and second year, students were required to take courses in Common Law Pleading, Code Pleading, and Equity Pleading, all taught by Professor Bogle.[121] This course was a hybrid civil procedure course that also required the drawing of written pleadings. In the third year, students were required to take both the Practice course taught by Bogle for one credit hour and the accompanying one-credit-hour Practice Court course taught by Professor Sunderland with the assistance of Instructor W. Gordon Stoner as well as other faculty members "from time to time."[122] The school warned that "[s]atisfactory completion of both courses is a condition precedent to a degree."[123] In addition, every student was required to take a third-year one-credit course in Conveyancing, taught by Professor Evans Holbrook with the assistance of Instructor Ralph Aigler. The catalog explained that the purpose of this course was to give, in addition to the substantive law of conveyancing:

> a thorough drill in the actual preparation of all of the more important forms of conveyances, including thereunder not only deeds, mortgages, wills and assignments of various sorts, but also all such contracts, agreements, corporate and partnership articles and other instruments as the lawyer in actual practice is likely to be called upon to prepare.[124]

In order to accomplish this audacious task, the students were presented with statements of fact and required to draw up the papers under the supervision of one of the professors. If not correct, they were required to be rewritten, and "[n]eatness, accuracy, and a lawyer-like method [were] insisted upon."[125]

For the 1911-12 academic year, the practical written work was expanded even more. The Conveyancing class was moved to the

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[121] UNIVERSITY OF MICHIGAN DEPARTMENT OF LAW ANNUAL ANNOUNCEMENT 1910–1911, 20–22 (1910).
[122] *See id.* at 21, 26–27.
[123] *Id.* at 28.
[124] *Id.* at 28.
[125] *Id.*

second year and increased to three credit hours.[126] In addition to Professor Holbrook, Professor John Rood and Assistant Professors Victor McLucas and Edgar Durfee were assigned to teach it. The work of the Practice Court was also extended to two credit hours over two semesters, and Stoner and Durfee joined Sunderland and the newly promoted Assistant Professor Stoner in teaching it.[127] Further, the accompanying Practice Course was renamed Trial Practice and was expanded to two hours.[128]

Northwestern also developed an incredibly comprehensive program. In its 1910 catalog, the school noted that, "as part of the systematic instruction in the body of law . . . an effort is made to provide adequate training in the practical use of legal knowledge and discipline, and in certain important details of legal writing and speaking which help materially to equip the accomplished lawyer."[129] In the first year, students took the three-hour course on Common Law Pleading and Procedure, which included "exercises in the drafting of the various kinds of pleadings."[130] In the second year, students took a year-long class for one hour each semester in Legal Writing and Forensics, which included moot court work.[131] In addition, second-year students took a two-hour course in Equity Pleading with written drafting exercises.[132] The third year continued this emphasis. In the two-hour Corporations course, the class was formed into two corporations, and the students were required to draft instruments to organize, issue stock, consolidate, and "do other various acts of corporate business."[133] The two semester one-hour Conveyancing course also required drafting exercises. Finally, students were required to take a two-hour Practice Court course in which they were required to draw up pleadings and try cases.[134] With only minor modifications, this system would continue until 1920.[135]

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[126] UNIVERSITY OF MICHIGAN DEPARTMENT OF LAW ANNUAL ANNOUNCEMENT 1911–1912, 21–22 (1911).
[127] *Id.*
[128] *Id.* at 21. Sunderland took over the teaching of this course from Professor Bogle. *Id.*
[129] NORTHWESTERN UNIVERSITY BULLETIN, ANNUAL CATALOGUE 208 (1909-1910), https://babel.hathitrust.org/cgi/pt?id=ien.35556042920017;view=1up;seq=1.
[130] *Id.* at 202, 208
[131] *Id.* at 202–03, 209 (describing the work of moot court).
[132] *Id.* at 202.
[133] *Id.* at 208.
[134] *Id.* at 209.
[135] *See* NORTHWESTERN UNIVERSITY BULLETIN, ANNUAL CATALOGUE 252–58 (1920-1921), https://babel.hathitrust.org/cgi/

Virginia, home of Dean William Lile, one of the co-authors of *Brief Making and the Use of Law Books*, also had a fairly comprehensive curriculum in legal writing. In the first semester of the first year, Dean Lile taught a two-credit-hour course in the Study of Cases, Legal Bibliography, and Brief Making.[136] In the second year, students took a two-credit course on Equity Procedure, which also involved work in the Practice Court.[137] The Practice Court was also required as an adjunct to the four-credit-hour Virginia Pleading and Practice class.[138] Finally, in the final semester of the third year, Dean Lile taught a two-credit-hour course on Practice of Law and Preparation of Cases.[139] Further, a student-run moot court operated in addition to the regular practice court, and every student was required to argue at least one case during his time at the law school, and to submit "a carefully prepared brief of his argument, with a digest of authorities relied upon."[140] In 1912, the Practice Court disappeared, but the interpretation of statutes was added to the first-year course, and the school's announcement of the curriculum included a special section on the importance of what it termed "Practical Work."[141] In 1913, the

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pt?id=ien.35556027641083;view=1up;seq=1. In 1920, the Legal Writing courses were replaced with Legal Bibliography. The Practice course was continued in the third year, but the other courses in the curriculum were by now taught using only casebooks. *Id*.

[136] UNIVERSITY OF VIRGINIA, CATALOGUE 1909–10, ANNOUNCEMENTS 1910–1911, DEPARTMENT OF LAW 8 (1910), https://virginia.app.box.com/s/1fboyegrf54tt7y3ckl2x5q9gnnqlpcn/file/296141949676.

[137] *Id*. at 8–9.

[138] *Id*.

[139] *Id*. at 8.

[140] *Id*.

[141] UNIVERSITY OF VIRGINIA, CATALOGUE 1911–12, ANNOUNCEMENTS 1912–1913, DEPARTMENT OF LAW 9–11 (1912), https://virginia.app.box.com/s/1fboyegrf54tt7y3ckl2x5q9gnnqlpcn/file/296142807007. This section stated that:

> In the courses of Equity Procedure, Virginia Pleading & Practice, Code Pleading, Criminal Procedure, and Legal Bibliography and Brief Making, special stress is laid upon practical work. In the Pleading and Procedure courses, every student is required to draw, and submit for correction and criticism, all of the principal pleadings, orders, decrees, and other forms usual in actual litigation. In the course on Legal Bibliography and Brief Making, familiarity with Law books and their use is secured by lectures and demonstrations in the presence of the books themselves, followed by oral and written quizzes, and finally by practical tests; and briefs on

student-run moot court was abandoned in favor of an elective class on Legal Argumentation, as well as a required first-year three-hour class on Forensic Debating.[142] This continued to be the practice at Virginia throughout the 1910s.

Despite the earlier pronouncement of its Dean that students in a high-quality law school did not need to spend time trying mock cases,[143] the University of Chicago also became a leader in the teaching of practice. In 1910, the University of Chicago had Practice I in the second year for two hours per quarter for two quarters.[144] This was followed by Practice II in the third year for two hours per quarter for two quarters.[145] In 1914, a lecture course on The Use of Law Books (with practical exercises) was added.[146] The next year, it was joined by a course on Brief-Making and Legal Argument (with practical exercises).[147] These required first-year courses replaced the previous moot court system of voluntary clubs assisted by members of the faculty. Instead, the school moved the program in-house to establish an environment "in which every entering student is given opportunity to obtain some experience in brief-making and legal argument under competent supervision. Systematic instruction is also given in the use of digests and other legal search-books."[148] Chicago would continue under this system throughout the 1910s.[149]

Nor was this emphasis on writing confined to the Great Lakes. In the Midwest, both Washburn University and the University of Kansas began the 1900s with the traditional moot court programs.[150] By 1905,

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> assigned topics are required to be prepared according to rigorous standards.

[142] UNIVERSITY OF VIRGINIA, CATALOGUE 1912–13, ANNOUNCEMENTS 1913–1914, DEPARTMENT OF LAW 9–12 (1913), https://virginia.app.box.com/s/1fboyegrf54tt7y3ckl2x5q9gnnqlpcn/file/296144872906.

[143] *See supra* note 67 and accompanying text.

[144] THE UNIVERSITY OF CHICAGO, ANNOUNCEMENTS 1910–11 14 (1910).

[145] *Id.*

[146] THE UNIVERSITY OF CHICAGO, ANNOUNCEMENTS 1914–15 15 (1914).

[147] THE UNIVERSITY OF CHICAGO, ANNOUNCEMENTS 1915–16 15 (1915).

[148] *Id.* at 5.

[149] *See* THE UNIVERSITY OF CHICAGO, ANNOUNCEMENTS 1921–22 8 (1921) (at this point Practice I and II became electives, but the first year moot court continued to be a required course), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1061&context=lawscholannouncements#page=8.

[150] WASHBURN COLLEGE SCHOOL OF LAW ANNOUNCEMENTS, 1905–06 16–17 (1905); BULLETIN OF THE UNIVERSITY OF KANSAS CATALOGUE 1900–01 85–87, https://babel.hathitrust.org/cgi/pt?id=uiug.30112111993942;view=1up;seq=93.

both schools had moved to what were essentially full-fledged practice courts. Washburn added a two-credit-hour one-semester Brief-Drawing class in 1910, and then folded that into an enhanced three-year practice court in 1916.[151]

North Dakota also made a good attempt through the expedient method of hiring Roger Cooley as a professor of law in 1911.[152] In 1913, Cooley inaugurated a course in Brief Making and the Use of Authorities for an hour a week extending throughout the entire year.[153] Another semester-long elective course in the writing of legal documents was also offered that year.[154] The school explained that Cooley's course would be required for all third-year students, and that "[i]t is intended to supplement the course in Procedure now given by Professor Lewinsohn, and the regular Practice course conducted by Professor Charles A. Pollock."[155] The course used *Brief Making and the Use of Law Books* as its text, and included mock arguments on questions of law before the instructor.[156]

Other schools in the East also expanded their writing programs. In its four-year degree program, Cornell offered a second-year course on brief-making, which was taught by a professor and used the first edition of *Brief Making and the Use of Law Books*.[157] In the third year, students took Procedural Papers, which involved the drafting of pleadings and motion papers.[158] In the final year, students took a one-hour Practice Court course.[159] These classes were also required for the three-year program, beginning in the first year.[160]

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[151] WASHBURN COLLEGE SCHOOL OF LAW REGISTER FOR 1909–1910, ANNOUNCEMENTS FOR 1910–1911 7 (1910); WASHBURN COLLEGE SCHOOL OF LAW REGISTER FOR 1915–1916, ANNOUNCEMENTS FOR 1916–1917 14–15 (1916).
[152] *See Notes and Personals*, 3 AM. L. SCH. REV. 38, 46 (1911) (announcing Cooley's hire).
[153] *Notes and Personals*, 3 AM. L. SCH. REV. 395, 402 (1913).
[154] *Id.*
[155] *Notes and Personals*, 3 AM. L. SCH. REV. 311, 312 (1913).
[156] *See id.* at 312 (describing the course).
[157] CORNELL UNIVERSITY, ANNOUNCEMENT OF THE COLLEGE OF LAW 1910–1911 11 (1910), https://babel.hathitrust.org/cgi/pt?id=uiug.30112111496946;view=1up;seq=379). The four-year course at Cornell was designed for those students that only had high school training. The first year of that course consisted of one law class, Torts, along with an Introduction to the Law Class, and then a variety of other classes from the College of Arts and Sciences, including Elementary Economics, English Constitutional History, and six or seven hours of other electives. *Id.* at 11-13.
[158] *Id.* at 11–12.
[159] *Id.* at 12–13.
[160] *Id.* at 14.

Maryland expanded its Practice Court and related classes in 1913 to encompass one credit hour each semester for two full years.[161] In 1914, Professor G. Ridgely Sappington took over the running of the court, assisted by four other attorneys.[162] Sappington continued to preside over the Practice Court throughout the 1910s and into the 1920s.

In the West, the University of California, Berkeley began to teach brief making and other legal forms in conjunction with its two-credit hour third-year Practice course and its various procedure courses in 1908.[163] In addition, the school had student-run moot courts with faculty involvement.[164] Although the moot courts soon became exclusively the domain of the students, the Practice course continued into the 1920s.[165]

Berkeley's older sibling, Hastings, had a compulsory third-year moot court program in 1911, along with a three-credit-hour per semester year-long course in Practice and Pleading in the third year.[166] For the 1921 school year, the Practice and Pleading was reduced to two credit hours a semester throughout the year, but a compulsory law clinic in connection with the San Francisco Legal Aid Society was established.[167]

B. Problems in Integration

This integration did not always go smoothly. A number of schools ran into problems as their ambitions to provide practical training ran into the realities of limited curricular resources and the staffing such courses required. In Seattle, the University of Washington had

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[161] CATALOGUE AND ANNOUNCEMENT, THE LAW SCHOOL OF UNIVERSITY OF MARYLAND 12–16 (1913).

[162] CATALOGUE AND ANNOUNCEMENT, THE LAW SCHOOL OF UNIVERSITY OF MARYLAND 14–15 (1914).

[163] *See* REGISTER UNIVERSITY OF CALIFORNIA 1907–08 217–18 (1908), https://babel.hathitrust.org/cgi/pt?id=uc1.31378008248414;view=1up;seq=227 (detailing courses for 1908–09).

[164] *Id.* at 218.

[165] *See* REGISTER, UNIVERSITY OF CALIFORNIA 1919/20 143–46 (1920), https://babel.hathitrust.org/cgi/pt?id=uc1.31378008248521;view=1up;seq=243.

[166] HASTINGS COLLEGE OF THE LAW ANNOUNCEMENT 1911–12 6 (1911), https://babel.hathitrust.org/cgi/pt?id=uc1.31378008248422;view=1up;seq=454.

[167] *See* HASTINGS COLLEGE OF THE LAW ANNOUNCEMENT 1920–21 3–7 (1921), https://babel.hathitrust.org/cgi/pt?id=uc1.31378008248521;view=1up;seq=605.

traditionally operated with a third-year Practice course in which "particular attention" was paid to the "drawing of deeds, mortgages, trust instruments, wills, contracts, and mercantile instruments of all kinds, and the drafting of papers relating to organization, reorganization, and management of corporations; also, the proper method of preparing and drafting bills to be enacted into law by Congress and the Legislature."[168] It operated a Practice Court as well, along with a course in forensics and oratory.[169] In 1906, however, the amount of the curriculum dedicated to legal writing and research exploded. A one-credit-hour course on legal research was added to the first year, along with a two-hour year-long "moot court" class that included "a study of the Washington Code of Pleading, the drawing of Pleadings under the Code, and the arrangement of motions, demurrers, etc., upon these pleadings."[170] In the second year the legal research class continued, along with another moot court class that included "the drawing of pleadings, argument of motions, demurrers, etc., the trial of cases before the Court alone and before the Court and a Jury."[171] In addition, a semester-long one-hour course in "[p]ractical work in drawing legal papers including contracts, deeds, wills, etc., from given states of facts" was added.[172]

By 1910, the legal writing curriculum had gotten even bolder. Although the Practice Courts were gone, the moot court and legal research courses were still in existence.[173] They were joined in the first year by Procedure I and II. The course catalog explained that:

> These courses are planned as laboratory courses to accompany the course in pleading. In course I the student will be required to copy and draft original writs and declarations and other pleadings at common law and to copy and draft proceedings in equity; and in course II do the same character of work in reference to

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[168] *See* THE BULLETIN OF THE UNIVERSITY OF WASHINGTON 180 (1901), https://babel.hathitrust.org/cgi/pt?id=uiug.30112114062950;view=1up;seq=192

[169] *Id.* at 181.

[170] CATALOGUE OF 1905–6 AND ANNOUNCEMENTS FOR 1906–7 OF THE UNIVERSITY OF WASHINGTON 189–90 (1906), https://babel.hathitrust.org/cgi/pt?id=uiug.30112114062935;view=1up;seq=199.

[171] *Id.* at 192.

[172] *Id.*

[173] *See* CATALOGUE OF 1909–10 AND ANNOUNCEMENTS FOR 1910–11 OF THE UNIVERSITY OF WASHINGTON 238–42 (1910), https://babel.hathitrust.org/cgi/pt?id=uiug.30112114062919;view=1up;seq=250.

> code pleading which occupies the second half of the course on pleading.[174]

The second year included Procedure III and IV, along with another year of legal research instruction.[175] The third year then added Procedure IV and V, which extended to appellate work.[176]

However, this represented the high point for legal research and writing instruction at Washington. In 1912, the moot court classes were abandoned in favor of using the Procedure classes to teach trial and appellate practice.[177] The legal research class was scaled back to just the first year.[178] In 1914, only the first-year Procedure course was required, with the other two years being elective.[179] By 1920, that course had lost its writing component, and only the electives remained.[180]

At the University of Pennsylvania, although the 1910 curriculum included a one-credit hour course in the first year entitled Use of Law Books and Preparation of Briefs and Legal Papers, the course was voluntary.[181] Similarly, the Moot Court class was voluntary.[182] In 1911, the Use of Law Books course disappeared and was replaced by the new third-year course entitled Office Practice.[183] In this course, the student performed "a series of problems in practical office work, such as the practitioner is often called upon to perform in the ordinary

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[174] CATALOGUE OF 1910–11 AND ANNOUNCEMENTS FOR 1911–12 OF THE UNIVERSITY OF WASHINGTON 239 (1911), https://babel.hathitrust.org/cgi/pt?id=uiug.30112114062919;view=1up;seq=251.

[175] *Id.* at 240.

[176] *Id.* at 242.

[177] *See* CATALOGUE OF 1911–12 AND ANNOUNCEMENTS FOR 1912–13 OF THE UNIVERSITY OF WASHINGTON 165–67, https://babel.hathitrust.org/cgi/pt?id=uiug.30112114062893;view=1up;seq=177.

[178] *Id.* at 165.

[179] CATALOGUE OF 1913–14 AND ANNOUNCEMENTS FOR 1914–15 OF THE UNIVERSITY OF WASHINGTON 306–09 (1914), https://babel.hathitrust.org/cgi/pt?id=uiug.30112114062885;view=1up;seq=316.

[180] *See* UNIVERSITY OF WASHINGTON CATALOGUE 1920–21, ANNOUNCEMENTS 1921–22 248–50 (1921), https://babel.hathitrust.org/cgi/pt?id=uiug.30112114062851;view=1up;seq=256.

[181] CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA 1910–1911 396 (1910), https://babel.hathitrust.org/cgi/pt?id=mdp.39015066635965;view=1up;seq=15.

[182] *Id.* at 401.

[183] CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA 1911–12 333–34 (1911), https://babel.hathitrust.org/cgi/pt?id=mdp.39015066635973;view=1up;seq=9.

routine of his office."[184] The class was taught by an "Assistant in Office Practice" and was ungraded.[185] The next year, this course disappeared and was replaced by Practice Seminars in the third year, which consisted of 15 assignments that were critiqued by "the assistant to the Professor in charge."[186] In 1913, certain "Auxiliary" electives were also added such as an hour (total, not credit) course on How to Find the Law and a three-hour (total) course on Legal Bibliography.[187] The Practice Seminars then disappeared in 1915, and were replaced by a requirement that third-year students participate in the Moot Courts, "thus acquiring knowledge of the method of Practice and Procedure in use in the Courts of Law."[188]

Boston University had a particularly colorful history in legal writing during this time. Until 1908, it had the standard practice court, where students were expected to draw pleadings and argue cases.[189] Then, in 1908, the system radically changed. Three different practice courts for simulated cases were established: the Municipal Court, the Superior Court, and the Supreme Court.[190] Beginning in the second year, students were assigned four cases each to be tried in the Municipal Court "*without suggestion or explanation*."[191] It was thought that this unusual pedagogical method would "have the

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[184] *Id.* at 334.

[185] *Id.*

[186] CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA 1912–1913 340–41 (1912), https://babel.hathitrust.org/cgi/pt?id=mdp.39015066635957;view=1up;seq=13.

[187] CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA 1913–1914 334–35 (1913), https://babel.hathitrust.org/cgi/pt?id=mdp.39015066635981;view=1up;seq=15. Interestingly, the number of problems in the Practice Course was reduced from 15 to 12. *Id.* In 1914, it would become "a number." CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA 1914-1915 350 (1914), https://babel.hathitrust.org/cgi/pt?id=mdp.39015066635999;view=1up;seq=13.

[188] CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA 1915–16 363 (1915), https://babel.hathitrust.org/cgi/pt?id=coo.31924064685997;view=1up;seq=7. Even this compulsion was dropped in 1920. *See* CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA FOR THE SESSION OF 1920–21 145 (1920), https://babel.hathitrust.org/cgi/pt?id=mdp.39015066635932;view=1up;seq=11.

[189] *See* 34 BOSTON UNIVERSITY YEARBOOK 182 (1907), https://babel.hathitrust.org/cgi/pt?id=uiuo.ark:/13960/t47q06k4b;view=1up;seq=646.

[190] 35 BOSTON UNIVERSITY YEARBOOK 195 (1908), https://babel.hathitrust.org/cgi/pt?id=uiug.30112110835094;view=1up;seq=203.

[191] *Id.* (Emphasis added).

student learn by his own mistakes and feel the responsibility of his own case."[192] The student was then expected to take appeals from his cases to the Superior Court and the Supreme Court throughout his third year.[193] Under this approach "[v]ery little suggestion [was] given to the student in the conduct of his case except at the hearing thereon," although, ominously, "[r]ecord [was] kept of the work of each student, in order to teach by experience the penalties which are imposed in practice for negligence or a failure in punctuality."[194]

This sink or swim approach was evidently not as successful as hoped. In 1912, the school added a third-year course in Brief-Making for one credit hour in the second semester.[195] However, this course lasted only a year.[196] The number of practice courts was cut to two, with student clubs taking the place of the Municipal Court.[197] However, at least the level of instruction was somewhat increased, as the students were expected to submit their pleadings and briefs to "some officer of the School for approval and criticism."[198]

The problems these schools experienced foreshadowed other factors at work that would soon cause problems for the teaching of writing, research, and practice in general. Although the main effects were still a number of years in the future, events were already starting that would ultimately see the teaching of practical skills such as these consigned to a "second-class" role in the law school curriculum.[199]

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[192] *Id.* at 196.
[193] *Id.*
[194] *Id.*
[195] I BOSTON UNIVERSITY THE YEAR BOOK 1912–13 173 (1912), https://babel.hathitrust.org/cgi/pt?id=uiug.30112110835102;view=1up;seq=183.
[196] II BOSTON UNIVERSITY THE YEAR BOOK 1913–14 235–37 (1913), https://babel.hathitrust.org/cgi/pt?id=uiug.30112110835102;view=1up;seq=803.
[197] *Id.* at 239.
[198] *Id.*
[199] For a discussion regarding the second-class status of professors teaching legal writing at many institutions, see Lucille A. Jewel, *Oil and Water: How Legal Education's Doctrine and Skills Divide Reproduces Toxic Hierarchies*, COLUM. J. GENDER & LAW 111 (2015); Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117 (1997); Mary Beth Beazely, *"Riddikulus!": Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe*, 1 SCRIBES J. LEG. WRITING 79 (2000); Jo Anne Durako, *Dismantling Hierarchies: Occupational Segregation of Legal Writing Faculty in Law Schools: Separate and Unequal*, 73 UMKC L. REV. 253 (2004); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50

C. Reasons for Decline in the Teaching of Writing

The difficulties in teaching legal writing that schools experienced in the 1910-20 period did not come from a failure to recognize the importance of the subjects. Indeed, of all the law schools in the country, only Harvard seemed to be of the opinion that law schools did not need to teach these subjects.[200] And Dean Ames's position that Harvard "deems it unwise to attempt to teach practice in a law school" was the subject of much derision throughout the earlier part of the century.[201]

Similar mockery greeted the statements of the Harvard contingent at the 1902 gathering of the Association of American Law Schools. The Harvard view at that meeting was espoused by Harvard Professor (and soon to be first dean of the University of Chicago) Joseph H. Beale, Jr., who stated, in response to the presentation on the need to teach practice: "Is the best things we can do for a student to teach him how to go into court and conduct a litigation? Evidently not. The first thing to do is to teach him law, the substance and soul

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J. LEGAL EDUC. 562 (2000); Pamela Edwards, *Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN'S L.J. 75 (1997); David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105 (2003-2004); Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467 (2004).

[200] *See supra* notes 65 to 66 and accompanying text.

[201] *See Meeting of the American Association of Law Schools: Discussion*, 2 AM. L. SCH. REV. 450, 453 (1910) (remarks of Dean Oliver Harker of the University of Illinois Law School) (referring obliquely to Ames's statement); Henry Jackson Darby, *A Criticism of Our Law Schools*, 12 ILL. L. REV. 342, 344 (1917) (criticizing Harvard's emphasis "upon principles, and noble disregard of the vulgar facts of the lawyer's work–a–day world, on no less an authority than one of Harvard's greatest professors"); William R. Vance, *The Function of a State–Supported Law School*, 3 AM. L. SCH. REV. 409, 411 (1914) (article by the Dean of the University of Minnesota's law school ridiculing Harvard's position as unfit for school's such as Minnesota, which is "earnestly trying to fit our graduates for the actual practice of law"); J. Newton Fiero, *Teaching Law Without Experience at the Bar*, 3 AM. L. SCH. REV. 558, 558–59 (1914) (article by the Dean of Albany Law School noting Harvard's position and stating that "to instruct a man in the abstract rules of the law, without giving him instruction as to the manner of their application and enforcement, is very much like explanation to the prospective engineer of the functions and possibilities of a steam engine without instruction as to the method of its operation").

of law."[202] Beale stated that the teaching of how to practice lacked scientific value and that time should be devoted to "the study of those subjects which will train [the students'] minds for the investigation of legal problems after they get out in practice."[203] Not only did these statements draw disagreement at the meeting,[204] but his quote was often referenced in later articles on the subject of practice.[205]

These comments indicate just how much an outlier Harvard was during the early 1900s in its view on the importance of practical instruction on writing, research, and practice. Despite Harvard's claim to status as "the greatest law school in the world,"[206] and despite its success in exporting the case system to other law schools,[207] Harvard was hardly the model of operation that other law schools strove to emulate during this time. The school had suffered serious financial problems in connection with the construction of Langdell Hall in the early 1900s.[208] Dean Ames had struggled to cope with Harvard's enrollment, personally teaching five courses in 1908–09.[209] He suffered a nervous breakdown in the fall of 1909 and died in

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[202] 25 ANNU. REP. A.B.A. 502, 504 (1902) (remark of Prof. Joseph H. Beale, Jr.).

[203] *Id.* at 505–06.

[204] *See, e.g., id.* at 506 (statement of Professor Thomas A. Bogle of Michigan). Bogle stated sarcastically that he was embarrassed because "a considerable portion of my time in the last eight years has been spent in attempting to do that which high authority here this afternoon has said there is no time to do, that is scientifically unimportant that it should not be done, and that it is not worth while to do it." *Id.* at 506–08.

[205] *See, e.g.*. Phillip Van Zile, *Practice Work in the Law Colleges*, 2 AM. L. SCH. REV. 71, 74 (1907). Van Zile, the Dean at Detroit College of Law argued that it was in fact "the best thing" if the school is to do the work it is expected to do by the profession." *Id. See also* Paul L. Martin, *The Trained Lawyer*, 3 AM. L. SCH. REV. 92, 103–06 (1912) (discussing the teaching of practice and Beale's comment).

[206] *See* Bruce A. Kimball, *Impoverishing "The Greatest Law School in the World": The Financial Collapse of Harvard Law School, 1895–1909*, 61 J. LEG. EDUC. 4, 5 (2011). The title of "The Greatest Law School in the World" was bestowed upon Harvard by then-Secretary of War William Howard Taft in his Oration at the Eighteenth Annual Meeting of the Harvard Law School Association. *Oration of William H. Taft*, HARVARD LAW SCHOOL ASSOCIATION, EIGHTEENTH ANNUAL MEETING 15 (1904), https://babel.hathitrust.org/cgi/pt?id=mdp.39015068527111;view=1up;seq=11.

[207] *See* Kimball, *The Proliferation of Case Method Teaching*, supra note 34, at 204–210.

[208] *See* Kimball, *Impoverishing "The Greatest Law School in the World," supra* note 206 at 6–7.

[209] *Id.* at 28.

January of 1910.[210] Ezra Thayer, a Boston lawyer and son of former Harvard law professor James Bradley Thayer, then assumed the Deanship.[211] However, he then fell into a nervous depression and died by suicide in 1915.[212] Although Harvard recovered, its influence waned during this period.[213]

Further, despite its determination that it could not profitably teach writing and other practice elements, Harvard in 1910 realized that leaving practical training to the law clubs (and eventually to the law firms) entirely was not enough. It established the Board of Student Advisers, composed of six students "of at least two years standing" whose duties were:

> (1) to explain to all inquirers the arrangement of books in the reading rooms, the scope of digests and of other works of reference, the mode of finding authorities upon any question stated to him, and the arrangement of briefs for club courts; (2) to keep until the end of May two office hours each week in the reading room of Langdell Hall at a table to be assigned; (3) to serve on the Committee of Law Clubs and, if requested, to sit as justice twelve times for clubs of first year students; and (4) to spend in addition twelve hours yearly in other work to be determined by the Law Faculty.[214]

In 1911, Harvard also added a carrot for students in the form of the Ames Competition, which gave cash prizes to the winners of the moot court competition between the law clubs.[215]

It also does not appear that whether schools adopted the case system during this time has any correlation to their success in or problems with the teaching of writing, research, and practice during this time. Many schools with thriving programs, such as Northwestern and Cornell, had been an early adopters of the case method.[216] Of those schools that struggled to teach the subjects,

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[210] *Id.*

[211] ARTHUR E. SUTHERLAND, THE LAW AT HARVARD 231 (1967).

[212] *Id.* at 232.

[213] *See* Kimball, *Impoverishing "The Greatest Law School in the World," supra* note 206, at 29.

[214] CENTENNIAL HISTORY OF HARVARD LAW SCHOOL, *supra* note 77, at 146.

[215] *Id.* at 147–48. At the time, the competition was for second-year students. *Id.* at 148.

[216] *See* Kimball, *The Proliferation of Case Method Teaching*, *supra* note 34, at 204–210.

schools such as Boston University and The University of Pennsylvania had adopted the case method, but Washington had rejected it.[217]

Instead, the gentle erosion of the teaching of practical skills such as legal writing had to do with economics. Although the number of law students overall increased from 1900 to 1920, the number of full-time law students at any one institution remained fairly stable during this period, save a dip in attendance during World War I that was cured relatively quickly.[218] Instead, the increase in overall number of law students was matched by the number of law schools that educated them.[219] However, things would change in the 1920s, as the number of law students began to outpace the opening of new schools, resulting in larger class sizes and larger student bodies. Schools such as Boston University would go from 309 students overall in 1909 to 633 by 1926.[220] Columbia likewise would go from 324 students in 1909 to 739 by 1926.[221] Smaller schools would also see similar increases during this time.[222]

Of a more immediate impact, at schools across the country the number of different courses was gradually increasing. At Boston, for example, the 1909 catalog listed 16 full-time professors and nine lecturers who taught 38 courses.[223] By 1915, however, there were 17 full-time professors and lecturers who taught a total of 49 courses.[224] Other schools experienced similar curriculum inflation.[225]

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[217] *Id*. at 234.

[218] *See* ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 195–99 (1921) (studying relative attendance at law schools).

[219] *See id*.

[220] ALFRED ZANTZINGER REED, PRESENT DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 451 (1928).

[221] *Id*. at 473.

[222] *See, e.g.,* Notre Dame (90 to 185); Washington (131 to 170). *Id*. at 440, 598.

[223] *See* 36 BOSTON UNIVERSITY YEARBOOK, 1909–10 169, 186–87 (1909), https://babel.hathitrust.org/cgi/pt?id=uiug.30112110835094;view=1up;seq=177. The number of courses reflects the total of semester courses. Full-year courses count are counted as two courses.

[224] See IV BOSTON UNIVERSITY THE YEARBOOK, 1915–16 271–72; 281–83 (1915), https://babel.hathitrust.org/cgi/pt?id=uiug.30112110835110;view=1up;seq=275. This list does not include the elective courses, many of which were taught by "lecturers" and not all of which were conducted every year.

[225] In 1909, the University of Pennsylvania had 9 full time teaching professors teaching 40 different courses. CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA 1909–10 385–87 (1909), https://babel.hathitrust.org/cgi/

D. Law Librarians Enter the Mix

As the number of courses offered increased, the strain placed on labor-intensive courses such as practice courses, practice courts, and other writing and research-based classes increased as well. A possible solution was offered by Frederick Hicks, the head of the law library at Columbia, in a 1918 article published in the *Law Library Journal*.[226] Hicks had been teaching a special course at Columbia entitled Legal Bibliography and the Use of Law Books since 1915.[227] The course consisted of a group of lectures, which were bibliographic and historical, followed by seminars in which small groups of students met with Hicks once a week.[228] In the seminars, Hicks would outline a specific legal problem and discuss how to solve it. Then, he would give each of the students their own problem and send them to the library to solve it. Finally, each student would return to the class and show their process.[229] This class proved be a great success, and, although it started out as a voluntary ungraded course, it eventually became required.[230] It also set Hicks upon a path to thinking about how to systematically teach legal research and also legal writing.

In his 1918 article, Hicks gave an appealing option to those faculties who were trying to find ways to teach the practice of law in light of the expanding curriculum.[231] Hicks identified the subject of "Legal Bibliography" in an expansive way that included what was essentially the entire legal research and writing course. His concept of the course included the teaching of:

> first, legal bibliography proper, which deals with the repositories of the law; second, methods of finding the law, which is an art to be acquired; and third, brief-making, which has to do with the orderly presentation

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pt?id=mdp.39015066635759;view=1up;seq=397. In 1919, the 9 full time professors were teaching 37 different courses but also lecturing in 9 more elective courses. CATALOGUE OF THE UNIVERSITY OF PENNSYLVANIA, 1919–20 222–24 (1919), https://babel.hathitrust.org/cgi/pt?id=mdp.39015066636021;view=1up;seq=229. The situation was even tougher in smaller areas. By 1909 at the University of Washington, a force of 6 professors were assigned to teach 64 different subjects.

[226] Hicks, *The Teaching of Legal Bibliography*, *supra* note 99.

[227] Stacy Etheredge, *Frederick C. Hicks: The Dean of Law Librarians*, 98 LAW LIBR. J. 349, 359 (2006).

[228] *Id.* at 359–60.

[229] *Id.* at 360.

[230] *Id.* at 361.

[231] *See* Hicks, *The Teaching of Legal Bibliography*, *supra* note 99, at 4–6.

> of arguments based on authorities, and in conformity with the rules the court to which they are addressed.[232]

Hicks also addressed when in the law school curriculum these three components should be taught. According to Hicks, the part of the course dealing solely with the types of legal authorities could be taught during the first year of law school, when it would "instill[] respect for the law into the minds of students."[233] The part of the course dealing with the art of how to find that law, which Hicks thought would be most practically appealing to the student, should be taught in the second or third year.[234] However, Hicks was of the opinion that the brief-making component, the "attempt to put into practice all of the knowledge of substantive law, of legal bibliography proper, of legal research and its mechanical processes, of analysis, of logic, and finally or constructive argument which the lawyer possesses," could only be accomplished in the third year, by which time the student would have a firm foundation in understanding the law.[235]

Hicks's plan reflected an admirable attempt to think about the teaching of all facets of legal research and writing in a coherent structure. However, it was the third aspect of his plan that seemed designed to appeal to those administrators who were dealing with all the problems posed by a gradually expanding student body and a rapidly expanding number of courses. Hicks identified this in his discussion of administrative problems: "[i]n a three-year course, eight months of the year, with twenty-four required subjects, and ten others either given in alternate years, or as electives, with moot courts clamoring for fuller recognition and new courses proposed, where can a place be found for so humble a subject as legal bibliography?"[236] This, in Hicks mind, led to more fundamental questions, such as "Who shall teach it?"[237]

To this question, Hicks had a ready answer: The course should be taught by law librarians.[238] Hicks explained that:

> Evidently this subject has more direct connection with the work of the librarian than any other in the curriculum. . . . His library is the laboratory for the course, and his office or even the library itself is the

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[232] *Id.* at 5–6.
[233] *Id.* at 6.
[234] *Id.*
[235] *Id.* at 6–7.
[236] *Id.* at 4–5.
[237] *Id.* at 5.
[238] *See id.* at 7.

> logical placed for holding classes. He is more accessible to the student than the professor usually is and can, therefore, carry on individual instruction supplementing the regular course.[239]

In identifying law librarians as the members of the law school staff best equipped to teach both research and writing, Hicks was offering administrators faced with a burgeoning curriculum a way to deliver the labor-intensive practical part in a cheaper format. Of course, he was also securing an additional professional opportunity for law librarians. Indeed, his teaching resulted in Hicks being granted the faculty rank of associate professor of legal bibliography in 1921.[240]

Unfortunately, Hicks also unintentionally created a number of issues that would plague the teaching, and teachers, of legal research and writing. The first, of course, was the idea that subjects such as legal writing could be, and indeed should be, taught by someone other than a law professor. While Hicks's aim in doing so was to elevate the professional status of law librarians, it had the unintended effect of signaling to administrators that the teaching could be left to lower-salaried employees. Hicks compounded this problem by the deferential way in which he talked about the course. Hicks referred to the subject of legal bibliography as "humble," and later on in the article noted that "[l]egal bibliography is not the most important subject to be treated in law schools."[241] While this may have been politically expedient at the time, it also gave the impression that the subject itself was relatively minor, and thus could be safely trusted to non-professors.

The final problem was Hicks' assertion that the written part of legal writing could, and should, be relegated to the third year of law school.[242] Although Hicks did not characterize this portion of the curriculum as less important than either the "pure bibliography" or the instruction on the use of law books, it was certainly the area he knew less about, as he had not taught actual writing in his course.[243] This short shrift towards the writing element was compounded when Hicks published his seminal book on legal bibliography, *Materials and Methods of Legal Research*, which omitted the writing component entirely.[244] The popularity of Hicks's book and his

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[239] *Id.*
[240] *See* Etheredge, *supra* note 227, at 361.
[241] Hicks, *The Teaching of Legal Bibliography*, *supra* note 99, at 8.
[242] *See id.* at 6–7.
[243] *See* Etheredge, *supra* note 227, at 359–61 (describing Hicks's course).
[244] *See* Frederick C. Hicks, MATERIALS AND METHODS OF LEGAL RESEARCH (1923).

assertion that law librarians should teach legal writing courses contributed to the status issues that teachers of legal writing would have in the future.

However, Hicks's influence on the teaching of research and writing should not be overstated. While many law schools did introduce legal bibliography courses throughout the 1920s, few followed Hicks's advice.[245] The vast majority of the reported hires both at schools establishing legal bibliography classes and those that were replacing previous instructors for legal bibliography classes were regular faculty.[246] Further, legal bibliography, including courses that incorporated brief making and other elements of legal writing, only supplemented, but did not replace, the instruction provided in the practice courses and courts.[247]

VIII. The 1920s: The Expansion of Courses Puts Pressure on Legal Writing

During the 1920s, the teaching of legal writing and research in the law school curriculum was still a vital part of the law school curriculum in most places. The practice courts and their curriculum were still in operation in most schools.[248] *Brief-Making and the Use*

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[245] The University of Chicago added a course on Legal Bibliography and the Use of Law Books, taught by their law librarian in 1921. UNIVERSITY OF CHICAGO ANNOUNCEMENTS, 1921–22 16 (1921), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1058&context=lawschoolannouncements#page=12. The University of Illinois and California–Berkeley added legal bibliography classes taught by law librarians in 1922. *See Notes and Personals* 5 AM. L. SCH. REV. 33, 34 (1922); *id*. at 35.

[246] *See Notes and Personals*, 5 AM. L. SCH. REV. 245, 249 (1923) (University of Kansas); *Notes and Personals*, 5 AM. L. SCH. REV. 424, 445 (1924) (South Texas College of Law); *Notes and Personals*, 5 AM. L. SCH. REV. 502, 503 (1925) (Texas); *Notes and Personals*, 5 AM. L. SCH. REV. 602, 606 (1925) (SMU); *Id*. at 607 (LSU); *Notes and Personals*, 6 AM. L. SCH. REVIEW 146, 157 (1927) (Tulsa); *Notes and Personals*, 6 AM. L. SCH. REV. 365, 366 (1928) (University of Southern California); *Notes and Personals*, 6 AM. L. SCH. REV. 463, 467 (1929) (Utah); *Notes and Personals*, 6 AM. L. SCH. REV. 623, 634 (1930) (SMU again).

[247] *See, e.g*. *infra* notes 233 to 239; 253 and accompanying text (describing programs at Chicago and Columbia).

[248] *See* J. Benjamin Van Veen, *Moot Court and the Law School*, 1 N.Y.U. L. REV. 37, 38 (1924) (giving special credit to schools such as Michigan, Cornell, Yale, and Georgetown for their programs).

of Law Books was in its third edition,[249] and had been joined by a book entitled *Legal Reasoning and Briefing*, written by Jesse F. Brumbaugh.[250]

Still, the law school curriculum continued to grow, and with it came discussion of what law schools could accomplish, and indeed what law schools should be trying to accomplish, even among colleagues on the same faculty. Arthur Corbin of Yale remarked at the 1922 Meeting of the Association of American Law Schools that:

> I come to the inquiry whether it is possible for the law school, with the material offered, to give as a law course both the practical and the academic sides of the law. I think it impossible. There is not time, and, moreover, the only way to learn practice is to practice, and practice varies not only by states, but by localities in states.[251]

Corbin's colleague at Yale (and future Dean), Professor Charles E. Clarke, however, remarked at the same meeting that:

> I shall immediately confess to a personal lack of sympathy with the position that it is no part of the function of the modern law school to attempt the so-called practical courses. If the function of the law school is the training of *lawyers*, it needs not only to inculcate proper habits and methods of thought, but also actually to demonstrate how such habits and methods are to be *used*.[252]

Another threat to practical education reared its head in the last 1920s in the form of the movement toward legal realism. Beginning in 1922, new courses in the curriculum began to appear that merged law and the social sciences.[253] By and large, these new courses did not replace the standard courses, but instead were simply added to the curriculum. Unfortunately, this course expansion caused issues with

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[249] *See* WILLIAM M. LILE, ALFRED F. MASON, ROGER W. COOLEY, EUGENE WAMBAUGH, EDSON R. SUNDERLAND & HENRY F. REDFIELD, BRIEF–MAKING AND THE USE OF LAW BOOKS (Cooley & Ames, eds.) (3d ed. 1914).

[250] *See* JESSE FRANKLIN BRUMBAUGH, LEGAL REASONING AND BRIEFING (1917). In its 726 pages, that book contained extensive discussion of legal reasoning and interpretation of cases and statutes, as well as discussions of witness bias, legal argument before a jury, and 363 pages dedicated to briefing and oral argument at trial and appeal. *Id.*

[251] *Meeting of the Association of American Law Schools – 1922*, 5 AM. L. SCH. REV. 93, 124 (1922).

[252] *Id.* at 157-58 (emphasis in original).

[253] STEVENS, *supra* note 2, at 137.

the teaching of legal writing at places such as the University of Chicago, where the explosion in coursework tended to crowd out the more labor intensive of the practical courses.

For the 1924–25 school year, students at Chicago were required to take moot court during their first year, where instruction was given in legal research, brief writing, and oral argument.[254] Upper-division electives included Practice I and II as well as a course in the Use of Law Books and Brief Making, all taught by professors at the school.[255] In 1926, however, moot court disappeared, leaving only the three electives.[256] By 1930, only a one-semester Practice course remained, while a host of business and seminar courses had joined the curriculum, including the "Seminar in Psycho-Analytic Aspects of Criminology" and the course on "Legal Sociology."[257]

The legal realism movement also spread to Columbia, which became even more ambitious in embracing the trend. By 1926, the faculty had come up with an 800-page plan for an entirely new law school curriculum, which was eventually presented in 1928.[258] It was the view of some of the faculty that Columbia should take a revolutionary turn in legal education and that "[t]he time has arrived for at least one school to become a 'community of scholars' devoting itself 'primarily to the nonprofessional study of law, in order that the function of law may be comprehended, its results evaluated, and its development kept more nearly in step with the complex of modern life.'"[259] Still others of the faculty sought to make the school the model of preparation for public service, including, grudgingly, the training of lawyers as practicing attorneys.[260] The plan devised sought to

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[254] UNIVERSITY OF CHICAGO LAW SCHOOL ANNOUNCEMENTS, 1924–1925 10 (1924), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1060&context=lawschoolannouncements#page=12.

[255] *Id.* at 16.

[256] UNIVERSITY OF CHICAGO LAW SCHOOL ANNOUNCEMENTS, 1926–27 8, 13 (1926), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1061&context=lawschoolannouncements#page=8.

[257] *See* UNIVERSITY OF CHICAGO LAW SCHOOL ANNOUNCEMENTS, 1930–31 12–18 (1930), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1045&context=lawschoolannouncements#page=15.

[258] STEVENS, *supra* note 2, at 138.

[259] SUMMARY OF STUDIES OF LEGAL EDUCATION BY THE FACULTY OF LAW OF COLUMBIA UNIVERSITY 20 (1928).

[260] *See id.* at 21–22.

engage both of those aims simultaneously by establishing both a "research school" and a "training school."[261]

Under the plan, the entire curriculum would be reorganized around functional themes of scientific attitude, societal background, methods of legal study, familial relations, business relations, political relations, law administration, synthesis and comparison, and evaluation and criticism, and infused with lessons learned from the social sciences.[262] It was understood that this abrupt shift in method and aims might cause a problem with, say, preparing students to pass a bar exam.[263] Therefore, the plan also contemplated offering "rapid survey courses designed to enable the student to pass his bar examinations."[264]

This audacious plan never really got off the ground.[265] In 1928, Professor Herman Oliphant, the compiler of the plan and outspoken advocate for a pure research school, was passed over for Dean in favor of the more pragmatic Young B. Smith.[266] This led five professors who had been the most vocal in support of the "community of scholars" model (including future Supreme Court Justice William O. Douglas) to resign.[267] The new Dean took the position that "whatever may be said in favor of establishing elsewhere a school or institute devoted exclusively to research in law, the present important position now occupied by Columbia Law School in the field of legal education, coupled with the fact that it is outstanding as a first-grade professional school in the state of New York, makes it socially desirable that it should not relinquish its hold upon prospective members of the Bar."[268]

Unfortunately, as at Chicago, the flirtation with the social sciences had a detrimental effect on the teaching of practical courses at that school. While Columbia had in 1925–26 required Pleading and Practice I throughout the first year, with Pleading and Practice II as an elective along with Trial Practice and Hicks's Legal Bibliography

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[261] *Id.* at 23.
[262] *Id.* at 65–66.
[263] *Id.* at 167.
[264] *Id.*
[265] *See* STEVENS, *supra* note 2, at 138–39.
[266] WILLIAM TWINING, KARL LLEWELLYN AND THE REALIST MOVEMENT 52 (2012).
[267] *Id.* at 52–53. Interestingly, of the professors that resigned, three of them had never practiced law, and thus might have felt less of a need for the school to serve the practicing bar. *See id.* at 54.
[268] STEVENS, *supra* note 2, at 139.

course,[269] the Practice Courses disappeared the next year.[270] Trial Practice disappeared the year after that,[271] and then Legal Bibliography disappeared the next year when Hicks left Columbia for Yale.[272] Thus, Columbia was left without any courses teaching what modern students would recognize as legal writing. Instead, it had a curriculum stuffed with other classes, including a plethora of seminars on subjects such as Foreign Concepts of International Law (not to be confused with the course in International Law it also offered), Institutes of Roman Law, Seminar in English Legal History, and Problems of Statutory Systems of Trusts, Powers and Perpetuities (again, not to be confused with Future Interests and Non-Commercial Trusts).[273]

Yale also had a dalliance with legal realism during this period. Soon after with the appointment of Robert Hutchins as Dean in 1927, various faculty made curriculum proposals along the same lines as those Columbia had entertained.[274] However, the proposals never generated steam, and instead Yale merely expanded the curriculum with a number of honors courses.[275] When Charles E. Clark became Dean in 1929, this curriculum would expand further.[276] However, perhaps due to his previous experience teaching legal writing, Clark did not neglect practical skills, as moot court remained a large part of the curriculum, although students gained the option of replacing it with more hours of seminar work in particular legal subjects.[277]

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[269] *See* COLUMBIA UNIVERSITY CATALOGUE 1925–26 278 (1925), https://babel.hathitrust.org/cgi/pt?id=nnc2.ark:/13960/t3jw92k3v;view=1up;seq=288.

[270] *See* COLUMBIA UNIVERSITY CATALOGUE 1926–27 290 (1926), https://babel.hathitrust.org/cgi/pt?id=nnc2.ark:/13960/t0cv56h6t;view=1up;seq=300.

[271] *See* COLUMBIA UNIVERSITY CATALOGUE 1927–28 295 (1927), https://babel.hathitrust.org/cgi/pt?id=nnc2.ark:/13960/t9b578j5n;view=1up;seq=305

[272] *See* COLUMBIA UNIVERSITY CATALOGUE 1928–29 313 (1928), https://babel.hathitrust.org/cgi/pt?id=nnc2.ark:/13960/t4xh0995m;view=1up;seq=323

[273] *Id.*

[274] *See* John Henry Schlegel, *American Legal Realism and Empirical Social Science: From the Yale Experience*, 28 BUFF. L. REV. 459, 478–79 (1979).

[275] *Id.*; *see also* Robert M. Hutchinson, Richard R. Powell & Walter W. Cook, *Modern Movements in Legal Education*, 6 AM. L. SCH. REV. 402, 402–03 (1929) (describing the seminars).

[276] *See* LAURA KALMAN, LEGAL REALISM AT YALE, 1927–1960 119 (1986).

[277] *See id.* at 76–77.

IX. The State of the Curriculum: Early 1930s

A snapshot of the curriculum of 36 law schools in the first part of the 1930s captures the extent to which the traditional practice court was still the predominant method of delivering writing instruction in the early 1930s, some 60 years after the Langdellian revolution.[278] Of these 36 schools, the largest number (17) fall into what can be considered the "Practice Court-Plus" curriculum: that is, their curriculum included a required practice court along with some other writing classes, whether required or optional.[279] In addition to Michigan, whose program has already been extensively chronicled, notable programs in this category include Howard, which required students to prepare and argue three appellate briefs during the first year as part of a course in legal bibliography and argumentation, and then to draft, file and argue trial motions during the second year, and

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[278] The schools included in this snapshot are, in alphabetical order: Alabama; Albany; American University Washington College of Law; Boston University; Boston College; Brooklyn; Cal-Berkeley; Chicago; Cincinnati; Colorado; Cornell; Florida; Harvard; Howard; Iowa; Kentucky; Louisville; Loyola-New Orleans; Marquette; Miami; Michigan; New York Law School; Northwestern; Notre Dame; Ohio State; Saint Louis; South Carolina; SMU; Stanford; Texas; Valparaiso; Washburn; Washington; William & Mary; and Wisconsin.

[279] *See* UNIVERSITY OF ALABAMA BULLETIN 265-271 (1931); UNION UNIVERSITY, DEPARTMENT OF LAW, ALBANY LAW SCHOOL ANNOUNCEMENT FOR EIGHTIETH YEAR 1930-31 15-21 (1930); WASHINGTON COLLEGE OF LAW 1930-31 15-20 (1930); BOSTON UNIVERSITY SCHOOL OF LAW CATALOGUE 1930-1931, ANNOUNCEMENT 1931-1932 10-17 (1931); ST. LAWRENCE UNIVERSITY, THE BROOKLYN LAW SCHOOL CATALOGUE 1930-1931 18-24 (1931); UNIVERSITY OF CINCINNATI RECORD, ANNOUNCEMENT OF THE COLLEGE OF LAW 1930-31 16-18 (1930); UNIVERSITY OF COLORADO BULLETIN, ANNOUNCEMENT SCHOOL OF LAW 19-24 (1931); HOWARD UNIVERSITY BULLETIN ANNUAL CATALOGUE 1931-1932 WITH ANNOUNCEMENTS FOR 1932-1933 332-33, 341-43 (1932); UNIVERSITY OF LOUISVILLE BULLETIN, SCHOOL OF LAW ANNOUNCEMENTS 1930-1931 22-27 (1930); BULLETIN OF MARQUETTE UNIVERSITY LAW SCHOOL, ANNOUNCEMENTS FOR THE ACADEMIC YEAR 1930 TO 1931 21-29 (1930); UNIVERSITY OF MICHIGAN LAW SCHOOL ANNOUNCEMENT 1931-1932 22-30 (1931); CATALOGUE OF THE NEW YORK LAW SCHOOL FOR THE YEAR 1930-1931 10-11 (1931); OFFICIAL BULLETIN OF THE UNIVERSITY OF NOTRE DAME, ANNOUNCEMENT OF THE COLLEGE OF LAW 1930-1931 11-13 (1929); BULLETIN OF ST. LOUIS UNIVERSITY, ANNOUNCEMENT OF THE SCHOOL OF LAW 12-16 (1931); UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW ANNOUNCEMENT 1930-1931 10-21 (1930); VALPARAISO UNIVERSITY BULLETIN, SCHOOL OF LAW ANNOUNCEMENT 1930-31 8-13 (1927); WASHBURN COLLEGE SCHOOL OF LAW REGISTER FOR 1929-1930, ANNOUNCEMENTS FOR 1930-1931 8-16 (1930).

argue another appeal in the third year as part of required moot court.[280]

A smaller number of schools depended solely on required moot court work to teach legal writing, without additional coursework.[281] Cornell in 1930 was an example of this more traditional approach, requiring the entire first-year class to participate in its moot court.[282] A third category of schools did away with the moot or practice court as a teaching vehicle, and instead taught writing as a part of a required course, such as Legal Bibliography.[283]

However, an increasing number of schools during this time period responded to the pressure to increase curricular choice by making their writing and practice-oriented courses purely elective.[284] This is not to say that some of the offerings were not substantial. The University of Washington, for instance, offered different courses in Use of Law Books, Briefmaking, Legal Bibliography, and three semesters of Practice.[285] However, it was now possible for students to graduate without any training in the writing of legal documents.

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[280] HOWARD UNIVERSITY BULLETIN, *supra* note 279, at 332-33.

[281] *See* ANNOUNCEMENT OF THE CORNELL LAW SCHOOL FOR 1931-32 7-16 (1931); UNIVERSITY OF MIAMI BULLETIN, SCHOOL OF LAW ANNOUNCEMENT FOR THE ACADEMIC YEAR 1930-1931 8 (1930).

[282] ANNOUNCEMENT OF THE CORNELL LAW SCHOOL, *supra* note 281, at 16.

[283] *See* BOSTON COLLEGE BULLETIN, THE LAW SCHOOL ANNOUNCEMENT 1931-1931 17-18 (1931) (Legal Bibliography required in first year, Practice required in third year); UNIVERSITY OF CALIFORNIA, SCHOOL OF JURISPRUDENCE ANNOUNCEMENT FOR 1930-1931 18-22 (193) (required first year course in Legal Bibliography along with elective upper-division practice work); LOYOLA UNIVERSITY PROSPECTUS OF THE SCHOOL OF LAW, THIRTIETH SESSION 1930-1931 16-23 (1930) (first-year Legal Bibliography); BULLETIN OF THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA ANNOUNCEMENT, SESSION 1931-1932 250-55 (1931) (same).

[284] *See* THE UNIVERSITY OF CHICAGO ANNOUNCEMENT, THE LAW SCHOOL 1930-31 12-18 (1930); BULLETIN OF THE STATE UNIVERSITY OF IOWA COLLEGE OF LAW ANNOUNCEMENT 1930-1931 17-22 (1930); BULLETIN OF THE UNIVERSITY OF KENTUCKY COLLEGE OF LAW 12-14 (1931); Leon Green, *A New Program in Legal Education*, 17 A.B.A. J. 299, 299-302 (931) (describing Northwestern's program); THE OHIO STATE UNIVERSITY BULLETIN, COLLEGE OF LAW 1931-1932 23-30 (1931); STANFORD UNIVERSITY BULLETIN, ANNOUNCEMENT OF COURSES 1931-32 126-133 (1931); THE UNIVERSITY OF TEXAS BULLETIN, FINAL ANNOUNCEMENT OF COURSES 1930-1931 100-101 (1930); CATALOGUE NUMBER FOR 1931-1932 SESSION, UNIVERSITY OF WASHINGTON 309-13 (1931); BULLETIN OF THE UNIVERSITY OF WISCONSIN LAW SCHOOL ANNOUNCEMENT OF COURSES 1930-1931 14-19 (1930).

[285] CATALOGUE NUMBER FOR 1931-1932 SESSION, UNIVERSITY OF WASHINGTON, *supra* note 284, at 311-13.

Nevertheless, of the group surveyed, only Harvard persisted in refusing to offer a class in writing at all.[286] But even this might deserve an asterisk: Beginning in 1924, the school that did not deem it advisable to teach practice began offering an "Extra Course" taught by lecturer William Goodrich Thompson, in "Brief Making and the Preparation of Cases."[287] Although the course did not have an examination and did not count toward a degree, it showed that even Harvard was responding to the need for practical instruction.[288]

X. Conclusion

Despite the traditional view that the adoption of the case method and related trappings of the "modern law school" was responsible for the downfall of legal writing and practical legal education, a study of the real history shows that the teaching of legal writing in law schools remained surprisingly robust in the period from the end of Civil War to the beginning of the 1930s. The traditional method of teaching legal writing, the moot court, was refined and expanded by the practice courts of the post-Civil War era.[289] The early 1900s then brought about an expansion of this teaching with the advent of courses on brief making and legal bibliography and materials to teach students how to find, analyze and write about the law.[290] This expansion continued in the period from 1910 to 1920, with even more schools adopting formalized courses to teach these skills.[291]

This is not to say that there were no warning signs that the teaching of legal writing might be in peril. As law schools struggled to offer more numerous and diverse courses, the labor-intensive writing courses came under pressure, and in some institutions slipped from the required to the elective curriculum.[292] Nevertheless, as of the 1930s, courses on legal writing, in a number of varieties, were still prominent features in most American law schools.[293]

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[286] THE LAW SCHOOL OF HARVARD UNIVERSITY ANNOUNCEMENT, 1931-32 7-10 (1931).
[287] *See* THE LAW SCHOOL OF HARVARD UNIVERSITY ANNOUNCEMENT, 1924-25 9 (1924).
[288] *See id.*
[289] *See supra* notes 8 to 74 and accompanying text.
[290] *See supra* notes 75 to 119 and accompanying text.
[291] *See supra* notes 120 to 247 and accompanying text.
[292] *See supra* notes 248 to 277 and accompanying text.
[293] *See supra* notes 278 to 288 and accompanying text.