

**“WHO ARE THOSE GUYS?”\*: THE RESULTS OF A SURVEY  
STUDYING THE INFORMATION LITERACY OF INCOMING  
LAW STUDENTS**

IAN GALLACHER\*\*

*Summary: This article presents the results of a summer 2006 survey of students about to begin their first year of law school. In total, 740 students from seven different law schools responded to the survey. The survey gathered general information from the students, as well as self-evaluative data on student reading, writing, and research habits in an attempt to understand how the students perceive their skills in these crucial areas. The survey data suggest that while there is some positive news to report, incoming law students overestimate their writing and research skills and come to law school inadequately trained in information literacy. The article concludes with an analysis of some of the broad conclusions suggested by the data from this survey and from other studies of law students and new lawyers, and proposes some possible remedies for the skills deficits displayed by incoming law students.*

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\* The question posed several times during the movie BUTCH CASSIDY AND THE SUNDANCE KID (Twentieth Century-Fox 1969).

\*\* Assistant Professor of Law and Director, Legal Communication and Research Program, Syracuse University College of Law. Thanks to Dean Hannah Arterian for her continued support, to Jill Hayford (Marquette), Sarah Ricks (Rutgers-Camden), Amy Dillard (Baltimore), Nancy Modesitt (Washington College of Law), Linda Berger (Thomas Jefferson), and Molly Lien (John Marshall), without whom the survey would have been impossible, to Ruth McKinney for reading an earlier draft of this article and for her invaluable comments, and to Noreen Gaubatz, a teaching/assessment consultant at Syracuse University's Center for Support of Teaching and Learning, for help in drafting the survey's questions. And thanks, as always, to Julie Mckinstry.

## I. INTRODUCTION

We are awash in a sea of bad news about information literacy<sup>1</sup> skills. Recent studies from the National Endowment for the Arts,<sup>2</sup> the National Center for Education Statistics,<sup>3</sup> and the National Commission on Writing<sup>4</sup> indicate that societal literacy skills are declining, and studies directed specifically at lawyers<sup>5</sup> suggest that

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1. The skills necessary to locate, assimilate, and reproduce information—reading, writing, and research, and not the narrower meaning of research skills alone, sometimes given to it.

2. NAT'L ENDOWMENT FOR THE ARTS, *READING AT RISK: A SURVEY OF LITERARY READING IN AMERICA* xi (2004) [hereinafter NEA STUDY], available at <http://www.nea.gov/pub/readingatrisk.pdf> (suggesting a 28% drop in literary reading in the past twenty years in the incoming law student age group).

3. NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEPT. OF EDUC., *NATIONAL ASSESSMENT OF ADULT LITERACY: A FIRST LOOK AT THE LITERACY OF AMERICA'S ADULTS IN THE 21ST CENTURY* 4 (2005), available at <http://nces.ed.gov/NAAL/PDF/2006470.PDF> (concluding that while the percentage of adults with intermediate document literacy increased 4% between 1992 and 2003, and the number of adults with intermediate quantitative literacy increased by 3% during the same period, the percentage of adults with basic literacy skills was essentially unchanged between 1992 and 2003, and the number of adults with proficient prose or document literacy fell by 2% during the same period).

4. The Commission has issued three reports that analyze the decline in literacy skills in the American population: NAT'L COMM'N ON WRITING IN AM.'S SCHS. & COLLS., *THE NEGLECTED "R": THE NEED FOR A WRITING REVOLUTION* 3 (2003), available at [http://www.writingcommission.org/prod\\_downloads/writingcom/neglectedr.pdf](http://www.writingcommission.org/prod_downloads/writingcom/neglectedr.pdf) (concluding that "[a]lthough many models of effective ways to teach writing exist, both the teaching and practice of writing are increasingly shortchanged throughout the school and college years"); NAT'L COMM'N ON WRITING FOR AM.'S FAMILIES, SCHS., & COLLS., *WRITING: A TICKET TO WORK . . . OR A TICKET OUT* 4 (2004), available at [http://www.writingcommission.org/prod\\_downloads/writingcom/writing-ticket-to-work.pdf](http://www.writingcommission.org/prod_downloads/writingcom/writing-ticket-to-work.pdf) (concluding that "[m]ore than 40 percent of responding firms offer or require training for salaried employees with writing deficiencies" and that "[b]ased on the survey responses, it appears that remedying deficiencies in writing may cost American firms as much as \$3.1 billion annually"); NAT'L COMM'N ON WRITING FOR AM.'S FAMILIES, SCHS. & COLLS., *WRITING: A POWERFUL MESSAGE FROM STATE GOVERNMENT* 3 (2005), available at [http://www.writingcommission.org/prod\\_downloads/writingcom/powerful-message-from-state.pdf](http://www.writingcommission.org/prod_downloads/writingcom/powerful-message-from-state.pdf) (concluding that "despite the high value that state employers put on writing skills, a significant numbers [sic] of their employees do not meet states' expectations" and that "[t]hese deficiencies cost taxpayers nearly a quarter of a billion dollars annually").

5. See KATHRYN HENSIK ET AL., *ASSESSING INFORMATION LITERACY AMONG*

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things are no better in our profession despite the recent increase in emphasis on skills training in law schools.<sup>6</sup>

Some of the pessimism concerning lawyer literacy might be more of a cultural artifact than a genuine reflection of a decline in standards.<sup>7</sup> But whether or not things actually are getting worse,

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FIRST YEAR LAW STUDENTS: FINAL TECHNICAL REPORT 2 (2004) [hereinafter AALL SURVEY] (“[M]any [incoming law] students do not have basic research skills.”); TOM GAYLORD, CHICAGO-AREA LIBRARIAN SURVEY 2, 5 (2007) [hereinafter 2007 LIBRARIAN SURVEY] (revealing that 71% of respondents believed that new attorneys were not able to research effectively and efficiently prior to in-house training, and concluding that the percentage of respondents who answered that new attorneys were able to research efficiently dropped by almost half between 2005 and 2007); SANFORD N. GREENBURG, CHICAGO-AREA ATTORNEY SURVEY 7 (2007) [hereinafter 2007 ATTORNEY SURVEY ] (finding that 54% of respondents believed that new attorneys “seldom” or “never” were aware of helpful legal research print resources prior to in-house training, 57% of respondents believed that new attorneys were “seldom” or “never” able to use print legal research resources efficiently prior to in-house training, and 44% of respondents believed that new attorneys were “seldom” or “never” able to use fee-based online legal research resources efficiently prior to in-house training); Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 85 (2003) (“Nearly 94 percent, overall, of the respondents found briefs and memoranda marred by basic writing problems.”).

6. Skills instruction in American law schools has received more attention since the 1992 MacCrate Report was issued. See SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) [hereinafter MACCRATE REPORT]. For an exhaustive description of almost every facet of skills instruction in American law schools, see ASS’N OF LEGAL WRITING DIRS., LEGAL WRITING INST., 2007 SURVEY RESULTS (2007) [hereinafter ALWD SURVEY], available at [http://www.alwd.org/surveys/survey\\_results/2007\\_Survey\\_Results.pdf](http://www.alwd.org/surveys/survey_results/2007_Survey_Results.pdf). For a discussion of ways in which legal skills training could be improved, see Kenneth D. Chestek, *MacCrate (In)Action: The Case for Enhancing the Upper-Level Writing Requirement in Law Schools*, 78 U. COLO. L. REV. 115 (2007).

7. Certainly criticism of lawyers’ writing is nothing new. See David M. Becker, *My Two Cents on Changing Times*, 76 WASH. U. L.Q. 43, 53 (1998) (“Do [law] students of the nineties write better or at least as well as students of the sixties and seventies? The answer is: no, they do not even write as well!”); Albert P. Blaustein, *On Legal Writing*, 18 CLEV.-MARSHALL L. REV. 237, 237 (1969) (“Virtually all legal writing is atrocious!”); K.N. Llewellyn, *On What is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651, 660 (1935) (“I want every law student to be able to read and write. Half of my first-year students, more than a third of my second-year students, can do neither.”); William L. Prosser, *English as She is Wrote*,

practicing lawyers and legal academics certainly seem to think they are, and this is an area where reality is perhaps less important than perception.

Missing from the chorus of voices bemoaning the downward slide in information literacy skills are those of the students whose work is being scrutinized. Yet their opinions are significant; only they can tell us what they read, how they communicate, and how they go about finding information. And if law students believe their information literacy skills to be adequate or better, they likely will not understand the very different perception of their teachers and future employers.

This article reflects the results of a survey designed to generate data about incoming law students and their perceptions of the information literacy skills they bring to law school. The survey presents self-evaluations by incoming law students of their reading, writing, and research habits, and allows us to better understand the nature and dimensions of the problems facing law students during their first year in law school.

After describing the methodology used to obtain the data in Part II, Part III offers some general information that helps to place the data in context. Parts IV, V, and VI present the survey data concerning incoming law student responses to questions about their reading,<sup>8</sup> writing, and research habits. Part VII analyzes the data and compares it to other research data. This analysis suggests that the data indicate some broad conclusions—that incoming law students read substantially more than the national average; that incoming law students will experience some reading problems in their first year of law school; that incoming law students overestimate their writing skills; that incoming law students overestimate their research skills;

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7 J. LEGAL EDUC. 155, 157 (1954) (“Very, very many of [my students] are hopelessly, deplorably unskilled and inept in the use of words to say what they mean, or, indeed, to say anything at all”); Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1936) (“There are two things wrong with almost all legal writing. One is its style. The other is its content.”); Arthur T. Vanderbilt, *A Report on Prelegal Education*, 25 N.Y.U. L. REV. 199, 209 (1950) (“[There is a] well-nigh universal criticism respecting the inability of law students to think straight and to write and speak in clear, forceful, attractive English.”).

8. Detailed information about student reading habits is contained in five appendices which summarize student responses to questions about their favorite book, least favorite book, last book they read, book they were reading when they responded to the survey, and book they were planning to read next.

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and that law schools must take student writing and research deficits into account when developing skills criteria—and then examines each of these conclusions in detail.

The article concludes that there is work to be done in order to help law students improve their information literacy. While the data suggest that incoming law students have a strong self-belief in their reading, writing, and research skills, it appears that this belief is founded on the perception that previously successful strategies for performing well in an academic setting will continue to prove effective in law school. But studies of law student performance, and surveys of legal employers, suggest that this perception is flawed, and that not enough students develop strong legal information literacy skills in law school.

## II. METHODOLOGY

The survey was conducted during the summer of 2006. The survey's questions were designed to generate some general information about the responding students and sought specific information about student reading, writing, and research habits.<sup>9</sup> After the questions were prepared, law schools were invited to participate by means of a posting to the DIRCON<sup>10</sup> and LWI<sup>11</sup> listservs and seven schools ultimately<sup>12</sup> took part in the survey. Permission to proceed was received from the Institutional Review Boards of all participating schools.

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9. 2006 Incoming Law Student Survey. A copy of the full survey results is on file with the author. For purposes of brevity, and to avoid pages of "id." footnotes, this article will not cite to the survey every time information from it is referred to in the body of the text. References to the survey in the text should be sufficiently self-evident that constant citation is not necessary, and all other sources will be fully cited.

10. A listserv for legal writing directors hosted by the Association of Legal Writing Directors.

11. A listserv for legal writing teachers hosted by the Legal Writing Institute.

12. The following schools participated in the survey: Syracuse University College of Law, Washington College of Law, Marquette University Law School, Rutgers School of Law, Camden, Thomas Jefferson School of Law, John Marshall Law School, and University of Baltimore School of Law. Several other schools expressed an interest in participation, but circumstances prevented them from joining the survey in 2006.

The survey was internet-based; the survey form was generated using Cicada Consulting Group's online survey generating program,<sup>13</sup> and the incoming students answered the questions by typing a uniform resource locator (URL) into the address line of their web browsers and going directly to Cicada's survey site. Once there, the survey questions were grouped in the general areas outlined above, with a "comments" section after each cluster of questions. It was anticipated that the survey would take approximately one hour to complete.

The ability to use an internet-based survey format made this project possible. The cost of Cicada's services was relatively low and the ease of setup, distribution, and results analysis meant that the work could be done by one person, thereby eliminating the need for research assistants.<sup>14</sup> And, of course, the internet is a more environmentally-friendly medium with which to conduct what would otherwise be a paper-intensive activity like survey taking.<sup>15</sup>

Students were notified about the survey either by emails, with the URL embedded as an active link, or in person during law school

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13. Although Cicada drafted an early generation version of the survey form, I was able to create the final form with much gentle hand-holding from the Cicada staff. This final form, consisting of 121 questions, was drafted in a little over two hours, although the time was substantially reduced by being able to cut and paste questions from previous drafts directly into this final version. Once familiar with the vagaries of the form generation program, the process was remarkably straightforward and uncomplicated, allowing a neophyte survey preparer like myself to develop a variety of different question types, including questions calling for answer ranges, "yes/no" answers, short textual answers, and general response boxes in which survey takers could write as much or as little as they desired.

14. But not eliminating the need for help completely. I would be remiss if I did not comment on the professionalism, helpfulness, and cheerfulness displayed by everyone at Cicada. They are a flexible and responsive group of people who never once showed irritation with my limited understanding of the technology I was using. Working with them was a pleasure, and without their level of support this project would not have been possible.

15. I perceived two downsides to using an internet-based approach: (1) the survey would only reach, or could be answered by, those students with internet access, and (2) technological problems might interfere with the reception and processing of results. The first of these issues I discounted, believing that almost all incoming students would have internet access either at home or once they arrived at law school. And while a technical glitch in the previous year had caused the pilot survey to be offline for some time, there was no report of any technological problem during this survey period.

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orientation. In all, 740 students responded to the survey.<sup>16</sup> Responses were viewable instantly, and Cicada's service provides a raw number and percentage based summary of all received responses, thereby allowing hour by hour results tracking.<sup>17</sup> Because the survey asked respondents to identify themselves as male or female, the results can also show gender disparity in the answers.

The data are presented here without any claims to statistical significance, but are offered to give insight into what our students believe about their information literacy. Where the responses reflected what appeared to be a significant disparity in responses based on gender, those differences have been identified.

### III. GENERAL INFORMATION

In addition to the survey's principal focus on information literacy, it also collected some general information about those incoming law students who responded to the survey. Some of that data is included here in order to place the students' answers into a broader context.

#### *A. Time Between Undergraduate Degree and Law School*

Of the responding students, the majority had spent some time between obtaining an undergraduate degree and coming to law school. More than 57% had at least one year of work experience before coming to law school, 35.3% were attending law school directly after completing an undergraduate degree, and 4.2% were attending law school directly after completing a graduate degree. Of those students

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16. Or at least, began to respond. In a survey of this sort, where no control over how many questions a student answers can be exerted, almost every question contains a different number of actual responses. The length of the survey likely caused some students to stop answering, and because no personal information concerning the students was collected, it was impossible for students to answer part of the survey in one sitting and return to complete their answers later. The results of the survey are given here in terms of percentages of the 740 students who began to respond. The complete survey results also include numbers of students who responded to each question.

17. Another benefit of this method is that results could be analyzed in a variety of ways with great ease. As a result, the participating schools were able to get not only the total results but also the results for that school, thereby allowing an insight into each school's incoming class.

who had at least a year between completing their undergraduate degree and coming to law school, 18% had worked for one year, 13.3% had worked for two years, and 26% had worked for more than two years.

A substantial number of responding students, who worked for at least a year before coming to law school, worked in the law in some capacity or other. Approximately 34% of the responding students had worked in a law firm or in a legal department of some form: 27.6% in a law firm, 4.2% in the legal department of a company, and 2.7% in the legal department of a government agency. By contrast, 49.6% of responding students had no legal work experience. Some students had worked for federal or state government: 4.2% directly for a federal or state legislator and 8.8% for the government in some capacity.

### *B. Class Preparation*

When asked about preparation for classes as undergraduates,<sup>18</sup> 7.6% of responding students indicated that they had not prepared for classes, while 16.5% answered that they had spent less than an hour and 28.3% answered that they spent about an hour preparing for classes, while 22.2% indicated that they had spent about two hours and 21.5% indicated that they had spent more than two hours preparing for classes.

In contrast to these numbers, the responding students appeared to anticipate a greater commitment to class preparation in law school: no students answered that they would not prepare for class and only 1% of students responded that they would prepare for less than one hour. Only 5.3% of responding students indicated that they would prepare for about an hour for law school classes, while 22.8% indicated that they would prepare for about two hours and 67.4% indicated that they would spend more than two hours preparing for classes in law school.

### *C. Learning Styles*

The survey asked students to identify their preferred way of learning. Of the single options, 10.3% of responding students

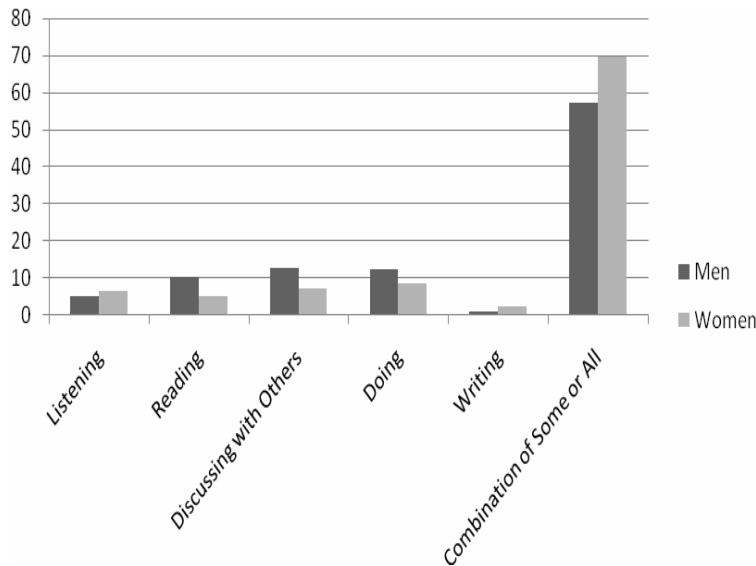
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18. The students were asked "as an undergraduate, how much time did you spend each day preparing for classes." Accordingly, the answers to this question relate to the time they spent preparing for all classes, not just each individual class.

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identified “doing” as their preferred learning style, with “discussing the subject with others” (9.9%), “reading” (7.7%), and “listening” (5.5%) as the other responses. The clear favorite among students, however, was “a combination of some or all of these,” with 61.5% of responding students selecting this option.

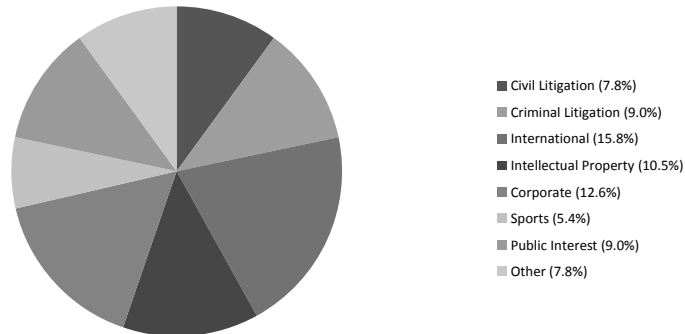
There was some gender disparity in these results, as indicated below:



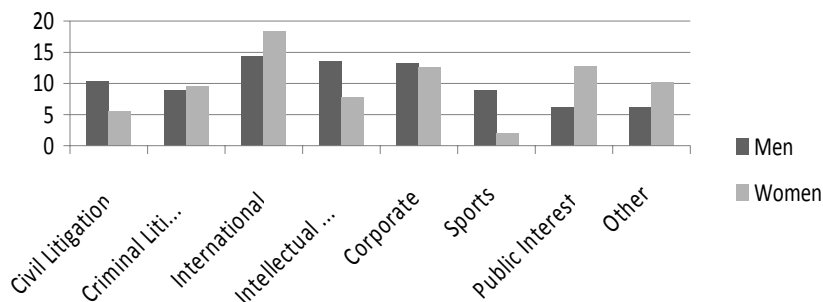
#### *D. Preferred Practice Area*

One of the more interesting pieces of general information the survey recorded was the preferred practice areas of the responding students. The survey listed 21 possible choices, with an “other” option for those students who would have selected a different alternative had it been available. Of those choices selected by more than 5% of the responding students, the clear winner was international law, with 15.8% of the total responses. Surprisingly, perhaps, public interest and criminal litigation were tied with 9% of total responses, and both beat civil litigation, which was selected by only 7.8% of responding students.

The ranking of preferred practice areas selected by more than 5% of the responding students was as follows:



The data reflect some gender differences in the responses to preferred practice areas, with almost twice as many men (10.4%) as woman (5.5%) preferring civil litigation, but slightly more women (9.6%) preferring criminal litigation to men (9.0%), and more than twice as many women (12.7%) preferring public interest to men (6.1%). The gender difference by practice area selected by more than 5% of total responding students is as follows:



### *E. Importance of Skills and Ease of Acquisition*

The survey sought to identify student reactions to some of the various skills they would learn in law school. Predictably, the incoming students ranked legal analysis, written communication, and oral communication as the three most important skills, although the

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gap between these three skills and the remaining three is larger than might have been anticipated.

	Oral Communication	Written Communication	Knowledge of Substantive Law	Knowledge of Procedural Law	Legal Analysis	Legal Research
Most Important	23.4%	25.1%	5.5%	4.2%	31.5%	6.9%
Easiest to Learn in Law School	15.9	19.9	16.2	12.6	10.7	21.2
Most Difficult to Learn in Law School	27.0	9.7	13.2	11.6	23.8	10.9

More surprising, perhaps, is the confidence displayed in their information literacy skills by the incoming law students.<sup>19</sup> Nearly 20% of responding students believed that written communication would be the easiest skill they would have to learn in law school with slightly fewer than 10% responding that it would be the most difficult skill they would learn, while more than 21% thought that legal research would be the easiest skill to learn with almost 11% responding that it would be the most difficult skill to learn.

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19. It is possible that these results were affected by other factors. For example, a student might be influenced by the way a law school grades its legal research and writing class, believing that a pass/fail grading protocol indicates that the class is easier than others, and therefore the subject will be easier to acquire. Conversely, the student may believe that if the school has drawn particular attention to its writing and research program in promotional materials, the subject might be more difficult to learn than other subjects. The results here are, however, consistent with the responding students' self-evaluations of their writing and research skills. *See infra* pp. 172-73, 178-80.

## IV. READING

The survey sought to capture some general information about incoming student reading habits as well as specific information about student informational and educational reading.

It is no great insight to recognize that reading is of crucial importance to lawyers and law students.<sup>20</sup> Ours is a profession of words, and the better we understand the meaning of those words—not just the dictionary definitions but the deeper, contextual meaning where the law lives—the better law students will be able to understand what courts and lawyers actually say when they write. So being simple readers of words is not enough for our students; they must become what Ruth McKinney calls “expert readers.”<sup>21</sup> “[T]he successful study and practice of law requires all students and all practitioners to read with vigor and with accuracy, critically examining words in the context of action taken by the courts and legislatures, challenging assumptions, finding patterns, generating new ideas.”<sup>22</sup>

There has been much concern recently that the population as a whole is not reading.<sup>23</sup> In particular, there is concern that the generation from which our students are now drawn is not engaged in literary reading.<sup>24</sup> This is of concern to law professors because of reading’s importance in forming a vocabulary, in learning rhetorical

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20. “One of the most important skills in law school is the ability to read a judicial opinion efficiently and accurately . . . .” Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 603 (2007).

21. RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT*, at xiii (2005).

22. *Id.* at 53.

23. *See, e.g.*, NEA STUDY, *supra* note 2. The NEA concluded that “[l]ess than half of the adult American population now reads literature” and that there was a 10% reduction in literary reading between 1982 and 2002. *Id.* at ix. Moreover, the Study found that in 2002, only 56.6% of the American population had read any book and only 46.6% had read a work of literature. *Id.* Although reading rates increased with educational levels, reading among every group declined between 1992 and 2002. *Id.* at xi.

24. *See id.* at ix-xi. The NEA Study set the bar for “literary reading” very low. *See id.* at 1-2. Novels, short stories, poetry, and plays, counted as a literary work for purposes of the NEA Study. *Id.*

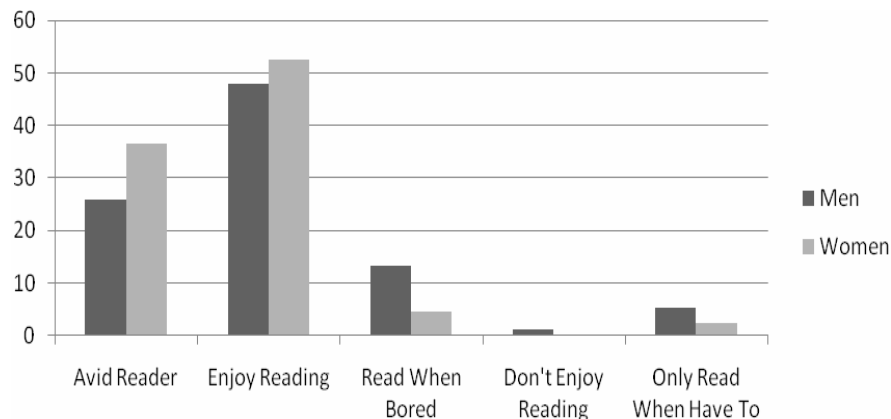
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strategies, in assimilating the importance of narrative, and for many other reasons.<sup>25</sup>

### A. General Reading Information

When asked to characterize their reading habits, 30% of the responding students described themselves as “avid readers,” while 48.9% responded that they “enjoy reading.” Only 8.9% responded that they read when they are bored, 0.7% responded that they “don’t enjoy reading,” and 3.8% responded that they only read when they have to.<sup>26</sup> When asked to rank reading among their other activities, 25% of responding students identified it as “very important,” 41.8% as “important,” 21.2% as “neither important nor unimportant,” 2.7% as “unimportant,” and 1.5% as “very unimportant.”

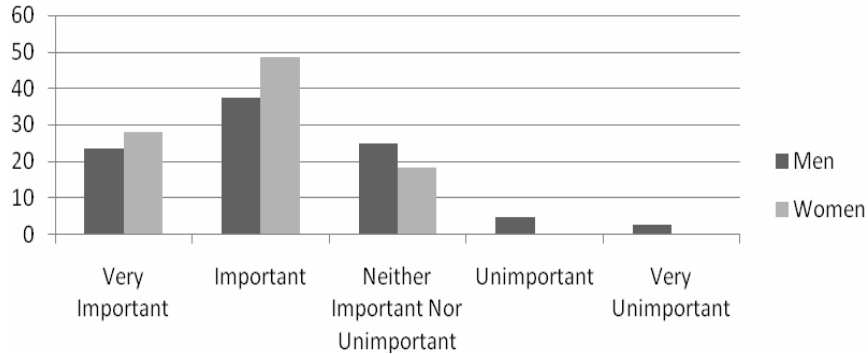
The survey indicated some significant gender differences in the way responding students described their reading habits, with women appearing to be much more enthusiastic about reading than men. The responses by gender were as follows:



25. For an example of the importance of critical reading skills, see Debra Moss Curtis & Judith R. Karp, “*In a Case, In a Book, They Will Not Take a Second Look!*” *Critical Reading in the Legal Writing Classroom*, 41 WILLAMETTE L. REV. 293 (2005); Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163 (1993).

26. While these numbers are encouraging, they still indicate that more than 13% of responding students are less than enthusiastic readers.

This gender disparity was also detectible when students were asked to rank reading against their other activities, with women again showing much more interest in reading than men. The responses by gender were as follows:



The survey also asked students to identify how many books they owned, excluding textbooks. Two students, or 0.3%, responded that they owned no books, 6.3% responded that they owned between one and ten books, 26.3% responded that they owned between eleven and fifty books, 22.3% responded that they owned between fifty-one and one hundred books, and 37.1% responded that they owned more than one hundred books. When asked about writing reference books, 75.9% of responding students indicated that they owned a print dictionary, 16.5% indicated that they did not, and 69.3% indicated that they owned a book on grammar and punctuation, while 22.7% indicated that they did not.

The survey also asked questions which allowed the students to estimate the time they spend reading for information and pleasure and contrast that with television watching and computer game playing.

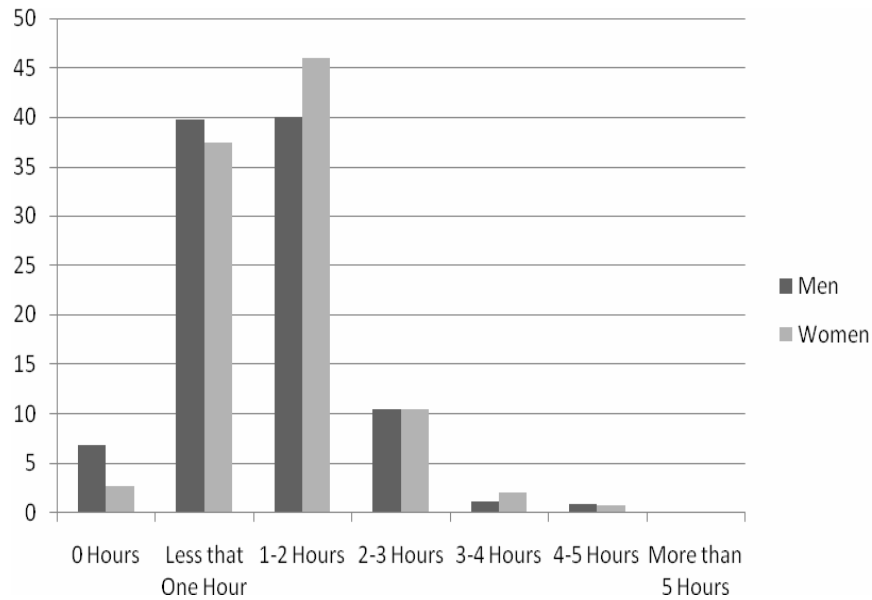
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The results were as follows:

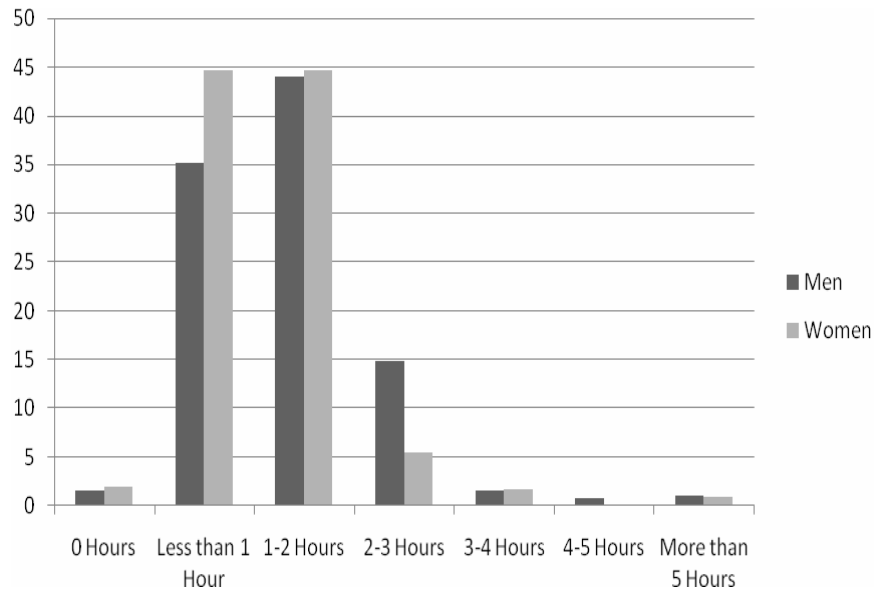
	Reading for Pleasure	Reading for Information	Watching Television	Playing Computer Games
0 Hours	4.6%	1.8%	5.5%	60.8%
Less than 1 Hour	37.6%	38.6%	27%	22.3%
1-2 Hours	41.8%	43.1%	38.5%	8.5%
2-3 Hours	10.1%	10.1%	15.4%	2.7%
3-4 Hours	1.5%	1.6%	5%	1.5%
4-5 Hours	0.4%	0.4%	2.2%	0.9%
More than 5 Hours	0.7%	0.9%	2.7%	0.4%

The data reflect some gender similarities and differences in these responses.

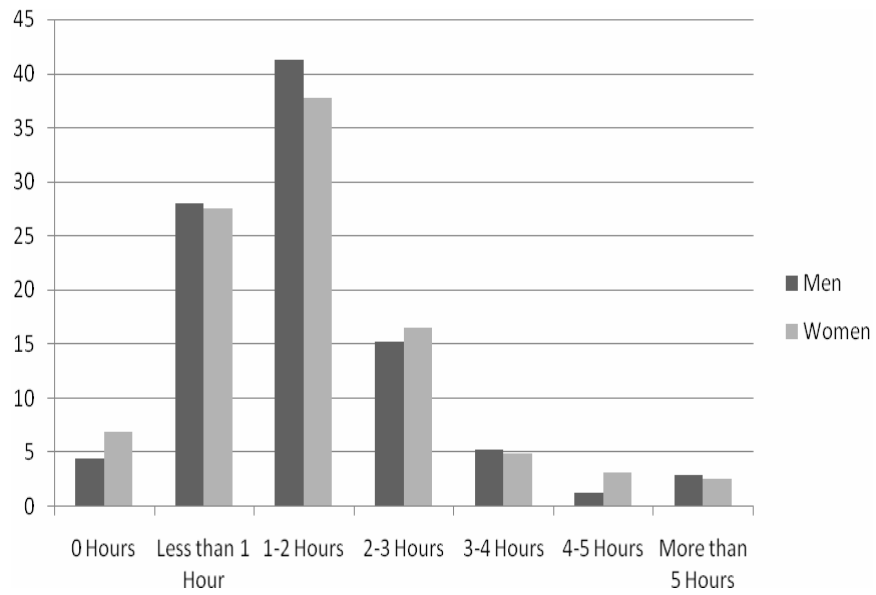
Time spent reading for pleasure:



Time spent reading for information:

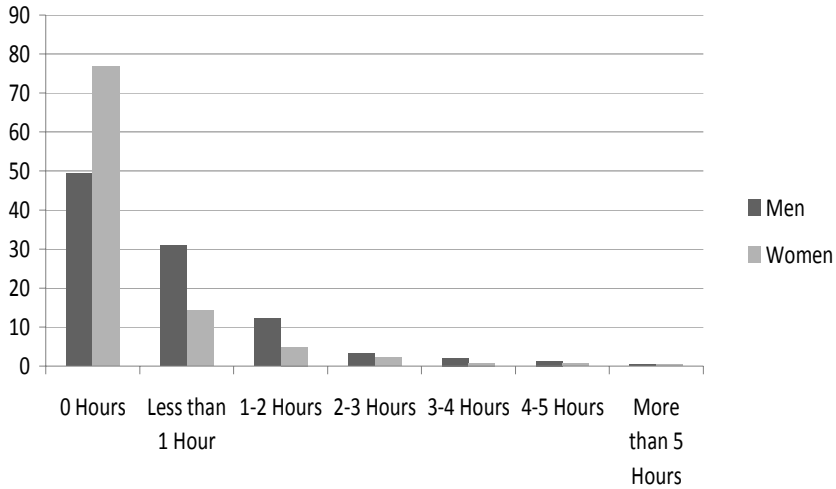


Time spent watching television:



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## Time spent playing computer or video games:

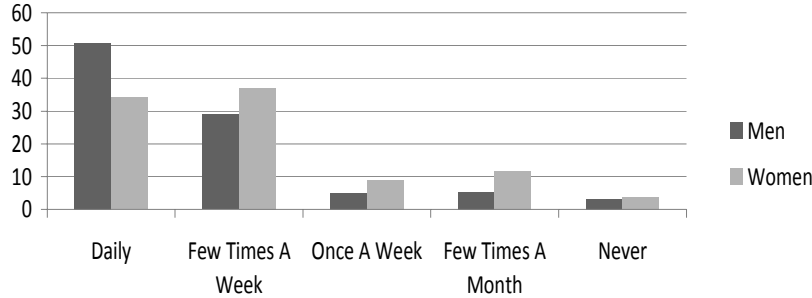
*B. Informational Reading*

In the section on reading to learn information,<sup>27</sup> the survey first asked students to describe their newspaper reading habits. The total responses indicated that 41.8% of responding students read newspapers daily, 32.0% read them a few times each week, 6.9% read them once a week, 8.1% read them a few times each month, and 3.3% never read newspapers.

The survey results suggest that men are more regular readers of newspapers than women, but that women were more likely to read newspapers occasionally.

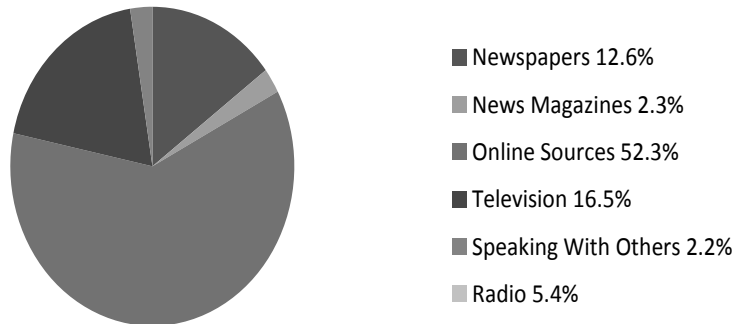
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27. "Information" was broadly defined by the survey. Information sources included newspapers, newsmagazines such as *Time* or *Newsweek*, entertainment magazines such as *People* or *Entertainment Weekly*, and lifestyle magazines such as *Cosmopolitan* or *GQ*.



When asked how they read newspapers, only 17.4% of responding students answered that they read them in print form, while 16.7% responded that they read them only online, and the overwhelming majority—55.5%—responded that they read them in both print and online formats.

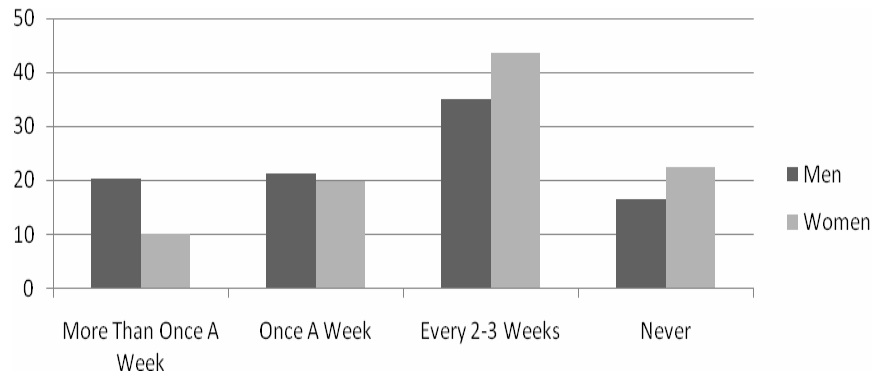
As might be expected, the internet is now by far the most important source of news information for responding students. Asked how they learned about the news, students responded as follows:



Newsmagazine readership was predictably less extensive than newspaper readership. Of those students who responded, 15% answered that they read such magazines more than once a week, 20.1% read them once a week, 38.1% read one every two to three weeks, and 18.8% never read newsmagazines.

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Again, there were notable gender differences among the answers:



Readership of entertainment and lifestyle magazines was much lower, although here again gender differences were apparent. Of those students who responded, 5.9% read more than one entertainment magazine each week (4.3% of men and 7.8% of women), 18.4% read one per week (10.6% of men and 27.8% of women), 26.9% read one every two to three weeks (22.1% of men and 33.3% of women), and 40.4% never read one (55.7% of men and 26% of women). For lifestyle magazines, 3.6% read more than one a week (1.3% of men and 6% of women), 8.5% read one a week (4.2% of men and 13.6% of women), 33.2% read one every two to three weeks (23.7% of men and 45.2% of women), and 45.9% never read one (62.7% of men and 30.4% of women).

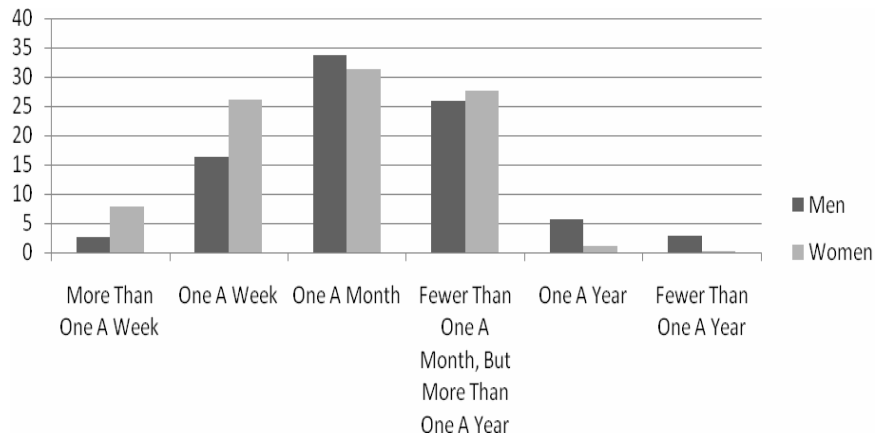
### *C. Pleasure Reading*

The data from the pleasure reading section of the survey reflected the gender disparities identified in the general reading information section.<sup>28</sup> When asked how many books they read for pleasure, a total of 5% responded that they read more than one book a week, 20.4% responded that they read one book a week, 31.8% responded that they read one book a month, 26.2% responded that they read fewer than one book a month but more than one a year, 3.5% responded that they read one book a year, and 1.6% responded that they read fewer than one book a year.

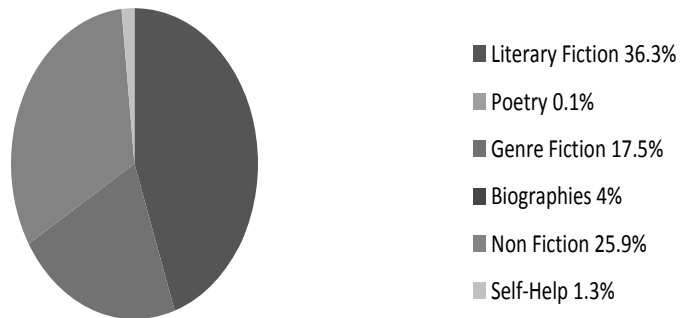
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28. *See supra* pp. 163-67.

Broken down by gender, these responses are as follows:

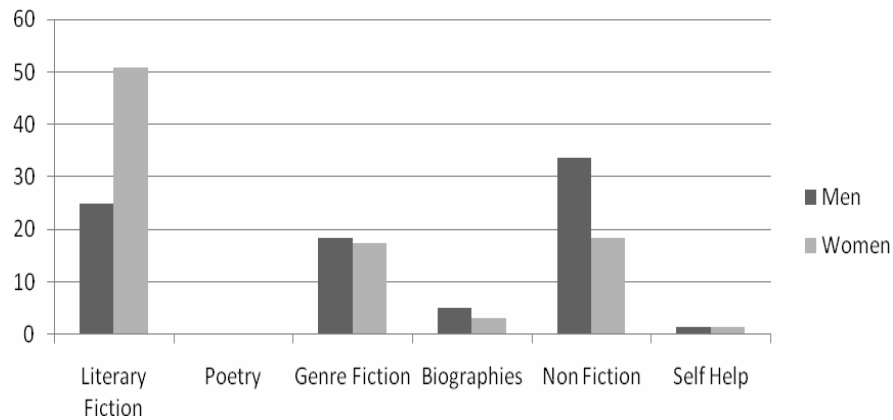


Gender differences can also be identified when looking at the writing styles incoming law students most enjoy reading. Overall, the total responses were as follows:



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Identified by gender, the responses were as follows:<sup>29</sup>



## V. WRITING

Writing is, of course, a core lawyering skill,<sup>30</sup> and forms a central part of at least the first year curriculum<sup>31</sup> at most American law schools.<sup>32</sup> But despite the attention paid to writing in law school, it is a generally held perception that new lawyer writing is “marred by basic writing problems”<sup>33</sup> and that the problem is getting worse.<sup>34</sup>

29. Although they track slightly different results, the data here reflect the same trend as the data announced by the NEA Study, which concluded that women were significantly more likely to engage in literary reading (55.1%) than men (37.6%). NEA STUDY, *supra* note 2, at x. The survey also noted that literary reading in both groups had dropped in the twenty years since 1982, with women’s literary reading falling by 7.9 percentage points and men’s literary reading falling by 11.5 percentage points. *Id.*

30. Although the MacCrate Report did not specifically list writing as a “fundamental lawyering skill,” it is subsumed within “Communication,” the fifth of ten fundamental skills identified by the report. See MACCRATE REPORT, *supra* note 6, at 172.

31. The ALWD SURVEY reports that 166 responding law schools offered upper-level writing courses. ALWD SURVEY, *supra* note 6, at 20-21.

32. See ALWD SURVEY for current specific information on legal writing instruction in American law schools.

33. See Kosse & ButleRitchie, *supra* note 5, at 85-86. This survey found remarkable unanimity among the four respondent groups it polled about the fact that legal writing is weak. *Id.* at 85. 92.5% of attorneys, 93.6% of state judges, 93.8% of

Since law schools are now paying such close attention to writing, it seems that the reason for any decline in writing standards must lie in the writing instruction students receive before attending law school.<sup>35</sup>

The survey gathered general data about incoming law students' perceptions of their writing skills. Specifically, the survey gathered information on their experiences in writing for communication and their previous academic writing experience. The goal of the survey was to discover how much and what type of writing experiences the students reported having.

#### A. General Information

Students seem generally satisfied with their technical writing skills. When asked to evaluate their writing, spelling, grammar, and punctuation skills, the results were as follows:

	Very Strong	Strong	Average	Weak	Poor
Writing	23.1%	47.8%	12.7%	0.9%	0%
Spelling	26.6%	30.5%	18.4%	7.7%	1%
Grammar	23.9%	41.9%	15.7%	2.7%	0.4%
Punctuation	23.1%	36.2%	21.9%	2.7%	0.2%

Students also indicated that writing is an important skill for them. When asked how important writing was to them now, 41.6%

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federal judges, and 95.1% of legal writing teachers responding that they perceived problems in legal writing. *Id.*

34. *See, e.g.,* Becker, *supra* note 7, at 53 (“[D]o students of the nineties write better or at least as well as students of the sixties and seventies? The answer is: no, they do not even write as well!”).

35. *Id.* at 55 (“[T]he decline [in writing standards] . . . [H]as to do with a student’s previous education—in particular college education.”). This is not a new insight. In 1969, Albert Blaustein noted that law schools “have put the major blame [for poor legal writing] on the failure of high school and college English composition teachers to send a better trained writer on to the graduate schools.” Blaustein, *supra* note 7, at 239. And even earlier, Arthur Vanderbilt wrote:

It is no secret that our law school authorities generally are far from satisfied with the intellectual attainments of their incoming students. . . .

More acute than the complaints as to inaccurate or hazy knowledge . . . is the well-nigh universal criticism respecting the inability of law students to think straight and to write and speak in clear, forceful, attractive English.

Vanderbilt, *supra* note 7, at 209.

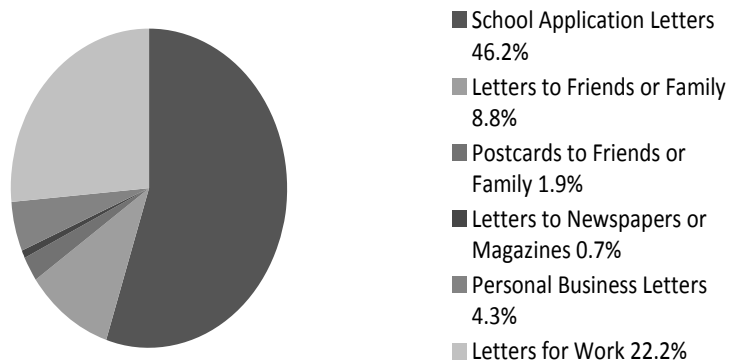
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responded “very important,” 34% responded “important,” 8.1% responded “neither important nor unimportant,” 0.4% responded “unimportant,” and only one student—representing 0.1%—responded “very unimportant.” And the students appeared to recognize the importance of writing to lawyers. When asked how important writing would be to them as lawyers, 77.7% responded “very important,” 6.6% responded “important,” 0.1% responded “neither important nor unimportant,” 0.1% responded “unimportant,” and no student responded “very unimportant.”

### B. Writing for Communication

The survey sought to discover how students use writing to communicate. It gathered data on the number and types of letters students write, and the numbers and types of electronic communications the students send and receive each day.

The data indicate that the letter, while not the robust medium of communication it was before the advent of the internet, is nowhere near extinction yet. When asked which types of letters they had written in the past year, the incoming students responded as follows:



By contrast, but predictably, electronic communication is thriving among incoming law students. Although email appears to be the most popular communication medium,<sup>36</sup> the survey also recorded

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36. This might not be the case much longer. The Pew Internet & American Life Project recently released a study concluding that “email may be at the beginning of a slow decline as online teens begin to express a preference for instant messaging.” AMANDA LENHART ET AL., PEW INTERNET & AM. LIFE PROJECT, TEENS AND TECHNOLOGY, at ii (2005), available at [http://www.pewinternet.org/pdfs/PIP\\_Teens\\_Tech\\_July2005web.pdf](http://www.pewinternet.org/pdfs/PIP_Teens_Tech_July2005web.pdf). When asked to comment on the appropriate

substantial instant message and non-computer text message<sup>37</sup> usage. The survey asked the students to record the number of each such communication they sent and received and the amount of time they spent engaging in electronic communication. The results are as follows:

Mode of Electronic Communication:

	0	1-9	10-20	21-50	More than 50
Emails sent each day	0.9%	55.7%	18.6%	7.3%	2.4%
Emails received each day	0%	33.6%	29.3%	14%	7.8%
Instant messages sent each day	36.7%	22.7%	11.1%	6.9%	6.8%
Instant messages received each day	37.1%	23.8%	10.1%	6.3%	7.3%
Non-Computer text messages sent each day	31.6%	43.9%	7.3%	1.2%	0.8%
Non-Computer text messages received each day	29.5%	46.2%	6.6%	1.2%	0.8%

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uses for email, teens responded that “they view email as something you use to talk to ‘old people,’ institutions, or to send complex instructions to large groups.” *Id.*

37. Non-computer text message use would include text messages sent by cell phone, but would presumably not include emails sent by Blackberry-type devices.

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## Time Spent per Day in Electronic Communication:

	0 Min	1-5 Min	6-10 Min	11-30 Min	31-60 Min	1-2 Hours	More than 2 Hours
Writing Emails	0.7%	11.0%	17.6%	25.4%	18.1%	7.4%	4.7%
Reading Emails	0%	8.6%	17.7%	29.6%	16.3%	8.1%	4.2%
Sending Instant Messages	37.6%	7.7%	9.2%	13.1%	9.9%	4.7%	2.6%
Reading Instant Messages	37.2%	9.9%	9.0%	12.0%	10.3%	3.8%	2.6%
Sending Non- Computer Text Messages	31.3%	31.6%	13.6%	6.6%	0.9%	0.5%	0.1%
Reading Non- Computer Text Messages	29.9%	38.6%	9.9%	5.0%	0.9%	0.4%	0.1%

*C. Previous Academic Writing*

The survey sought information about the type of writing students had undertaken during their previous academic careers. The responses seemed to indicate that a minority of students were asked to write a number of lengthy documents, while a substantial majority were asked to write shorter documents each semester. The responses also seem to indicate that a substantial number of students submitted the first drafts of these documents for a grade, that outlining was by no means a standard practice for writing such documents, and that while many students had collaborated on at least one writing project, the reaction was mixed as to how beneficial the experience had been.

When asked how many large thesis-type documents<sup>38</sup> they were asked to prepare as undergraduates or graduate students, 24.3% of the responding students replied that they had not written such a document, 28.4% responded that they had written one, 16.2% responded that they had written two, and 14.5% responded that they had written more than two. By contrast, when asked how many term paper-type documents<sup>39</sup>

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38. Defined in the survey as a document averaging thirty pages or longer.

39. Defined in the survey as a document averaging thirty pages or less.

they were asked to prepare as undergraduates or graduate students, on average only 0.9% responded that they had not written such a document, while 8.1% replied that they had written one each semester, 46.3% responded that they had written between two and five each semester, and 27.7% responded that they had written an average of more than five each semester.

The survey also asked how long these term papers were, on average. Of those students who had written such documents, 5.5% responded that they were between one and five pages long, 37.3% responded that they were between six and ten pages long, 29.3% responded that they were between eleven and fifteen pages long, 8.8% responded that they were between sixteen and twenty pages long, and 1.9% responded that they were more than twenty pages long.

Many students reported that their writing was evaluated, at least in part, on more than substance alone. When asked how their writing was evaluated, the responses were:

	Purely on substance	Mainly on substance, but some attention paid to grammar, punctuation, form, and style	Evenly divided between substance, grammar, punctuation, form, and style	Mostly on grammar, punctuation, form, and style, with some attention paid to substance	Purely on grammar, punctuation, form, and style
Thesis-Type Documents	3.8%	45.1%	13.2%	0.3%	0%
Term Papers	1.8%	61%	20%	0.3%	0%

When asked how many drafts of a paper they prepared on average, 24.6% replied that they had only prepared one draft, while 45.6% responded that they had prepared between two and three drafts, 6.8% responded that they had prepared between four and five, and 2.2% responded that they had prepared more than five drafts of papers. And when asked if they prepared outlines for the documents they wrote, 13.1% of responding students answered “always,” 20%

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responded “usually,” 33.6% responded “sometimes,” and 16.3% responded “never.”<sup>40</sup>

Asked if they were required to submit drafts to their teachers, only 1.3% responded that this was always required, 5.3% responded that they “usually” submitted such drafts, 55.8% responded that they “sometimes” submitted drafts, and 20.3% responded that they “never” submitted drafts. The numbers were similar when the students were asked if they discussed their written drafts with teachers or teaching assistants, with 2.3% responding that they “always” discussed drafts, 13.8% “usually” discussed drafts, 51.2% “sometimes” discussed drafts, and 14.9% “never” discussed drafts.

Interestingly, a majority of students had experience collaborating with other students on at least one writing assignment, with 55.1% responding that collaboration on at least one paper was permitted and 27.7% responding that they had not collaborated. Those students who had collaborated, however, were equivocal about the benefits of the experience, with 36.2% responding that collaboration was beneficial and 34.3% responding that it was not.

The large majority of students had taken at least one class that focused primarily on writing, with 5.7% responding that they had taken no such classes, 57.7% responding that they had taken between one and five writing classes, 10.9% responding that they had taken between six and ten writing classes, and 9.2% responding that they had taken more than ten writing classes. By the same token, a substantial majority of students had not used the services of a writing center, with 21.9% responding that they had and 61.5% responding that they had not.

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40. This stands in stark contrast to law school, where multiple drafts and rewrites are the norm. In 2007, sixty legal writing programs required all major assignments to be rewritten at least once and 105 required rewrites of some, but not all, major assignments. ALWD SURVEY, *supra* note 6, at 13. A major assignment was defined as “one in which the final product is equal to or greater than 5 pages.” *Id.* Although the ALWD Survey did not capture information about the number of drafts required in a first year legal writing course, it collected data concerning upper-level writing requirements noting that ninety-seven schools “require a faculty member to review at least one draft before the student submits the final version of the writing project,” and that sixty-one schools require faculty members to meet with students at least once during the drafting stage to discuss the project. *Id.* at 75-76.

## VI. RESEARCH

As with writing, criticism of lawyers' research skills is nothing new.<sup>41</sup> Recent surveys suggest that the problems start before students arrive in law school,<sup>42</sup> and continue once law students graduate and enter practice.<sup>43</sup> The survey attempted to generate data that would indicate how incoming law students conduct research and would capture their self-evaluation of their research skills.

The responding students showed an impressive degree of confidence in their research skills, with 37.1% responding that they were "very confident" in their research skills, 44% responding that they were "somewhat confident" in their research skills, and only 1.8% responding that they have "little or no confidence" in their research skills.<sup>44</sup>

Those skills tend to be exercised on the internet rather than in the library. When asked where they conduct research, 11.3% of responding students answered that they always use the internet for

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41. See Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. LEGAL EDUC. 381, 383 (1990) (reporting that 80% of polled law firm librarians found summer associates "less than satisfactory" in their ability to conduct legal research); Robin K. Mills, *Legal Research Instruction in Law Schools, The State of the Art or, Why Law School Graduates Do Not Know How to Find the Law*, 70 LAW LIBR. J. 343 (1977) (discussing the difficulties law school graduates experienced when trying to use the law library); Thomas A. Woxland, *Why Can't Johnny Research? or It All Started with Christopher Columbus Langdell*, 81 LAW LIBR. J. 451, 451 (1989) (noting that "[m]any law [school] graduates are incompetent to perform adequately one of the most vital of lawyerly functions—legal research").

42. AALL SURVEY, *supra* note 5, at 2-3 (concluding that students coming to law school "do not have basic research skills" and that "teaching legal research with an underlying assumption that entering first year students have basic research skills may be [a] flawed [approach].").

43. See, e.g., 2007 LIBRARIAN SURVEY, *supra* note 5 (between 2005 and 2007, the number of new attorneys able to research efficiently dropped by almost half and the percentage of new attorneys unaware of print resources in their practice went up by 30%). This Librarian survey also found that new attorneys are trained to do legal research in 85.7% of responding law firms, suggesting at least a perceived inability of those new attorneys to research efficiently. *Id.*

44. Although the question in the AALL Survey was framed differently, the results of that survey indicated that 71% of respondents rated their research skills as good, very good, or excellent when compared to their peers. AALL SURVEY, *supra* note 5, at 2.

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research, and 40.1% answered that they usually use the internet but will sometimes use the library. By contrast, 25.1% answered that they use the internet and library about the same amount for their research needs, 5.9% answered that they usually use the library but will sometimes use the internet, and only 0.4% (three students) answered that they always research in the library and never use the internet.<sup>45</sup>

The survey data indicates that incoming law students have a sense that the physical library retains some role in performing legal research but that they believe the internet is a more important source of legal information. Asked to respond to a series of statements, 4.3% of responding students agreed that “[t]he internet has all relevant information necessary to conduct legal research, 71.5% agreed that “[t]he internet is a valuable tool for legal research but it cannot be used to the exclusion of library research, 6.5% agreed that “[t]he internet is not as valuable for legal research as the library,” and 0.5% (four students) agreed that “[t]he internet is of little or no use for legal research.”

Predictably, most responding students use search engines frequently, with 66.3% responding that they use search engines more than once a day and 12.3% indicating that they use search engines about once a day. Surprisingly, 2.4% of responding students indicated that they only use search engines about once a week and 1.3% indicated that they only use search engines a few times a month.<sup>46</sup> And the responding students appear to be comfortable with the results they achieve on the internet, with 18.6% responding that they are very confident that their searches disclose the most appropriate resource for them to answer their query, 56.2% responding that they are somewhat confident, 6.5% responding that they are not confident, and 1% responding that they do not know.

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45. These numbers reflect more library use than a recent survey of undergraduate students, which found that 73% of students used the internet more than library resources while only 9% used the library more. STEVE JONES, PEW INTERNET & AM. LIFE PROJECT, THE INTERNET GOES TO COLLEGE 12 (2002), available at [http://www.pewinternet.org/pdfs/PIP\\_College\\_Report.pdf](http://www.pewinternet.org/pdfs/PIP_College_Report.pdf).

46. There should be no surprise, however, that Google was the overwhelming choice for internet search engine, with 70.9% of responding students indicating that it was the search engine they use most often. The only other search engine to achieve a significant number of users was Yahoo, with 9.5% responding that it was the search engine they use most frequently.

The students displayed some doubt as to the accuracy and timeliness of the information obtainable on the internet. When asked if they agreed that search engines are a fair and unbiased source of information, 19.1% students responded that they are and 62.7% responded that they are not. And while 2.3% of responding students agreed that the information provided by search engines is always correct, the majority of responding students—78.2%—were less sure, characterizing the information as “sometimes correct.” While 0.4% (three students), responded that information provided by search engines was rarely correct, 1.5% of responding students indicated that they did not know how correct such information is. And when asked if the information provided by search engines is up to date, 1.8% responded “always,” 56.9% responded “usually,” 22.1% responded “sometimes,” and 1.5% responded that they did not know.

Responding students were more certain about the benefits the internet had brought them. When asked if the internet was beneficial to them in their previous university education, 75.4% responded “yes” and only 6.5% responded “no.” When asked if the internet had been beneficial to their relationships with professors, 67% responded “yes” and 14.7% responded “no.” And when asked if the internet had been beneficial to their relationships with other students, 68.8% responded “yes” and 12.6% responded “no.”

## VII. ANALYSIS

The data collected by this survey are preliminary and suggestive, rather than final and definitive. The relatively small number of schools involved and the relatively small number of responding students, compared to the total number of incoming law students at American law schools each year, mean that we cannot draw anything more than tentative conclusions from the responses.

But these data, especially when considered in combination with some of the other research data compiled recently about general literacy and information literacy among law students in particular, do suggest some broad conclusions that are relevant to law students and

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teachers alike. These are:

- incoming law students read substantially more than the national average;
- incoming law students will experience some reading problems in their first year of law school;
- incoming law students overestimate their writing skills;
- incoming law students overestimate their research skills; and
- law schools must take student writing and research deficits into account when developing skills criteria.

The remainder of this article will explore these conclusions in more depth.

*A. The Data Suggest That Incoming Law Students Read Substantially More Than the National Average*

The data appear to disclose good news about the level of reading being conducted by incoming law students. Slightly more than one quarter of responding students indicated that they read at least one book each week,<sup>47</sup> while more than half of the responding students read at least one book each month<sup>48</sup> and 86.9% of incoming students responded that they read at least one book a year.<sup>49</sup>

These numbers compare favorably to the NEA Study, which found that the college graduate or graduate student population was engaging in literary reading<sup>50</sup> at a rate of 66.7%. Asked to describe their reading habits, 30% of incoming students selected “avid readers,” and 25% indicated that reading was “very important” to them.

Reading is, of course, a core skill for law students and lawyers.<sup>51</sup> But while the benefits of information transmission and knowledge

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47. Five percent read more than one book a week and 20.4% read one book a week.

48. An additional 31.8% read one book a month.

49. An additional 26.2% responded that they read fewer than one book a month but more than one a year, and 3.5% responded that they read one book a year.

50. The NEA Study focused on literary reading whereas this study included all forms of reading, making a true comparison of the data impossible. *See* NEA STUDY, *supra* note 2, at ix.

51. Reading is not identified as a “fundamental lawyering skill” by the

generation through reading are clear and relatively well-understood,<sup>52</sup> literary reading carries with it at least two additional benefits for law students that might be less immediately apparent.

Literary reading is one of the processes by which we learn to tell stories, and understanding how to construct a compelling narrative is a crucial skill for lawyers who seek to weave facts and law together in order to persuade a court, an opposing lawyer, or sometimes a client that a particular result is appropriate.<sup>53</sup> Storytelling and narrative construction are being studied closely in the legal writing community<sup>54</sup> and students with a deep immersion in literary reading will likely be better able to respond to the lessons being taught to them about narrative techniques that translate from literature to legal writing.

Less studied among lawyers, but no less significant, is the role all forms of literature play in transmitting common cultural memes, and the importance of being attuned to the role and details of

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MacCrate report but is, presumably, subsumed within the “legal analysis and reasoning” skill. *See* MACCRATE REPORT, *supra* note 6, at 151-57. The MacCrate Report’s failure to identify reading specifically as a fundamental lawyering skill is, perhaps, representative of what Dorothy Deegan calls “[a] common-sense notion that most educated adults generally read the same way [that] pervades both lay and professional communities . . . despite clear evidence that differences in reading achievement levels increase with years of schooling.” Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 *READING RES. Q.* 154, 154 (1995). However, given the centrality of reading in legal education and the legal profession, and the evidence that not all law students employ effective reading strategies, *see, e.g., infra* notes 53-56, 58-63 and accompanying text, it is to be hoped that future studies of law school education will give greater emphasis to reading skills.

52. *See* MCKINNEY, *supra* note 21, at 62 (“[R]eading is an activity that requires the reader to respond to the writer’s message, constructing new information from the exchange that occurs between the writer . . . and the reader . . . .”); Fajans & Falk, *supra* note 25 (discussing the importance of reading as a process by which the reader actively locates legal texts in larger contexts than identifying simple “meaning” of words).

53. *See generally* Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 *RUTGERS L.J.* 459 (2001) (discussing the importance of narrative construction in facts sections of legal briefs).

54. City University, London, and the Legal Writing Institute co-sponsored a conference, *Once Upon a Legal Time: Developing the Skills of Storytelling in Law*, devoted to the role of narrative in legal writing.

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contemporary cultural mythology.<sup>55</sup> The ability to interpret and communicate in cultural shorthand should not be underestimated by lawyers<sup>56</sup> and literary reading is one of the most effective ways to become versed in the themes of our shared cultural heritage.<sup>57</sup>

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55. For a lengthier discussion of the role of cultural mythology in legal writing, see Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey*, 29 SEATTLE U. L. REV. 767 (2006) (discussing the role the *Harry Potter* books by J. K. Rowling in particular, and cultural mythology in general, can play in the construction of compelling legal narrative).

56. Nor should lawyers be incapable of recognizing when the specifics of cultural mythology no longer serve to carry meaning. In 1950, Arthur Vanderbilt acknowledged the demise of a classical education as a cultural reference point when he wrote that “[n]o instructor in any class in any law school can make a reference to Plato or Aristotle, to the Bible or Shakespeare, to the Federalist or even the Constitution itself with any real assurance that he will be understood.” Vanderbilt, *supra* note 7, at 209. More recently, Ruth Ann McKinney made a similar admission when quoting Karl Llewellyn, noting that the courts’ adherence to precedent is “two-headed. It is Janus-faced.” MCKINNEY, *supra* note 21, at 39 (quoting K.N. LLEWELLYN, *THE BRAMBLE BUSH* 74 (3d ed. 1960)). In a footnote to the quoted passage, McKinney explains that “Mr. Llewellyn’s reference to ‘Janus’ is to the Roman God, Janus, who is depicted with two faces on either side of his head.” *Id.* While those who grew up steeped in the tradition of Roman and Greek mythology might be exasperated by the explanation of such a seemingly straightforward reference, no objective law professor would expect the majority of contemporary law students to connect the name “Janus” with the image of a two-faced head. Indeed, students might recognize the name and image from the Janus Capital Group, a global investment manager that advertises on television, much more so than from an understanding of Roman mythology. Significantly, a Google search returned the Janus Capital Group’s website as the highest-ranked website featuring the name “Janus” and the Wikipedia entry for “Janus,” the Roman god, was second. Google, <http://www.google.com/search?hl=en&q=janus&btnG=Google+Search> (last visited Oct. 21, 2007).

57. This is not, of course, the only way. And there is a compelling argument to be made, for example, that no trial lawyer can be completely assured of communicating with a jury without an understanding of the way trials and trial lawyers are portrayed on television and in films. There is, for example, considerable debate in the legal academic community as to the existence of a “CSI Effect”—the alleged tendency of criminal juries to acquit defendants where the prosecution fails to present scientific evidence of the type portrayed on the television series *CSI: Crime Scene Investigation*. See Hon. Donald E. Shelton, Young S. Kim, & Gregg Barak, *A Study of Juror Expectations and Demands Concerning Scientific Evidence: Does the “CSI Effect” Exist?*, 9 VAND. J. ENT. & TECH. L. 331, 367-68 (2007) (concluding that while a “CSI Effect” might not exist, broader media effects on juror expectations do exist); Tom R. Tyler, *Viewing CSI and The Threshold Of Guilt:*

While not definitive, the data generated by this survey suggest that incoming law students stand a good chance of having been exposed to both a quantity of narrative writing and cultural information through their reading prior to entering law school.

*B. The Data Suggest That Incoming Law Students Will Experience Some Reading Problems in Their First Year of Law School*

The study's reading data are heartening,<sup>58</sup> but one can also draw some less cheering information from them. If 25% of responding students indicated that reading was "very important" to them, then approximately<sup>59</sup> three-quarters of the students who responded to the survey indicated that reading was something less than very important to them, and 70% of the responding students are less than "avid" readers.

Even more disturbing, perhaps, is the discovery that students spend as much or more time reading for information<sup>60</sup> as they do reading for pleasure, and the fact that the preferred mode of reading newspapers is online as opposed to in print.<sup>61</sup> With no evidence to support this proposition, except my own personal experience, it appears to be harder to engage in the kind of "expert reading"<sup>62</sup>

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*Managing Truth and Justice in Reality and Fiction*, 115 YALE L.J. 1050 (2006) (questioning the existence of a "CSI Effect"). But whether or not there is a "CSI Effect" or a broader "media effect" operating on jurors, no competent criminal lawyer, representing either the prosecution or defense, can afford to be unaware of the possibility of such an effect and how it might affect trial strategy in a particular case.

58. Heartening though the numbers might be, they stand in isolation. One of the more disturbing elements of the NEA Study is the percentage reduction in literary reading over the past twenty years. *See* NEA STUDY, *supra* note 2, at ix. Literary reading among college graduates and graduate students, for examples, experienced a 7.9% reduction between 1982 and 1992, and a 15.4% reduction between 1982 and 2002. *Id.* at xi. The reading reported by incoming students will only truly be good news, then, if it can be repeated over time.

59. This number is approximate because not all responding students answered this question.

60. Defined in the survey as reading "newspapers or newsmagazines."

61. Only 17.4% reported reading newspapers only in print form, contrasted with 16.8% who read newspapers only online and 55.5% who read them in both print form and online.

62. Expert reading implies a dynamic process in which the reader constructs

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necessary to create meaning during the reading process and easier to engage in a passive form of reading in which “[s]ome limited flat information may . . . be transmitted, but no new meaning can be created.”<sup>63</sup>

The ability to read and comprehend complex texts is such a fundamental skill for law students and lawyers that students’ reading skills are tested on the Law School Aptitude Test.<sup>64</sup> Yet there can be little doubt that incoming law students can be located somewhere on a continuum of reading skill, and that law school student populations contain many students who employ reading strategies that do not serve them well.<sup>65</sup> Indeed, after conducting a study of law student reading strategies, one researcher observed that “debriefing interviews revealed a deep insecurity and anxiety about reading.”<sup>66</sup> And the same researcher noted that “[i]t was interesting that when asked why they volunteered for this study, many of the participants replied that they thought they might be able to talk to someone who understood their perceived, unvoiced, but very real concerns about reading.”<sup>67</sup>

Whether the students who perform worse in law school reading tasks are also the students who are less than enthusiastic readers

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knowledge as a result of the interaction between text and the reader’s thoughts. *See* MCKINNEY, *supra* note 21, at 52-53.

63. *Id.* at 53.

64. “The LSAT is designed to measure skills that are considered essential for success in law school . . . [including] the reading and comprehension of complex texts with accuracy and insight . . . .” Law School Admission Council, Frequently Asked Questions - LSAT, <http://www.lsac.org/LSAC.asp?url=/lsacfaqs-and-support-lsat.asp> (last visited Oct. 21, 2007). The limitations of this approach have been noted by Fajans and Falk. Fajans & Falk, *supra* note 25, at 164. Professor Leah Christensen’s recent study suggests that information supplied by the LSAT’s reading score is less helpful in predicting a student’s success in law school than an identification of that student’s reading strategies. Christensen, *supra* note 20, at 633.

65. The context in which the reading is being conducted might also have a role to play in the skill with which law students read texts. *See, e.g.*, James F. Stratman, *When Law Students Read Cases: Exploring Relations Between Professional Legal Reasoning Roles and Problem Detection*, 34 DISCOURSE PROCESSES 57, 57 (2002) (indicating that students reading from advocacy and policy perspectives performed better than students reading from academic class recitation perspective). Professor Christensen’s study observed results consistent with Stratman’s conclusions. Christensen, *supra* note 20, at 634.

66. Deegan, *supra* note 51, at 168.

67. *Id.*

before they come to law school is unclear. The data from this survey and the research conducted into law student reading suggest only that skill with “expert” reading strategies is crucial for success in law school, that not all incoming law students possess that skill,<sup>68</sup> and that those students who lack “expert” reading skills will have difficulty performing well in law school.<sup>69</sup>

*C. The Data Suggest That Incoming  
Law Students Overestimate Their Writing Skills*

The survey suggests that incoming law students are, in general, satisfied that they have the tools to cope with the writing tasks ahead. Research conducted among those who review law student and junior lawyer writing, however, suggests that the students are wrong to assume that their writing skills are adequate to cope with the demands placed on them in law school and in practice.

The survey data reveal that more than 70% of the responding students evaluated their own writing skills as “very strong” or “strong,” and therefore above average, the next selectable option. And while the responding students recognized the importance of legal writing, with 25% ranking it the most important skill for a practicing lawyer (second only to legal analysis, ranked first by 31.5% of

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68. Professor Christensen has concluded that the type of reading strategies employed by first year law students differ, and that identifying a student’s reading strategies “was a better predictor of student success in law school than incoming [undergraduate] GPA and/or LSAT scores.” Christensen, *supra* note 20, at 633. Laurel Oates’ seminal study of reading strategies among law students admitted through alternative admissions programs also highlights the importance of reading strategies and concluded that successful students read differently from those who did not succeed. Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs*, 83 IOWA L. REV. 139, 139-40 (1997).

69. A recent study suggests that while students’ legal reasoning improves in some ways in between the first and second years of law school, they are still unable to distinguish between relevant and irrelevant rules and have “difficulty paying close attention to the details of the problem.” Stefan H. Krieger, *The Development of Legal Reasoning Skills in Law Students: An Empirical Study*, 56 J. LEGAL EDUC. 332, 352 (2007). Moreover, the study found little change between second and third year law students. *Id.* While the study did not draw an explicit link between its results and the reading strategies employed by the subject students, its results appear to confirm the results of studies specifically addressing student reading skills.

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responding students), they also believed that it would be a relatively easy skill to learn, with nearly 20% responding that it would be the easiest skill to learn in law school (second only to legal research, at 21%) and 9.7% responding that it would be the most difficult (the lowest response).

This number suggests a possible reason for the discontent many first year law students express during their first year legal writing classes.<sup>70</sup> Put simply, first year law students come to law school knowing little, if anything, about the legal doctrine they will learn in their torts, contracts, property, and other traditional law school classes. But they come with the strongly-held belief that they can write, that their writing skills have served them well in their prior academic careers, and that a course in legal writing is at best an easy “A” and at worst a waste of time they could otherwise spend preparing for their unfamiliar doctrinal classes. When they discover that their writing will be scrutinized in detail, that the legal writing course is time-consuming and difficult, and that by no means all students in the course will receive an “A,” first-year law students have an understandable, but regrettable, tendency to lash out at the course and its teachers.<sup>71</sup>

Some of the survey data point to possible causes of writing problems among incoming law students. Almost one quarter of

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70. There are many possible causes for this discontent. For a full discussion of this phenomenon, see Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and The “Legal Writing Pathology:” Diagnosis Confirmed*, 5 N.Y. CITY L. REV. 115 (2002). Professor Marlow-Shafer concludes that the causes of this pathology are multi-factored and include gender disparity within the legal writing field, course content, and institutional disrespect towards legal writing as a discipline. *Id.* at 139.

71. *Id.* at 128-29 (quoting Suzanne E. Rowe, *Legal Research, Legal Writing and Legal Analysis: Putting Law School Into Practice*, 29 STETSON L. REV. 1193, 1208-10 (2000)). The timing of legal writing grades also seems to play a part in this phenomenon. *Id.* at 129. Whereas most first year law students receive grades in their doctrinal classes well after the first semester is over (with the exception of those students who receive partial grades as the result of mid-term exams), and therefore well after course evaluations are conducted, legal writing teachers typically give detailed comments on student writing and intermediate grades throughout the first semester—well before student evaluations are conducted. *Id.* at 130-31. For a discussion of this phenomenon, see Peter Bayer, *A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties as a Violation of Both Equal Protection and Professional Ethics*, 39 DUQ. L. REV. 329 (2001).

responding students indicated that they only prepared one draft of papers, meaning that they had little or no experience in the editing, proofreading, and rewriting, skills most legal writing teachers identify as crucial to generating polished and technically correct writing.<sup>72</sup> Even when drafts were prepared, 20% of responding students indicated that they “never” submitted drafts to their teachers, and almost 15% indicated that they “never” discussed drafts with teachers or teaching assistants. This was so even though slightly more than 20% of responding students indicated that they had taken six or more classes that focused primarily on writing and 57.7% indicated that they had taken between one and five such classes.

The incoming students’ self-evaluations stand in marked contrast to the evaluations of junior lawyer writing conducted by Susan Kosse and David ButleRitchie.<sup>73</sup> In their study, Kosse and ButleRitchie asked their respondents—attorneys, state and federal judges, and legal writing teachers—to identify the common mistakes they saw in legal writing, and 38.6% identified grammar, punctuation, or spelling errors,<sup>74</sup> a number that presents a stark contrast to the survey’s incoming student self-evaluations. Overall, 93.5% of the respondents to the Kosse and ButleRitchie Study “found briefs and memoranda marred by basic writing problems.”<sup>75</sup>

There are many possible reasons for the writing problems of junior lawyers identified by Kosse and ButleRitchie,<sup>76</sup> and

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72. See, e.g., RICHARD K. NEUMANN, JR., *LEGAL REASONING AND LEGAL WRITING* 65-66 (5th ed. 2005) (“At [the completion of a first draft], a writer who is *satisfied* is engaged in self-delusion. But an undeluded writer will rewrite, and rewrite, and rewrite—and rewrite again.”).

73. See Kosse & ButleRitchie, *supra* note 5.

74. *Id.* at 85-86.

75. *Id.* at 85.

76. Kosse and ButleRitchie identify twelve possible reasons. They propose that lawyers do not write well:

1. because they did not take a writing class in law school[;]
2. because law schools devalue legal writing classes[;]
3. because they do not get enough practice in law schools[;]
4. because poor writing promotes their economic interests[;]
5. because of inertia[;]
6. because of deficiencies in their early education[;]
7. because the profession offers very little continuing education on improving writing skills[;]
8. because of time and financial constraints[;]
9. because they do not know they write badly[;]
10. because of the Generation X factor (in the case of new lawyers)[;]
11. because of

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overconfidence in their writing skills is likely only part of the problem. But incoming law students are, in general, individuals who have performed at or close to the top of the population at each stage in their academic careers, and their belief in their writing skills has likely been buttressed by their prior success. Research shows that many of them have little time for the deconstructive and reconstructive work necessary to help them become effective and skilled legal writers.<sup>77</sup> And students who do not believe they have anything to learn will likely succeed in not learning anything, meaning that, for many law students, their writing problems will remain with them through law school and into practice.

*D. The Data Suggest That Incoming  
Law Students Overestimate Their Research Skills*

The survey suggests that incoming law students are, if anything, even more confident in their research skills than they are in their writing abilities. When asked to rank their level of confidence in their research skills, 37% indicated that they were “very” confident and 44% indicated that they were “somewhat” confident, with only 1.8% indicating that they had “little or no confidence” in their research skills. The students also indicated that research would be the easiest skill for them to learn in law school (21%) and research skills received the second lowest score (10.9%, second only to legal writing at 9.7%) when asked what the most difficult skill to learn in law school would be.

As with legal writing, data from other sources suggest that the incoming law students are not as capable a group of researchers as they might believe. That certainly was the conclusion of the 2004 AALL Survey of research skills among incoming law students, which found that many such students lacked basic research skills.<sup>78</sup> The AALL Survey found that 71% of the respondents rated their research skills as good, very good, or excellent when compared to their peers,<sup>79</sup>

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technology[; and] 12. because they do not write regularly.  
*Id.* at 93.

77. See Marlow-Shafer, *supra* note 70, at 131.

78. AALL SURVEY, *supra* note 5, at 2.

79. *Id.* Although the AALL survey asked a different question from the present survey, therefore making a direct comparison impossible, the results are sufficiently

even though large percentages of responding students were unclear about the mechanics of the research process.<sup>80</sup> The Survey's authors concluded that "teaching legal research with an underlying assumption that entering first year students have basic research skills may be flawed. Integration of instruction in basic research skills may be an important component for legal education."<sup>81</sup>

And those who see law students in practice, either as summer associates or as new attorneys, also feel that law students have inadequate research skills. A 1990 survey indicated that 80% of responding law firm librarians found summer associates "less than satisfactory" in their ability to conduct adequate legal research,<sup>82</sup> and a 2007 survey of Chicago librarians indicates that the problem remains today, with 71% of respondents indicating that new attorneys were not able to research effectively and efficiently prior to in-house training.<sup>83</sup> According to a companion study, attorneys were slightly more forgiving to other attorneys than were the librarians, with only 32% responding that new attorneys were never able to use either print or fee-based online services prior to in-house training.<sup>84</sup> Regardless, the data here still reflect a generally gloomy picture of new lawyer research capabilities.

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similar to reflect a general satisfaction with research skills among incoming law students.

80. For example, the AALL survey found that "42.1% of respondents thought looking at a bibliography included with an article was the best way to find more recent research on the topic covered in the article" and "[o]ver 40% of respondents did not know what a library catalog contains." *Id.* at 2-3.

81. *Id.* at 3.

82. Howland & Lewis, *supra* note 41, at 383.

83. 2007 LIBRARIAN SURVEY, *supra* note 5, at 2. The percentage of new attorneys able to research efficiently dropped by almost half between 2005 and 2007. *Id.* at 5. The survey suggests that this is a skills problem rather than a medium problem: the responding librarians indicated that 77.6% of new attorneys were ineffective print researchers and 73.7% were ineffective electronic resource researchers. *Id.* at 2.

84. 2007 ATTORNEY SURVEY, *supra* note 5, at 7. The survey also indicated that 25% of responding attorneys believe that new attorneys are "seldom" able to use print resources effectively, prior to in-house training, and 12% of responding attorneys believe that new attorneys are "seldom" able to use fee-based online resources effectively, prior to in-house training. *Id.*

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As with legal writing, it is possible that overconfidence in research skills leads to incoming students to take a closed-minded approach during the research portion of their first year writing and research course. Students feel themselves to be capable, even skilled, researchers, and therefore, are likely disinclined to believe that legal research will pose any substantial difficulties for them. When, or if, they discover that their legal research skills are inadequate, they are more inclined to blame their legal research instructors than their own prior research skills.

A possible cause of those research skill deficits, however, is also suggested in the survey data. It is no great insight to observe that the advent of the internet has changed research practices,<sup>85</sup> but the effects of this change can be seen in the survey's data. More than 50% of the responding students indicated that they "always" or "usually" use the internet for research and will only use the library "sometimes."<sup>86</sup> And of the 78% of students who use search engines once a day or more, Google is the search engine of choice, with 70.9% of responding students indicating that it was the search engine they use most often.

Google is, of course, a technical triumph and a useful tool for finding some types of information. The problem with the Google approach for nascent legal researchers is in its oversimplification of the research process. Google "[teaches] us that it is no longer necessary to go through the effort of defining our information need. We just put a word or two into the search box and let a search engine disambiguate the query and provide an answer."<sup>87</sup> And it is Google's

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85. For a discussion of the changes wrought by the internet to legal research and research instruction, see Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 AKRON L. REV. 151 (2006) (exploring tensions between book-based and computer-assisted legal research and proposing that legal research be taught using a process based, rather than medium based, approach).

86. What the students mean by "using" the library might not be what one might first suspect. For example, a group of students at Stanford University Law School, when instructed to use library resources to answer a legal question, went to the computers housed within the library and "'Googled' their way to the answer." ERICA V. WAYNE & J. PAUL LOMIO, *BOOK LOVERS BEWARE: A SURVEY OF ONLINE RESEARCH HABITS OF STANFORD LAW STUDENTS* 14 (2005).

87. Mary Ellen Bates, *Is That All?*, ECONTENT, Oct. 27, 2003, available at <http://econtentmag.com/articles/articleprint.aspx?articleid=5579&contextsubtypeid=13>.

ability to take thought out of the research process that might cause law students to fail as legal researchers: they might be able to find information,<sup>88</sup> but they might not really understand what they have found. As Professor Molly Lien has noted, “students appear to equate the ability to access the material with mastery of the material. They view downloaded information as learned information.”<sup>89</sup>

If Lien is correct in her view, and I suspect that most law school professors—especially those who teach legal research and writing—would agree with her, then the seeds of future research problems can already be seen before students even come to law school. Incoming law students are, it seems, devoted to the internet as an information source, and their approach to information acquisition tends to be passive rather than active. Yet as with legal writing, reliance on these research strategies, even though they were effective for the students as undergraduates, will produce mediocre, at best, results in law school and beyond.

*E. The Data Suggest That Law Schools Must  
Take Student Writing, Reading and Research  
Deficits Into Account When Developing Skills Curricula*

The survey data tend to support evidence from previous studies of law student and new lawyer skills. Taken together, the studies present a potentially discouraging picture: while incoming law students are clearly intelligent and capable, and have excelled academically at every previous stage of their education, the available data suggest that many incoming students have information literacy deficits that will affect them throughout their career in law school and on into the practice of law, and that they are unaware that such deficits exist.<sup>90</sup>

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88. And whether they actually will find information is by no means certain. Google is superb at finding information that many others have also found, but is less helpful in finding information that few have looked for. For a discussion of the way Google works, see Mary J. Koshollek, “Google” *Your Way to Better Web Searching*, WIS. LAW. (State Bar of Wisconsin, Madison, Wis.), July 2003, at 32. For a general discussion of the problems inherent in computer-based legal research, see Gallacher, *supra* note 85, at 183-90 (discussing “hidden problems of computer-assisted legal research”).

89. Molly Warner Lien, *Technocentrism and the Soul of the Common Law Lawyer*, 48 AM. U. L. REV. 85, 118 (1998).

90. Although I focus here on the more discouraging messages transmitted by

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And while their reading, writing, and research strategies have helped them succeed up to the point of entry into law school,<sup>91</sup> those strategies will be less helpful to them as law students.

The data also suggest that law schools are not fixing the students' problems. Although it seems unlikely that law schools are making things worse for law students,<sup>92</sup> it appears that they could be doing

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the data, it is possible to derive some comfort from the data as well. Most significantly, the students appear to display high self-efficacy with respect to their information literacy. For an introduction to the concept of "self-efficacy," see Ruth Anne McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 J. LEGAL WRITING INST. 229 (2002). In essence, "[s]elf-efficacy is the personal belief that you can control an outcome—that you can achieve a desired result." *Id.* at 233. Self-efficacy has been studied in educational settings, leading researchers to conclude that "individuals with high self-efficacy for a specific task are significantly more likely to do the things necessary to succeed at the task and far more likely to persist in the face of adversity than are individuals with low self-efficacy in relation to that specific task." *Id.* at 234. The problem, of course, is whether the high self-efficacy displayed by the responding incoming law students is well-founded or not and, if not, what will poor grades do to student self-perception over time and what will that mean for law student confidence. But to the extent students come to school with a realistic confidence in their abilities, teachers can use that confidence to help the students bridge what might be a rocky, but temporary, passage into their mastery of legal information skills.

91. Not to mention their study strategies. Although not a focus of the survey, and therefore not part of this analysis, it is worthwhile to note that almost a quarter of the responding students indicated that they either had not prepared for class at all (7.6%) or had spent less than an hour preparing for class (16.5%). More than a quarter of responding students (28.3%) indicated that they spent about an hour preparing for class, meaning that more than half of the responding students spent an hour or less preparing for class as undergraduates. Yet 67.4% of the responding students indicated that they would spend two hours or more preparing for law school classes. While the students are doubtlessly correct that they will need the additional study time in order to prepare for law school classes, it likely will be difficult for students to change study strategies that have proven successful for them in the past.

92. Unlikely, but perhaps not impossible. A student who comes to law school as a modestly capable general writer, for example, but who—for whatever reason—fails to become an adequate legal writer might be said to have been more harmed than helped by a law school legal skills education. Whether this happens, and if so, to how many law students, was not the subject of this survey but could productively be the subject of a survey into the improvement shown in legal skills performance by law students during the three years of law school. One preliminary study into law student reasoning skills—a related topic to information literacy—suggests that law students do not develop in the same way, or as effectively, as their medical school

more to help them improve their information literacy. This, likely, is not an especially controversial conclusion. The bigger and substantially more complicated issue is how this desirable result might be accomplished.

One obvious answer would be to substantially increase the amount of time spent in teaching information skills to law students. The average number of credit hours for writing programs in American law schools is 2.36 credit hours in the fall and 2.21 hours in the spring.<sup>93</sup> Slightly less than a quarter of law schools—forty-six programs from 196 responses—require an additional writing component during the second year of law school.<sup>94</sup> More time spent on developing writing skills with the law students would likely generate better results.

Yet finding that time is not a simple proposition. Just as it is easy, and a mistake, for doctrinal faculty to discount the importance of skills education in law school, it is simple, and no less of a mistake, for skills faculty to discount the importance of doctrinal education, and any extra credit hours devoted to legal skills training would have to come from somewhere.<sup>95</sup> For practical, pedagogical, and cultural reasons, it seems unlikely that many law schools will substantially increase the amount of informational skills training their students receive.<sup>96</sup>

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counterparts. *See* Krieger, *supra* note 69, at 352. The results of Krieger's study suggest that a more extensive survey of information literacy improvement during law school might generate important information and is overdue.

93. ALWD SURVEY, *supra* note 6, at 7.

94. *Id.*

95. First year legal research and writing classes, of course, are not the only places where students learn about lawyering skills. Clinical programs, in particular, are valuable sources of lawyering skill tuition, and advocacy skills courses are another source of skills training for law students. If additional credit hours cannot be added to research and writing curricula, it might be possible for law schools to find ways to incorporate more systematic skills training into these upper-level programs or, at least, to find ways to more closely integrate the skills faculty into the teaching of these courses.

96. This is not to say, by any means, that more time devoted to skills education is a bad thing. My own experience suggests that the additional two credits allocated to legal research and writing at Syracuse University, and taken by students during either the first or second semester of their second year, has helped to improve student skills, indicating that even one more required skills course in the curriculum could be beneficial to all law students.

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Another possible change law schools could make would be to reorganize their curricula to include recognition that reading is a core lawyering skill and that most law students do not read as effectively as they could or should.<sup>97</sup> This is a more practical suggestion, perhaps, than substantially increasing the number of credits allocated to legal writing, because it is something that could be done across the entire law school curriculum. Reading is the one consistent element in all law school classes and if a faculty was willing to make the effort, a coordinated approach to improving law student reading skills<sup>98</sup> might result in an improved classroom experience for students and faculty alike.

A more ambitious approach would be to attack the problems in student information literacy at an earlier stage than law school. The survey data suggest that student overestimation of their writing and research abilities might contribute to poor performance in law school and, ultimately, in practice. The most effective way to overcome this barrier to learning, and to remedy some information literacy deficits, would be to address them before students come to law school.

Such a proposal presents substantial hurdles to overcome. The only way a law school could be sure it was educating its own students, for example, would be to conduct such a program after students had accepted an offer to attend the law school<sup>99</sup> and this is likely too late for any meaningful progress to take place.<sup>100</sup>

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97. "Legal educators can no longer assume that all law students are good legal readers simply because they were successful before law school. . . . Law schools need to invest time and energy into teaching this skill." Christensen, *supra* note 20, at 647.

98. Law schools interested in pursuing this type of curricular modification would be well advised to hire a reading specialist to help educate their faculty on the latest scholarship on legal reading and to help develop a unified approach to reading training.

99. And even then, schools cannot be assured that accepted students will actually be attending a particular law school until classes start.

100. This is not to imply that the introduction to law school courses offered by many law schools to incoming students in the summer prior to the first year have no value. To the contrary, for many students they likely are invaluable and can mean the difference between success and failure in law school. Such programs, however, cannot, and should not, be expected to assume the role of addressing and fixing fundamental information literacy problems in incoming law students.

The alternative is for law schools to help students who might not become their law students to improve their information literacy skills. And while such a proposal might at first appear controversial or even radical, there are at least two ways in which this could be accomplished without a substantial disruption in the way law schools now operate: (1) law schools could partner with their home undergraduate and graduate institution<sup>101</sup> to offer writing, reading, and research courses that better prepare students in those institutions to learn lawyering skills in law school;<sup>102</sup> and (2) law schools could offer summer programs devoted to introducing students considering law school to legal reading, writing, and research skills.<sup>103</sup>

Such programs could be economically self-sustaining, through tuition charges, and could be beneficial to both incoming law students—regardless of the law school they decide to attend<sup>104</sup>—and law professors, who would reap the advantages of having students with stronger information literacy skills in their classrooms.

Whatever approach law schools take to improve the reading, writing, and research skills of their students, the available information suggests that they need to do something. The authors of the AALL Study concluded that “teaching legal research with an underlying assumption that entering first year [law] students have basic research skills may be flawed,”<sup>105</sup> and their observation has broader application to all forms of information literacy.<sup>106</sup>

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101. If a law school is a stand-alone entity with no home undergraduate or graduate institution, it could partner with a local undergraduate institution which has no law school.

102. Prelaw programs could, of course, offer such programs. The lack of meaningful coordination between prelaw and law school programs in many academic institutions, however, can dilute the effectiveness of prelaw skills training.

103. Such programs could also be offered online, rather than in person, although the effectiveness of reading, writing, and research instruction conducted online might be compromised by the lack of personal contact with an instructor.

104. An ancillary benefit to such programs would be the inherent advertising of a law school’s devotion to information literacy among its law students. Any sensible prospective student should carefully weigh the benefits of attending a law school dedicated to producing graduates capable of exceeding the expectations practicing lawyers have of new practitioners.

105. AALL SURVEY, *supra* note 5, at 3.

106. As Christensen notes, “[l]egal educators can no longer assume that all law students are good legal readers simply because they were successful before law

### VIII. CONCLUSION

It is easy to be persuaded that the survey's results point to almost universally grim conclusions and that the situation for incoming law students is dire and virtually without hope for improvement. The survey data, however, do not compel such a gloomy forecast. Incoming law students are reading well beyond what the NEA Study predicted for graduate students, they are sensitive to the importance of writing in the practice of law, and they have confidence in both their writing and research skills. That confidence might cause them to be less than willing to learn new approaches to these core skills while in law school, but law schools, and particularly the skills faculty within law schools, can address the problems caused by such overconfidence, thereby improving new lawyer information literacy.

The data do suggest, though, that something needs to be done. Fifteen years after the MacCrate Report was published,<sup>107</sup> practitioner and judicial evaluations of legal writing still display a dramatic level of unhappiness at the state of legal writing and recent surveys suggest that legal research skills are, if anything, declining rather than improving.<sup>108</sup> Some of the criticism of legal research and writing might be grounded more in the seemingly inevitable rose-tinted view of a better past that infects members of society over a certain age; if legal writing truly had been deteriorating with each successive generation at the rate suggested by commentators from the past, we would have reached a point of functional illiteracy long ago. But the survey data suggest that there are identifiable problems with incoming law student information literacy that are serious and demand attention.

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school." Christensen, *supra* note 20, at 647.

107. The MacCrate Report was published in July of 1992. MACCRATE REPORT, *supra* note 6.

108. The present situation is strikingly, although depressingly, similar to that described by Blaustein in 1969, when he wrote that:

[law schools] have put the major blame on the failure of high school and college English composition teachers to send a better trained writer on to the graduate schools. But, to their credit, the law schools do more than assign blame. By now, practically every law school has some kind of legal writing program designed to produce better lawyer-writers. Yet no one is satisfied.

Blaustein, *supra* note 7, at 239.

Law schools could, of course, blame the students and the curricular constraints placed on their skills programs, throw up their hands in despair, and join the chorus bewailing the demise of the literate lawyer. But there are more productive activities which are more likely to accomplish positive results among law students, some of which are outlined above. Whether or not the proposals in this article are implemented, law schools need to engage the issue of incoming law student information literacy more directly and effectively than they are at present. The status quo appears not to be working.

## APPENDICES

In addition to collecting incoming student responses to questions, the survey also asked the students to provide information about: their favorite book; their least favorite book; the book they had read most recently; the book they were reading now; and the book they had selected to read next.

The following appendices contain the responses to these questions. Where more than one student selected a book in a particular category, the number of students has been indicated in parentheses after the title. Books are listed in alphabetical order.<sup>109</sup>

Where a student listed more than one book in a particular category, all responses have been listed. When no specific book in a series was listed (the “Lord of the Ring” or “Harry Potter” series, for example), the series has been identified. But when a student’s response was so vague that no specific book could be identified (“a book about torts,” for example), that response has been omitted.

Although the data gathered by the rest of the survey are as unaffected as possible by the influence of law school, student reading in the summer before law school is inevitably influenced by the experience the students are about to undergo. It is unlikely, for example, that so many students would have read, be reading, or be about to read, books such as “One L,” “Gideon’s Trumpet,” “Getting to Maybe,” “Law School Confidential,” or “Law School Without Fear,” without either a summer reading list or a healthy desire to understand what the next three years might be like.

No attempt has been made to verify the spelling of the listed books or to confirm that the titles are correct, or even that such books exist. The responses are given as provided by the students.

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109. Thereby creating some interesting juxtapositions, my favorite of which can be found in Appendix D, “Book You Are Reading Now,” in which the Bible is placed next to BIG BANG: THE ORIGIN OF THE UNIVERSE.



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