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1998

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SCHOLARSHIP ABOUT TEACHING

JONATHAN L. ENTIN*

Over the past half-dozen years, as co-editor of the *Journal of Legal Education*, I have read numerous manuscripts about law teaching. Some of those have been historical or comparative, others personal, many descriptive of new courses or innovative approaches to traditional subjects, and a few empirical. Although we have tried to be eclectic in our selections, space constraints have limited the number of good papers of any genre that we could publish.¹ My experience on the *Journal* has given me a valuable perspective on current writing about the teaching of law and has confirmed a long-held intuition that we can and should do a better job of studying how law schools educate their students.

This essay draws on that experience, focusing on approximately half a dozen particularly good articles that have appeared in the *Journal* during my editorial tenure. Most of these describe new ideas, offering detailed information for the curious reader who might want to emulate the author's approach or simply to learn what others in the legal academy are doing. Typically, however, these papers contain little or no meaningful assessment or evaluation. "Descriptive" is too often a pejorative term of dismissal. But good description is often an essential first step toward understanding.² Because I believe that more rigorous evaluation could add to our store of reliable knowledge about legal education, I offer some suggestions for designing quasi-experiments to assess the utility of educational innovations and discuss some non-experimental studies that have relied upon statistical analysis to evaluate new courses or programs.³

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1. The *Journal* publishes four issues per year. Each issue is limited to 160 pages, including the masthead, general information for authors and readers, and table of contents; we also have to fit an index into the last issue of each volume. Even if we had the flexible page limits of the typical student-edited law review, we still could not publish every good manuscript we receive.

2. Cf. Jonathan L. Entin, *Innumeracy and Jurisprudence: The Surprising Difficulty of Counting Petition Signatures*, 33 JURIMETRICS J. 223, 224 & n.3 (1993) (noting that apparently mundane descriptive tasks are among the most important of scholarly undertakings).

3. To avoid any misunderstanding, I intend no criticism of any author whose work is discussed here. Designing new courses or restructuring existing ones is daunting enough without getting into the techniques of educational evaluation, a subject in which most law teachers lack training. Some do have training in empirical research; for those who don't, efforts to undertake

I. QUALITATIVE ARTICLES

Probably the most common approach in papers about legal education is a qualitative discussion of a new or redesigned course. A law teacher describes his or her innovation.⁴ Such works often include extensive explanations of the educational philosophy underlying the innovation as well as a more or less detailed overview of the course. They do not, however, undertake a rigorous or detailed evaluation of the project. Nevertheless, these articles frequently contain a considerable amount of useful information.

A. *New Courses*

New courses are added to law school curricula every year.⁵ Some of the more novel additions become the subject of articles by their creators. The two that I focus on here are seminars.

1. Abortion

Anyone who teaches about contentious issues must confront the strong feelings those issues generate. Few issues provoke stronger feelings than abortion, and those feelings affect not only students but also teachers. Those views can affect the content of a course, the number and viewpoints of students enrolled, and the entire classroom dynamic. These issues were explored by Samuel Calhoun in his article about his seminar on abortion.⁶

Calhoun, whose pro-life views were well known at his school,⁷ sought to offer an eclectic course covering many aspects of the abortion controversy—legal, moral, political, and sociological, among others.⁸ He was especially concerned about maintaining a sufficiently balanced classroom atmosphere that pro-choice students would feel welcome to participate. At times he felt constrained not to express his own views for fear of silencing those who disagreed with him,⁹ but at

more rigorous evaluation of curricular innovations can facilitate cooperative arrangements with colleagues in other disciplines.

4. Many submissions of this type are accompanied by voluminous appendices of course materials or class handouts. Due to the rigid space constraints under which we operate, *see supra* note 1, we generally do not publish these. Instead, we ask interested readers to obtain them from the author.

5. *See, e.g.*, Deborah Jones Merritt & Jennifer Cihon, *New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey*, 47 J. LEGAL EDUC. 524 (1997).

6. *See* Samuel W. Calhoun, *Impartiality in the Classroom: A Personal Account of a Struggle to Be Evenhanded in Teaching About Abortion*, 45 J. LEGAL EDUC. 99 (1995).

7. *See id.* at 101. Samuel Calhoun is a Professor of Law at Washington and Lee University.

8. *See id.* at 100-01.

9. *See id.* at 103, 108, 111.

others he spoke out because he believed that some points were too important to be left unexpressed.¹⁰ He continually explored the tensions in his role with his former research assistant, a pro-choice student who was enrolled in the seminar.¹¹

Much of the article recounts "thoughtful, sometimes intense" seminar sessions.¹² For example, Calhoun describes the "troubled silences"¹³ when a pro-life student expressed approval for genetic testing for Tay-Sachs disease and a pro-choice student confronted a thirty-year-old Planned Parenthood policy statement characterizing abortion as a procedure that "kills the life of a baby after it has begun."¹⁴ Professor Calhoun views these episodes as justifying the course. Students on both sides of the abortion issue had to confront "the full moral force of their opponents' position" without "lightly . . . dismiss[ing] the other side."¹⁵

He concludes that his chosen (but sometimes unsuccessfully implemented) role of non-partisanship was central to the effectiveness of his course. Although recognizing the view that teachers should make their commitments explicit to stimulate students to develop their own responses, Calhoun contends that this approach would likely have generated more heat than light in a seminar devoted to such a hot-button issue.¹⁶

2. A feminist retrospective on the first year

The basic courses offered during the first year serve as the foundation for the rest of a student's legal education. Although cases or topics that arise during the first year may recur in upper-class courses, it is rare for a teacher to return to an entire subject that was part of the first year of study. Anita Bernstein, however, has offered a retrospective seminar that seeks to bring a feminist focus to that foundational experience.¹⁷

Professor Bernstein divides her seminar into two parts. For half the semester, she examines various topics relating to women (e.g., se-

10. *See id.* at 104, 105, 109-10, 112.

11. *See id.* at 102, 104-05, 105-06, 106-07, 108-09, 110, 112. In addition, a pro-choice female professor attended the seminar—as a participant rather than as co-teacher—and offered some feedback to the author. *See id.* at 102, 103.

12. *Id.* at 110.

13. *Id.* at 111.

14. *Id.*

15. *Id.*

16. *See id.* at 111-12.

17. *See Anita Bernstein, A Feminist Revisit to the First-Year Curriculum*, 46 J. LEGAL EDUC. 217 (1996).

duction, prenuptial agreements, domestic violence) that are formally within the scope of first-year courses but frequently omitted from coverage in those courses.¹⁸ The balance of the seminar critically examines legal doctrine from the standpoint of Carol Gilligan's theory of the different voice.¹⁹ After a detailed focus on the meaning and limitations of Gilligan's ethic of care, Bernstein considers the different voice's implications for legal doctrine in several first-year courses by discussing a variety of decided cases and exploring the relationship between the ethic-of-care perspective and the writings of academic commentators on subjects as diverse as relational contracts, game theory and property, and feminist approaches to civil procedure and accident law.²⁰

The article goes beyond a mere catalogue of seminar coverage, however. Professor Bernstein compares her approach, which brings a feminist perspective to bear on the entire first-year curriculum at her school,²¹ with courses in feminist jurisprudence, which she regards as sometimes lacking a focus outside feminism.²² At the same time, she examines some disadvantages of her approach. For example, some students might perceive a conservative bias that accepts the traditional organization of legal education, a bias that courses in feminist jurisprudence typically reject.²³ Similarly, the focus on the first-year curriculum necessarily omits what that curriculum omits.²⁴ She also addresses other challenges that teaching this seminar presents: the difficulty of obtaining effective criticism of the subject; the possibilities of unconscious racial, ethnic, or class bias; the need to revise materials to take account of new developments in law and society as well as changes in the students' previous exposure to feminist writing; the tensions implicit in viewing women as both victims and responsible actors; and the place of male students in the class.²⁵

18. *See id.* at 219.

19. *See id.* at 220; *see also* CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982).

20. *See* Bernstein, *supra* note 17, at 220-23.

21. Anita Bernstein is a Professor of Law at the Chicago-Kent College of Law.

22. *See id.* at 225-26.

23. *See id.* at 226.

24. *See id.* at 226-27. Precisely what is omitted will, of course, depend on the details of the first-year curriculum of a particular school. For example, Professor Bernstein's students do not study Constitutional Law in the first year, although first-year students at some (but not all) other schools do take that course.

25. *See id.* at 227-31.

B. Innovative Approaches to Existing Courses

The outpouring of new and updated casebooks for traditional courses suggests that change is typical even in the core curriculum. One aspect of that change is to reorganize the way core materials are presented, particularly by consolidating subjects for some combination of intellectual and pedagogical reasons. This section discusses efforts to integrate traditionally separate subjects.

1. Integrating Legal Research and Writing with other courses

Many law schools are rethinking their approach to teaching legal research and writing, and that rethinking has generated an outpouring of scholarship. The *Journal of Legal Education* has published several papers in this area. The two that I will discuss here involved efforts to integrate legal research and writing with other aspects of the first-year curriculum.

a. Integrating Legal Writing and lawyering skills

The Albany Law School has developed a course called Introduction to Lawyering that seeks to integrate clinical training into the first-year course on legal research and writing ("LRW").²⁶ As described by Nancy M. Maurer and Linda Fitts Mischler, the clinician and writing director who developed the course, students are assigned throughout their first year to one of two "law firms" that represent one party to an ongoing legal dispute. The students complete the same research and writing exercises as they would in a more traditional LRW course but also draft client letters, pleadings, and other legal documents that the typical first-year student does not.²⁷ Course assignments are based upon a single complex fact pattern that is introduced to the class in skeletal form early in the year and revealed in more detail as students complete subsequent assignments.²⁸ Much of this course uses simulation techniques, including client interviews to begin the process of fact gathering and negotiations to explore the possibilities of settlement.²⁹

26. See Nancy M. Maurer & Linda Fitts Mischler, *Introduction to Lawyering: Teaching First-Year Students to Think Like Professionals*, 44 J. LEGAL EDUC. 96 (1994).

27. See *id.* at 99, 109-10, 111-13.

28. See *id.* at 106. The focus of these fact patterns has included sexual harassment, housing discrimination, and a school dress code. See *id.* at 106-07 & n.35.

29. See *id.* at 108-09, 110-11. For more on the simulation approach, see *Symposium on Simulations*, 45 J. LEGAL EDUC. 469 (1995).

b. Integrating Legal Writing and Civil Procedure

Several faculty members at Suffolk University coordinated their sections of civil procedure and legal writing to give students a more realistic understanding of how procedural issues arise in law practice and to enhance their ability to analyze legal problems.³⁰ During the fall semester, teachers in the two courses worked together on problems of subject-matter and personal jurisdiction: domicile and minimum contacts. Both problems arose from a minor league baseball player's medical malpractice suit against a physician.³¹

The first problem required students to analyze whether the parties were domiciliaries of the same state or of different states for purposes of establishing whether a federal court could entertain a lawsuit under its diversity jurisdiction. The physician was clearly from Massachusetts, but the ballplayer could plausibly have been characterized as a citizen of either Massachusetts or Rhode Island (his team played in Rhode Island and he lived there during the season but returned to his native Massachusetts for the rest of the year). Students read several cases on subject-matter jurisdiction for their Civil Procedure class, observed a simulated client interview with the party whose domicile was in question, and wrote a memo in LRW analyzing that party's domicile based upon the interview and the cases they had read in Civil Procedure.³²

The second problem involved the minimum contacts necessary for a state court to exercise personal jurisdiction over an out-of-state defendant. Here the question was whether the ballplayer's lawsuit could be heard in a Rhode Island court (the player was treated by the physician in a Massachusetts hospital, which transferred him to a Rhode Island hospital when complications arose, while the doctor continued to issue orders about the player's treatment after his transfer to the Rhode Island hospital). Again, the Civil Procedure teachers focused on the leading cases, while the LRW teachers had the students write a memo analyzing whether the physician was amenable to suit in Rhode Island.³³

30. See Joseph W. Glannon, Terry Jean Seligmann, Medb Mahony Sichko & Linda Sandstrom Smard, *Coordinating Civil Procedure with Legal Research and Writing: A Field Experiment*, 47 J. LEGAL EDUC. 246, 247-48 (1997). Glannon and Smard were the civil procedure teachers; Seligmann and Sichko were the writing teachers.

31. See *id.* at 249-51.

32. See *id.* at 249-50.

33. See *id.* at 250-51.

During the spring semester, the teachers in these two courses collaborated on pleadings and pretrial motions. The focus was on an employer's liability for an employee's sexual misconduct, specifically on whether the misconduct occurred within the employee's scope of employment (either a teacher at a private school who was alleged to have become involved with a female student or a therapist at a counseling center who had an affair with a patient).³⁴

The Civil Procedure teachers introduced students to the elements of a complaint and to answers and Rule 12(b)(6) motions. Concurrently, the LRW teachers presented their classes with a complaint and a responsive motion to dismiss for failure to state a claim. Students then wrote a memorandum in support of or in opposition to the motion to dismiss.³⁵

Following the denial of that motion, the focus turned to summary judgment. The Civil Procedure teachers examined the discovery process and the requirements for summary judgment. The LRW teachers had the students write briefs in support of or opposition to summary judgment based on simulated discovery materials, including the transcript of an in-class deposition.³⁶

2. Integration of upper-class courses

Efforts to combine traditionally separate subjects are not confined to the first year. A notable example of restructuring of second- and third-year materials is Temple University's course in Integrated Transactional Practice ("ITP"), a year-long course that combines Trusts and Estates with Professional Responsibility ("PR") with a focus on interviewing, counseling, negotiation, and drafting rather than litigation.³⁷

The course focuses on a series of client files involving the affairs of several generations of a single family. Two full-time faculty members developed the course and teach the substantive aspects of the major subjects; they are aided by adjuncts who teach the skills segments in small sections and several teaching assistants who play the role of clients in various simulation exercises.³⁸ The full-time teachers

34. See *id.* at 251.

35. See *id.*

36. See *id.* at 252.

37. See Eleanor W. Myers, *Teaching Good and Teaching Well: Integrating Values with Theory and Practice*, 47 J. LEGAL EDUC. 401 (1997). The two-semester course carries five credits: three for Trusts and Estates in the fall and two for Professional Responsibility in the spring. See *id.* at 410. In fact, the class meets five hours per week throughout the year. See *id.* at 406.

38. See *id.* at 406-07.

observe the skills sections and devote part of the full-class sessions to debriefing the students on their experiences in the skills sessions.³⁹

According to Eleanor Myers, who helped develop the course, ITP offers several advantages over the traditional stand-alone course in Professional Responsibility for teaching students about legal ethics. Although Myers teaches the PR segment of ITP herself, ethical issues frequently arise in skills sessions and can be dealt with directly in the context of various simulations.⁴⁰ Moreover, the simulations themselves are designed to sensitize students to the importance of judgment and discretion⁴¹ as well as the significance of a lawyer's personal reputation for honesty and fair dealing.⁴² An especially challenging exercise involves the lawyer's response to a client's misrepresentations to an Internal Revenue Service agent, which is designed to explore the relevance of situational factors in law practice.⁴³

Moreover, Myers contends that the course's transactional focus is superior to the litigation orientation that predominates when a subject is taught primarily through the analysis of judicial decisions.⁴⁴ For example, working through simulations gives students a sense of the urgency and indeterminacy of law practice as well as a more realistic sense of how theory and doctrine interact in the real world. This process also emphasizes the importance of planning and the dilemmas posed by the inevitably incomplete information with which lawyers usually work.⁴⁵ Finally, the course integrates theory and practice at every stage.⁴⁶

II. EVALUATING EDUCATIONAL INNOVATIONS

The articles discussed in Part I are very good at describing new approaches in legal education. Good description provides a wealth of valuable detail, but it often does not support very firm conclusions about the effectiveness of particular innovations. That is particularly true of papers like these. Assessments were informal and impressionistic, based largely on the perceptions of the instructors.⁴⁷ But such

39. *See id.* at 408-09.

40. *See id.* at 412.

41. *See id.* at 413-14.

42. *See id.* at 417-19.

43. *See id.* at 415-17.

44. *See id.* at 421.

45. *See id.* at 420-22.

46. *See id.* at 423.

47. *See, e.g.,* Maurer & Mischler, *supra* note 26, at 100 & n.12; Glannon et al., *supra* note 30, at 253-58.

perceptions can be unreliable; there is always the temptation to perceive what we want to find, even in the classroom.⁴⁸ Let me be clear that I do not mean to single out these very good descriptive papers for special criticism. The point is intrinsic to works of this type. Accordingly, this section examines some ways that new approaches to teaching law can be assessed more systematically.

A. *The Limitations of Traditional Reports*

Most reports on innovations in legal education are one-shot case studies: the focus is on one group of students who have gone through a particular course.⁴⁹ Other reports use static-group comparisons: students who have gone through an innovative course are compared with others who have not.⁵⁰ One-shot case studies and static-group comparisons do not permit reliable conclusions about the effectiveness of innovations because they do not take account of alternative explanations for student performance.

There are two concerns here. The first is *internal validity*: did the educational innovation in fact make a difference? The second is *external validity*: even if the innovation made a difference to the students who experienced it, can the results be generalized to a wider population?⁵¹ Because many reports on innovations in legal education provide only impressionistic findings about effectiveness, I will focus here on threats to internal validity—how can we tell whether the new course or approach led to a better outcome than a traditional course would have?

There are several possible threats to internal validity. The most significant for our purposes are:

- *history*: specific events that occur during a course might affect student performance;
- *maturational*: general processes during the course, such as the mere passage of time (rather than some specific event) might affect student performance;
- *testing*: the experience of taking a test to establish a baseline at the beginning of a study might affect scores on a later administration of the same or a similar test administered at the end of an innovative course or program;

48. See, e.g., ROBERT ROSENTHAL & LENORE JACOBSON, *PYGMALION IN THE CLASSROOM* (1968).

49. See DONALD T. CAMPBELL & JULIAN C. STANLEY, *EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH* 6 (1963).

50. See *id.* at 12.

51. See *id.* at 5.

- *regression*: students who were selected for a course on the basis of their extreme performance on a qualifying test might normally be expected to perform closer to the mean on the same or a similar test at another time; and
- *mortality*: more students might withdraw from either the innovative course or the traditional one, thereby affecting any comparisons that might be made between the groups.⁵²

B. Alternative Research Designs

One of the principal features of experimental design is the random assignment of subjects to experimental and control groups.⁵³ This feature effectively addresses all of the standard threats to internal validity.⁵⁴ After being randomly assigned, all subjects might be tested or observed before the experimental treatment (for our purposes, the course or program) begins;⁵⁵ afterward they are tested or observed again to determine what difference the treatment might have made.⁵⁶

For practical or ethical reasons, randomization might be impossible to achieve in studies of law students. One alternative is to adopt a quasi-experimental design: take two naturally occurring groups—different sections of a first-year class, for example—and offer a traditional course to one section while offering an innovative course to the other.⁵⁷ Note that this design differs from the standard experimental approach described above only in that students are not randomly assigned to each section. For this reason, some type of pretest is appropriate to establish a baseline against which to assess the effectiveness of the innovation.⁵⁸

Against this background, let us return to some of the descriptive articles to consider how they might have produced more robust findings. Obtaining data on effectiveness necessarily entails defining course objectives with some precision. Sometimes a teacher might have various goals, not all of which can be quantified. Nevertheless, I

52. *See id.*

53. *See id.* at 13.

54. *See id.* at 13-16.

55. Pretesting “is not actually essential to true experimental designs.” *Id.* at 25.

56. *See id.* at 13-16. A more complex design, intended to control for various threats to external validity, randomly assigns subjects to one of four categories: those who are pretested and receive the experimental treatment, those who are pretested but do not receive the experimental treatment, those who are not pretested and receive the experimental treatment, and those who are not pretested and do not receive the experimental treatment. *See id.* at 24-25.

57. The choice of which group receives the innovative and which the traditional course should be random, although the composition of the two sections need not.

58. *See id.* at 47-48.

offer the following possibilities as a means of stimulating further thought.

1. Abortion

Professor Calhoun counts as one of the benefits of his abortion seminar that his students were “stretch[ed]” to think more deeply about that topic.⁵⁹ He cites as evidence that the class succeeded in this respect his “cordial conversations concerning abortion with each of the prochoice [seminar] students.”⁶⁰ Perhaps a better indicator would have been to administer a questionnaire to seminar participants, at the beginning of the semester and again at the end, focusing on the intensity of students’ views about abortion and their feelings about those who held contrary views.

To be sure, this procedure cannot control for many threats to internal validity.⁶¹ Some of those threats, however, seem to have limited relevance to this situation. For instance, history would be a problem only if some significant external event concerning abortion occurred during the semester (perhaps a major court decision or a violent incident at an abortion clinic). Maturation—factors such as fatigue or boredom that vary systematically with the passage of time without regard to external happenings—similarly seems unlikely to pose problems in a law school seminar. Nor would regression likely matter. Even if seminar participants were disproportionately likely to hold extreme views on abortion, there is no reason to believe that those views are subject to dramatic change at least in the relatively brief span of a semester. Despite threats to internal validity, this type of design is “worth doing where nothing better can be done”;⁶² limited data of this sort are preferable to anecdotes, however plausible they might seem.

2. Introduction to Lawyering

Albany Law School’s experimental course combining legal research and writing with clinical skills was offered on a limited basis to first-year students; most of the class took the traditional legal writing course. It would be useful to compare the performance of students who took the new course with those who took the traditional one. This would naturally require that reasonably specific criteria of per-

59. Calhoun, *supra* note 6, at 111.

60. *Id.* at 112.

61. See CAMPBELL & STANLEY, *supra* note 49, at 7-12.

62. *Id.* at 7.

formance be articulated, but presumably teachers in any course with a substantial writing component must do that anyway.

Assignment to Introduction to Lawyering was not strictly random, because the experimental course required students to do more work than did Legal Reasoning, Writing, and Research (the traditional course). But enrollment in the experimental course was not purely arbitrary, either. The instructors solicited applications from entering students and randomly selected enrollees from a very large pool.⁶³ There was, in short, an element of randomness that could have provided the basis for a broader inquiry. To test for systematic differences between the groups, it might have been possible to compare the known characteristics of those who applied for the new course with those who did not. Assuming no systematic differences were found,⁶⁴ the instructors could assess the extent to which the novel features of Introduction to Lawyering improved student performance.

3. Legal Writing and Civil Procedure

Like the others discussed here, the Suffolk faculty who coordinated segments of their LRW and Civil Procedure courses did not design a rigorous experimental test of their project. They presented the same sort of qualitative impressions as did the other authors.⁶⁵ But they did compare the performance of the students who went through their collaboration with another group who did not: evening students who wrote their research memoranda on the same topics as did the day students who were the focus of the article. The comparison suggested that the collaboration made a difference, although no precise figures were presented.⁶⁶

Comparing the day and evening students was not the point of the article, but we might take a moment to consider how a more rigorous comparison could have been made. In the first place, day and evening students probably differ from each other in systematic ways. For example, evening students are likely to have more substantial outside employment and other personal or family responsibilities than day students. In other words, there is a high risk of selection bias in any

63. See Maurer & Mischler, *supra* note 26, at 100 n.12. The authors do not indicate how large a percentage of the entering class applied for the experimental course, but they do report receiving 170 applications for 32 spots the first time the course was offered. See *id.*

64. But see D.H. Kaye, *The Problem of Nonresponse: Remarks on a Recent Survey of Clinical Education*, 43 J. LEGAL EDUC. 594 (1993) (warning of the difficulty of comparing groups that might vary in many ways).

65. See Glannon et al., *supra* note 30, at 253-58.

66. See *id.* at 256.

comparison between day and evening students, and that fact alone could undermine the internal validity of any comparison. One way around this problem might have been to have only part of the daytime class go through the collaboration and compare the performance of those students who were part of the experiment with those who went through the traditionally separate courses in LRW and Civil Procedure.

Another factor that could affect the analysis is that the evening class was divided into two sections for Civil Procedure, one of which followed the basic organization of the daytime sections and one of which did not; the evening sections performed differently on their writing assignments. One of the evening Civil Procedure professors was not involved in the daytime collaboration, and his students appeared to do a worse job on their writing assignments than did the day students. The other Civil Procedure professor was participating in the daytime collaboration, although his evening class was not. Nevertheless, his evening students did about as well on its writing assignments as his day students.⁶⁷ But if that is so, perhaps the explanation for the day students' apparently improved performance was not the in-class simulations and other features of the formal collaboration between faculty teaching different subjects, but rather something about the organization or teaching of Civil Procedure. One way to test this possibility would be to add a third condition to the one described in the previous paragraph: expose one section to the collaborative project, have another section take the two courses separately with Civil Procedure following its traditional topic sequence, and have the third take the courses separately but with Civil Procedure following the revised topic sequence.

4. Integrated Transactional Practice

The combination of Professional Responsibility with Trusts and Estates described by Professor Myers also affords opportunities for more systematic evaluation. The most obvious question to explore is the extent to which students differ in the extent to which they learn the basic concepts of the two major subjects in the combined course as opposed to the traditionally separate courses. Although enrollment in either version undoubtedly is not random, students do take final examinations in both ITP and the separate courses, and performance on

67. *See id.*

the examinations could be compared.⁶⁸ Perhaps the best way to undertake such a comparison is the static-group comparison, despite the obvious potential for selection bias.⁶⁹

III. ALTERNATIVES TO EXPERIMENTATION

Sometimes it will be impossible to design even a primitive experiment to evaluate an educational technique or innovation. In this final substantive section, I briefly describe two statistical studies that suggest other ways to address the evaluation question. The first focuses on the utility of various teaching materials, the second on evaluating methods of academic support for law students.

A. *Evaluating Teaching Materials*

Suppose a teacher assigns or recommends a variety of teaching materials to a class and wants to determine how useful those materials are to the students. No experimental design will readily capture that information. But students can be asked to evaluate those materials, and their responses can be subjected to statistical analysis. A short paper comparing various materials appeared in the *Journal of Legal Education* not too long ago.⁷⁰

The paper compared student assessments of a casebook, a hornbook, and computer-assisted legal instructional materials that were assigned or recommended in one course.⁷¹ Students at the end of the last class session of the semester were asked how helpful they thought each item had been; the instructor found statistically significant differences between each pair of materials.⁷² He also analyzed the extent to which use of any of the items affected students' exam scores. It turned out that a student's previous grade point average was the best predictor of exam score; beyond GPA only use of the computer exercises made a statistically significant difference.⁷³

68. In fact, Professor Myers believes that the ITP students write better exam answers than the PR students, although she admits that her impression is "unscientific." Myers, *supra* note 37, at 424.

69. See CAMPBELL & STANLEY, *supra* note 49, at 12.

70. See Stephen J. Shapiro, *The Use and Effectiveness of Various Learning Materials in an Evidence Class*, 46 J. LEGAL EDUC. 101 (1996).

71. See *id.* at 103-04.

72. See *id.* at 105. Students found the hornbook least helpful. See *id.* Perhaps not surprisingly, it made no real difference whether the professor listed the hornbook as required or recommended on his syllabus. See *id.* at 107.

73. See *id.* at 105-06.

B. *Evaluating Academic Support Programs*

Many law schools have adopted academic support programs to assist students who may need help in adjusting to the rigors of legal education. There are several models of academic support, but whether and to what extent any of them makes a real difference has been difficult to determine. Kristine Knaplund and Richard Sander of the UCLA School of Law used the statistical technique of multiple regression to assess their institution's experience with academic support.⁷⁴ Their article contains a clear, nontechnical explanation of the concept of multiple regression and how it applies to evaluating educational programs.⁷⁵

The article is extraordinarily rich and defies brief summary. Perhaps the most important point that Knaplund and Sander make is that it is very difficult to design methodologically sound evaluation studies.⁷⁶ Participants in academic support programs are often self-selected and usually atypical at least insofar as they are disproportionately drawn from the weaker part of the student body, thereby making it difficult to devise comparable control groups.⁷⁷ Partly for that reason, participating students are likely to see their grades improve regardless of the effectiveness of support programs due to the phenomenon of regression to the mean.⁷⁸ Moreover, some short-term effects of academic support diminish or disappear over the longer haul.⁷⁹

Against this sobering background, the authors proceed to evaluate a variety of programs that have operated at UCLA in recent years, including a two-week summer orientation program conducted by faculty members, weekly review sessions offered to first-year students by second- and third-year students, workshops that allow 1L's to take practice exams in most of their courses, an alternative legal writing course for first-year students offered during the spring semester to a small group of students who had particular difficulty in their fall semester courses, a course for second-year students on academic probation, faculty-led study groups for weaker students enrolled in upper-class courses, and individual tutoring by faculty members. The study

74. See Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157 (1995).

75. See *id.* at 165-66, 208-10.

76. See *id.* at 162-63.

77. See *id.* at 163.

78. See *id.* at 164-65; CAMPBELL & STANLEY, *supra* note 49, at 5, 10-12.

79. See Knaplund & Sander, *supra* note 74, at 167-68.

examined the experience of nine classes of UCLA law students, utilizing information on more than a dozen background variables, and numerous measures of academic performance and success on the bar examination.⁸⁰ Statistical analysis showed that some programs had strong, long-term benefits but also that programs with equal levels of funding, faculty involvement, and institutional support could vary widely in their effectiveness.⁸¹ The most successful programs taught students new learning skills and how to apply them, but the authors caution other institutions against simply adopting wholesale those programs that have been beneficial at UCLA.⁸²

CONCLUSION

Legal education finds itself in proverbially interesting times. Ferment abounds, and law teachers are developing both new courses as well as novel approaches to old ones. We need to share information, and much of that information will be descriptive. At some point, though, we need to figure out what works and what needs further refinement. To do that, we need to design better evaluation studies than we have managed to produce so far. I hope that this discussion of ways to take some of our best descriptive work to a higher level of sophistication will help us do that.

80. *See id.* at 168-70.

81. *See id.* at 172-73.

82. *See id.* at 206-07. They do, however, offer a detailed account of UCLA's most successful program. *See id.* at 225-34.