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The Practitioners' Council: Connecting Legal Research Instruction and Current Legal Research Practice

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In order to better prepare law students to perform legal research outside of academia, legal research instructors must connect with contemporary legal research practice. A desire to make such a connection led the authors to form an attorney advisory board known as the Practitioners' Council to discuss legal research practice. The authors discuss the process of making the Practitioners' Council a reality and how it has improved their legal research instruction.

¶1 "You mean you want to make law school reflect what we actually do in practice?" That was one attorney's response to our idea of gathering a group of practicing attorneys with whom we could discuss current legal research practice. This sarcastic question highlights the disconnect between the standard law school curriculum and legal practice, and legal research instruction is no exception. While legal research is certainly more practical than many law school courses, the way it is taught in the academy can be estranged from the way it is currently practiced in the field. This, in turn, can be detrimental to students whose first "real world" task will likely be legal research.

¶2 Part of the problem is that many law librarians teaching legal research are not currently practicing law. Law librarians are experts in the use of a variety of legal resources and many have had significant legal research experience, but they often lack a current connection to legal research practice. This does not mean they must return to the practice of law or abandon teaching legal research. It does mean that law librarians should look for ways to stay connected to current legal research practice. As they do, legal research instruction will improve, better preparing students for the legal research assignments awaiting them in law practice.

¶3 In today's ever-changing legal information environment, a connection to contemporary legal research practice is more important than ever. Law librarians can create such a connection in many ways: surveys or interviews of law firm

librarians or attorneys, visits to law firms, visits by attorneys or law firm librarians to legal research classes, and so forth. Whatever the vehicle, we hope that all law librarians are looking for ways to ensure that their instruction is connected to and well-informed by current legal research practice.

¶4 The desire for our legal research instruction to be informed by current legal research practice led us to form what we now call the Practitioners' Council. This council, made up of seven practicing attorneys, acts as an advisory board regarding current legal research practice and provides us with real-world insight and experiences that enhance our teaching. The feedback we receive does not dictate all or even a significant part of what we do in class, but coupled with our knowledge, experience, and professional judgment it is a valuable tool for ensuring our students are well-educated in legal research.

¶5 Because we chose the Practitioners' Council as the vehicle to accomplish our goal of staying connected to current legal research practice, we hope sharing our experience with this project and the thought process behind it will help others in the quest to improve legal research instruction. This article first examines the criticism of law librarians' lack of connection to legal research practice and ways law librarians have responded. It then discusses why we chose the Practitioners' Council over other possible vehicles and describes our experience in creating and executing the Practitioners' Council, including the brainstorming exercise called stemming that we used as our primary means of eliciting feedback from the attorneys. Finally, we examine what we learned for our classes and, more important, for making the Practitioners' Council work. It also addresses possible future uses and benefits of the council.

Connecting with Current Legal Research Practice

The Need for a Connection

¶6 Full-time academic law librarians are in an interesting position regarding legal research instruction. As expert legal researchers, we have mastered a variety of legal research resources and skills that are valuable to our students. Because of the full-time nature of our jobs, however, most of us do not currently practice law and are, therefore, not in a practice-based legal research environment on a regular basis. As might be suspected, much of the legal research we do is academic.

¶7 Several authors have identified this as a weakness in law librarians who teach legal research. In 1997, Michael Lynch concluded that law librarians' focus on scholarly research as opposed to client-centered research was a serious weakness for those teaching legal research.[1] In his opinion, "the research experience of law librarians often predisposes them to a limited view of research that emphasizes the comprehensive search for all relevant sources over the struggle to understand authorities that are found in the context of a restricted problem controlled by the client's interests."[2] Lynch asserted that this lack of client-centered research experi-

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1. Michael J. Lynch, *An Impossible Task but Everybody Has to Do It—Teaching Legal Research in Law Schools*, 89 Law Libr. J. 415, 421 (1997).
2. *Id.*

ence "sometimes colors the librarians' discussion of legal research and keeps them from anticipating the reactions of other participants in the discussion of research training."[3]

¶8 Because their professional home is the academy, it is understandable that academic law librarians will have a stronger connection to academic, rather than client-centered, research. Lynch, however, does not offer any solutions for overcoming this weakness among his suggestions for improving legal research instruction.[4] His only solution is that academic law librarians "must exercise care in making judgments about the research training appropriate for law students,"[5] and his conclusion is that law librarians may be "too hopeful regarding what can be achieved [by legal research instruction] in law schools."[6]

¶9 Legal writing professor Ian Gallacher agrees with Lynch's assessment of law librarians. In Gallacher's opinion, law librarians offer an important academic approach to legal research instruction, but lack an essential practical perspective.[7] "[L]egal writing teachers might not be as well trained as librarians in legal bibliography or information theory," Gallacher argues, "but they often have more experience as legal researchers in the context of law practice, the place most law students will be using the research techniques they learn in law school."[8]

¶10 Paul Callister took the first step toward providing a solution to this dilemma. In explaining the objective of teaching legal research, Callister relied heavily on Lynch's distinction between academic and client-centered legal research to demonstrate that there are differences between what law librarians do and what they must teach students to do.[9] Callister then noted that "law librarians may need to stretch (or reflect on earlier days when they practiced law) to fully understand the package of skills needed by their students."[10] While reflecting on earlier practice

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3. *Id.* at 416.

4. *See id.* at 430–35.

5. *Id.* at 419.

6. *Id.* at 421.

7. *See* Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 Akron L. Rev. 151, 174 (2006). Gallacher contends that a solely academic approach to legal research instruction "could be disastrous" from a practitioner's perspective.

8. *Id.* With this article, we are not entering the fray in the debate regarding who should teach legal research. The fact is that law librarians teach legal research in most law schools across the country. The 2010 *ALWD/LWI Survey* shows that law librarians participate in teaching legal research in LRW courses in 124 law schools and are solely responsible for legal research instruction in 56 of those schools. Ass'n of Legal Writing Dirs./Legal Writing Inst., ALWD/LWI 2010 Survey Report 11, *available at* http://www.alwd.org/surveys/survey_results/2010_Survey_Results.pdf. This is a trend that does not seem to be declining; the 124 schools is up from 91 in 2004. *See* Ass'n of Legal Writing Dirs./Legal Writing Inst., 2004 Survey Results, at iii, *available at* http://www.alwd.org/surveys/survey_results/2004_Survey_Results.pdf. Law librarians are overwhelmingly the instructors of advanced legal research courses. In Ann Hemmens's 2000 survey of ALR courses, law librarians had primary responsibility for such courses in 68 of 72 schools that responded to her survey. Ann Hemmens, *Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools*, 94 Law. Libr. J. 209, 223, 2002 Law. Libr. J. 17, ¶ 34. Since law librarians are legal research instructors, our focus is on what those of us law librarians who teach can do to improve legal research instruction.

9. Paul Douglas Callister, *Beyond Training: Law Librarianship's Quest for the Pedagogy of Legal Research Education*, 95 Law Libr. J. 7, 23–25, 2003 Law Libr. J. 1, ¶ 36–38.

10. *Id.* at 24, ¶ 38.

experiences may help, its usefulness declines as the legal information environment continues to change rapidly. Callister's suggestion to "stretch," however, offers an important first step toward the answers law librarians need. Callister believes that by stretching, law librarians can overcome their lack of connection to current legal research practice without reentering practice. We agree. Unfortunately, he does not provide any concrete examples of what this stretching might look like.

¶11 Building on Lynch and Callister, Nolan Wright takes the extra step of providing some possible examples of stretching. First, Wright explains the lack-of-connection weakness this way:

> [I]f [law librarians] have not actually practiced, or a long time has passed since they have, they run the risk of coming at legal research education from the wrong perspective, teaching research with an academic instead of a client-centered orientation, with ramifications both for how they prepare and evaluate students accordingly.[11]

¶12 As a solution, Wright believes that law librarians with recent practice experience will be able to overcome the weakness of a lack of connection to the client-based world.[12] This makes sense, since these law librarians will be able to draw on their experience in a contemporary legal research practice setting to enhance their instruction. The problem, however, is time. Eventually each of us will get to the point where our practice experience is not recent enough to qualify under Wright's formula. Additionally, we would be discounting the experience of law librarians who have taught legal research for years. There must be another solution.

¶13 While Wright puts a premium on recent practice experience, he also offers three ideas that might exemplify Callister's idea of stretching. First, law librarians could teach "in connection with a legal clinic, public interest organization attorneys, or attorney in private practice." Second, law librarians may want to occasionally attend continuing legal education seminars. And finally, "[t]hey might even consider volunteering occasionally at a local neighborhood legal clinic . . . ."[13] While some of these ideas are more focused on legal research than others, they are good suggestions for law librarians looking to stay connected to current legal research practice.

¶14 Establishing this connection allows law librarians to keep a proper perspective between academic and client-centered research. It allows them to understand the ever-changing legal research environment that their students face.[14] It even provides added interest and motivation for students in a legal research class. In fact, many academic law librarians are already engaged in activities to create connec-

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11. Nolan L. Wright, *Standing at the Gates: A New Law Librarian Wonders About the Future Role of the Profession in Legal Research Education*, 27 Legal Reference Services Q. 305, 332–33 (2008).

12. *Id.*

13. *Id.* at 333.

14. *See* Leslie A. Street & Amanda M. Runyon, *Finding the Middle Ground in Collection Development: How Academic Law Libraries Can Shape Their Collections in Response to the Call for More Practice-Oriented Legal Education*, 102 Law Libr. J. 399, 431, 2010 Law Libr. J. 23, ¶ 78 ("By consulting practitioners, academic librarians can . . . speak more authoritatively to students about what sources they can expect to be available in practice.").

tions between the ivory tower and current legal research practice to the benefit of their students.[15]

Law Librarians Connecting

¶15 One popular way in which librarians stay in touch with current legal research practice is through surveys. These surveys often target law firm librarians, but some have queried practicing attorneys as well.[16] Through these surveys, law librarians generally attempt to discover what types of legal research materials new associates should be familiar with and in what formats. Inadequacies in research skills are also discovered, although these inadequacies tend to center around the use—or lack thereof—of certain resources or formats.

¶16 For example, law librarian Patrick Meyer recently published the results of a 2007 survey of law firm librarians in which he hoped to "ascertain the research needs of law firms."[17] The results of Meyer's survey identified things such as the most important research tasks new attorneys should know how to do, what research tasks are best done in print, and what print and electronic resources new attorneys should know how to use. Meyer's survey concluded that print resources are still alive and well in large law firms—a finding that is very useful for legal research instructors.[18] Surveys such as Meyer's help law librarians stay connected to the ever-changing legal information environment in practice and are a valuable resource for law librarians teaching legal research.

¶17 Another way in which law librarians stay connected to current legal research practice is by visiting law firms or having law firm librarians or attorneys visit legal research classes. For example, librarians from the Northern Kentucky University Chase College of Law Library toured several law firm libraries in 2007.[19] According to tour organizer Michael Whiteman, goals of these visits included "[t]our[ing] the

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15. While we did not end up adopting any of these methods, an examination of their strengths and weaknesses helped us craft our Practitioners' Council. We have also used some of the results of these other methods in our own instruction and appreciate all the efforts law librarians make to better understand current legal research practice.

16. *See, e.g.*, Jill L.K. Brooks, *Great Expectations: New Associates' Research Skills from Law School to Law Firm*, 28 Legal Reference Services Q. 291 (2009) (surveying attorneys and law firm librarians); Sanford N. Greenberg, *Legal Research Training: Preparing Students for a Rapidly Changing Research Environment*, 13 Legal Writing: J. Legal Writing Inst. 241 (2007) (surveying practicing attorneys); Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. Legal Educ. 381 (1990) (surveying law firm librarians); Laura K. Justiss, *A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms*, 103 Law Libr. J. 71, 2011 Law Libr. J. 4 (surveying law firm librarians); Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 Law Libr. J. 297, 2009 Law Libr. J. 17 (surveying law firm librarians); Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know* Will *Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 Clinical L. Rev. 105 (2007) (surveying judges and attorneys); Tom Gaylord, 2007 Librarian Survey, http://www.kentlaw.edu/academics/lrw/future/handouts/gaylord%20-%20powerpoint.pdf (PowerPoint presentation prepared for Back to the Future of Legal Research Symposium, Chicago Kent College of Law, May 18, 2007) (surveying law firm librarians); Todd M. Venie, Essential Research Skills for New Attorneys (2008), http://etd.ils.unc.edu/dspace/bitstream/1901/494/1/paper.pdf (surveying academic and law firm librarians).

17. Meyer, *supra* note 16, at 311, ¶ 43.

18. *Id.* at 319–20, ¶¶ 68–71.

19. Michael Whiteman, *Law-Library-Palooza*, AALL Spectrum, Apr. 2008, at 6, 8.

libraries to see what resources (both print and online) were available to their patrons" and "[d]iscuss[ing] with the librarians how they and the attorneys, and paralegals with whom they work, do research."[20] Law-Library-Palooza, as the tour was nicknamed, was a success in Whiteman's eyes and helped him improve his legal research instruction.[21] He noted: "The refresher on how things work in the 'real world' has, I believe, given me a great reason to revamp the legal research class to make it more meaningful to my students . . . ."[22]

¶18 A far more common practice is to invite law firm librarians or practicing attorneys to be guest speakers in a legal research class.[23] These guest speakers "can bring [a] real-world element to the classroom that law school professors often cannot."[24] In addition, guest speakers in legal research classes validate legal research instruction and its importance, providing a link between what students are learning and what they will be doing in practice.[25] Inviting law firm librarians and practicing attorneys into legal research classrooms helps connect the ivory tower with the real world. It offers insight to librarians into ways legal research can be improved, as well as providing motivation to both teachers and students.

¶19 Law librarians also connect with current legal research practice by interviewing, either formally or informally, law firm librarians or practicing attorneys about how they conduct legal research. One of the few examples in the literature of formal interviews of attorneys was in a recent piece by Judith Lihosit, who spoke to fifteen San Diego attorneys regarding their legal research habits.[26] The interview setting allowed Lihosit to clarify questions and answers, as well as probe deeper into the experiences of her interviewees. As a result, Lihosit reached conclusions contradictory to those of the prevailing literature with respect to computer-assisted legal research (CALR) and its effect on legal research.[27] Her results also painted a valuable picture of how attorneys are conducting legal research in today's practice environment.[28]

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20. *Id.* at 8–9.

21. *Id.* at 9.

22. *Id.* at 35.

23. *See* Timothy L. Coggins, *Bringing the "Real World" to Advanced Legal Research*, 6 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 19, 19 (1997) ("Most Advanced Legal Research courses also use 'real-world figures' (guest speakers) to supplement and enhance the instruction provided by the professors of the courses. The experiences and current positions of the 'real-world' speakers are diverse, including librarians, attorneys, publisher/vendor representatives, and government officials." (footnote omitted)); *see also* Marjorie Crawford, *Bridging the Gap Between Legal Education and Practice*, AALL SPECTRUM, Apr. 2008, at 10, 34.

24. Coggins, *supra* note 23, at 20.

25. Frank Houdek, *Our Question—Your Answers*, 2 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 66 (1994) ("I found that . . . I can talk until I'm blue in the face about the importance of legal research skills and only about twenty-five percent of the students hear me, but when a guest speaker such as a Texas District or Supreme Court judge or prominent local attorney [says the same thing] they really sit up and listen.") (quoting Kristin Cheney).

26. Judith Lihosit, *Research in the Wild: CALR and the Role of Informal Apprenticeship in Attorney Training*, 101 LAW LIBR. J. 157, 2009 LAW LIBR. J. 10.

27. *Id.* at 158, ¶ 1 (concluding that CALR will not "fundamentally alter the way attorneys think or do research, nor will it alter the legal system itself ").

28. *Id.* at 170–75, ¶¶ 35–47.

Why a Practitioners' Council?

¶20 To meet our goal of ensuring our legal research instruction is informed by current legal research practice, we first listed several characteristics we felt necessary for any project we pursued. One of the first things we decided was that we wanted feedback that would be tailored to the practice environments of our particular students. This meant we would have to reach beyond the many connections academic law librarians are making with law firm librarians. While law firm librarians provide very useful insight about the skills of new associates, they represent only a portion of legal employers.

¶21 For example, in Patrick Meyer's recent survey of law firm librarians, only five of 162 respondents were from firms ranging from one to twenty-five attorneys. The number was so small that the small-firm results were not summarized for the article.[29] This leaves a gap in understanding current legal research practice for law librarians whose students get jobs with small firms. At Brigham Young University, for example, more than one-third of the students who took jobs with law firms in 2007 found them with firms of fewer than twenty attorneys.[30] In approaching the problem of understanding current legal research practice, we wanted to make sure we took into account firms that do not have a law firm librarian, as the legal research environment in those firms often differs in the research tools available as well as the research tasks assigned.[31]

¶22 Another factor favoring the use of attorneys was that attorneys are the ones evaluating our students' work product in the real world. At firms of all sizes, partners and associates are the ones who will determine just how good our students' research really is. We wanted to be in touch with their expectations, as well as their impressions, of students' and new associates' research skills, so we could have a better feel for what our teaching might be lacking and how we could best prepare our students to succeed.

¶23 Critics may argue that attorneys are not the best group to consult when focusing on legal research skills, since they do not always follow "best practices."[32] This might have been true if we planned to rely wholly on their feedback to shape

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29. Meyer, *supra* note 16, at 311, ¶ 44.

30. Twenty-nine of seventy-nine students. These numbers were calculated by examining a spreadsheet provided by BYU Law School's Career Services Office of firms for which 2007 graduates went to work. Firm size was then determined by locating the firm on the Martindale-Hubbell web site or on the firm's own web site.

31. *See* Sarah Gotschall, *Teaching Cost-Effective Research Skills: Have We Overemphasized Its Importance?*, 29 LEGAL REFERENCE SERVICES Q. 149, 154 (2010) (noting the possibility that surveys of law firm librarians are not representative of smaller firms because small firms rarely employ librarians).

32. Of course, this argument in itself may be flawed. Richard Danner has pointed out that, "[a]lthough librarians and others have long shared the sense that lawyers are less effective researchers than they might be, the published literature on the subject suggests that we actually know very little about how lawyers go about their research." Richard A. Danner, *Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available*, 31 INT'L J. LEGAL INFO. 179, 184 (2003). This was similarly the case in 1969 when Morris Cohen found that there was little written about the "actual procedures used by lawyers in their search into the law." *See* Morris L. Cohen, *Research Habits of Lawyers*, 9 JURIMETRICS J. 183, 183 (1969).

our courses. We, however, saw our project as an attempt to add the legal research perspective of practicing attorneys to our own "best practices" to create a better way to teach legal research and motivate students, rather than to replace everything we had been doing.[33] Consistent feedback from practicing attorneys is an area that is lacking in current legal research education.[34]

¶24 In addition to focusing on practitioners, another aspect that was important to us was the ability to ask follow-up questions to broaden our understanding and to clarify responses. The inability to follow up successfully is a weakness inherent in surveys. While survey participants often provide useful comments, the surveyor can never dig deeper than what is written on the page. This is fine if the purpose of the survey is to get a better understanding of a legal research environment— print versus electronic, Westlaw versus LexisNexis—but limits the usefulness of the tool if what is being explored is something more intricate, like the legal research skills and habits of a practicing attorney.[35]

¶25 Lihosit made this point when explaining why she chose to do interviews rather than a survey:

> I wanted to make sure that any misconceptions that my subjects may have held about the legal research process would not cloud the results of the study. Indeed, there were quite a few occasions when my follow-up questions revealed that what I had in mind was not quite what my interviewee had in mind. I also hoped that open-ended questions calling for a descriptive narrative would lead my research in directions that I might not have thought of originally.[36]

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33. In a recent article primarily focused on legal research by scholars, Stephanie Davidson pointed out the importance of focusing on those who are actually doing the research. She wrote, "By focusing on theory and models without accounting for the actual practice of lawyers and scholars, librarians may miss important information about the way people use legal information . . . ." Stephanie Davidson, *Way Beyond Legal Research: Understanding the Research Habits of Legal Scholars*, 102 Law Libr. J. 561, 565, 2010 Law Libr. J. 32, ¶ 8.

34. AALL has also considered this an area in need of further exploration. Its research agenda includes the question, "How do lawyers in various professional settings actually conduct research. . . ?" Am. Ass'n of Law Libraries, AALL Research Agenda, § IV(A) (approved Nov. 4, 2000), *available at* http://www.aallnet.org/committee/research/agenda.asp. Indeed, the lack of practitioner feedback plagues all of legal education. In *Best Practices for Legal Education*, the authors focus on practitioner feedback as an important principle for assessing institutional effectiveness: "The school solicits and incorporates the opinions of its alumni as well as other practicing judges and lawyers who hire and interact with graduates of the school." Comments to this principle state: "Many law schools make curriculum decisions, even significant decisions, without consulting practitioners. This approach is precisely contrary to best practices in curriculum development." Roy Stuckey et al., Best Practices for Legal Education 272 (2007). Other important examinations of legal education have also focused on the need to connect with constituents, including practitioners. *See* Gregory S. Munro, Outcomes Assessment for Law Schools 62, 94 (2000); William M. Sullivan et al., Educating Lawyers 181–82 (2007) (Carnegie Report). This is an area in which legal research educators could be leaders in legal education.

35. Davidson points out that the results of previous studies regarding the information-seeking behavior of lawyers "suggest that an approach using qualitative techniques, also referred to as a naturalistic or ethnographic approach, would be most effective" for understanding lawyers' legal research behavior. Davidson, *supra* note 33, at 570, ¶ 19.

36. Lihosit, *supra* note 26, at 170, ¶ 34.

Lihosit's interviews ultimately led to some interesting conclusions regarding the research habits of practicing attorneys, while also demonstrating the additional information that can be gained in an interview setting over a survey.[37]

¶26 Another critical characteristic we hoped our project would possess, and that ultimately led us away from interviews, was that of a sustained relationship between us and the attorneys with whom we hoped to work. The majority of projects we evaluated—whether surveys, on-site visits, or interviews—were fleeting. Law librarians connected with outside researchers at one moment in time, and then the connection ceased. We hoped that a sustained relationship with the attorneys would provide us with the continuing connection to current legal practice we were seeking. We also hoped it would produce a greater investment on the attorneys' parts and allow us to collaborate with them in ways not possible with a written survey or a single interview. This would allow us not only to gather information, but to get feedback on things we were currently doing or ideas we were interested in trying.

¶27 With these three characteristics—attorneys, interview-type interaction, and a sustained relationship—we felt confident we would find the connection to contemporary legal research practice we desired. It became clear that what we were looking to create was something akin to an advisory board to provide us with practical insights and make sure we were staying grounded in the real-world practice of legal research.[38] Out of these ideas, the Practitioners' Council was born.

The Practitioners' Council

Getting Started

¶28 Ideas about the Practitioners' Council had been rattling around our heads for a while before we began. To start, we decided to synthesize our thoughts and put them in writing. We created a one-page guiding document for what we called the Legal Research Practitioners' Advisory Council, which we immediately shortened to the Practitioners' Council.[39] This document began by stating the council's purpose, which was "to assure that legal research instruction is well informed by contemporary legal research practice." It also contained information detailing what the council would be asked to do, including (1) "Be familiar with the goals of the first-year legal research and writing program," (2) "Provide feedback on the types of research tasks interns, clerks, and associates are typically conducting," (3) "Provide feedback about existing and proposed legal research assignments," and (4) "Provide feedback about specific research practices in their environment including sources and methods most often used."

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37. *See id.* at 170–75, ¶¶ 35–47; Davidson, *supra* note 33, at 570, ¶ 20 ("Interviews are useful for going deeper with questions, and for pursuing trails suggested by the subject's responses.").

38. A recent article has recommended "the formation of an advisory panel comprised of judges, decision makers . . . and practicing lawyers" to assist in improving legal writing programs. Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 PHOENIX L. REV. 1, 22 (2009).

39. The document is reprinted *infra* appendix A.

¶29 This document was prepared not only to help formalize the council and set forth its objectives, but also to serve as a reference sheet for the attorneys who would become members of the council. For this purpose we also included a few examples of what council members would be asked to do. We did not want the document to be overwhelming, but at the same time we wanted to clearly lay out what we hoped the council would be.

¶30 At this early stage, we thought a lot about the time commitment of the attorneys who would be involved. We knew the idea would be much better received if we were extremely sensitive to the attorneys' busy schedules and limited our interactions with them as best we could. We decided we would only ask them to commit to ten hours of assistance during a calendar year. We knew this meant we would not be able to get all the information we wanted from them, but we felt it would help with buy-in on the project. As an added benefit, this kept things manageable for us as well.[40] We were also pleased when our library director pledged some financial assistance so that we could offer our council members lunch and thereby use time that the attorneys could afford to give us, while also making it worth their while. After all, lawyers, like law students, still jump at a free lunch.

Composition of the Council

¶31 In order to more fully benefit our students, we wanted the council to roughly mirror the employment environments typical of our graduates. We contacted our Career Services Office and acquired their most recent placement report. The report indicated that approximately seventy percent of students went into private practice or a judicial clerkship after graduation. Of those who went into private practice, about one-third were employed by small firms, which we designated as having fewer than twenty attorneys. Approximately fifteen percent took jobs with the government or in public interest work. With these numbers, we were able to get a better idea of what we wanted our council to look like.[41]

¶32 We envisioned our council as being relatively small so that we could have meaningful interaction with the attorneys. After looking at the placement numbers, we determined it would be useful to have approximately one attorney from the government or public interest area, two attorneys from small firms, and three attorneys from medium to large firms. We also hoped that we would have some diversity in terms of practitioner age, gender, years of practice, and type of practice. In addition, we wanted to make sure we found attorneys who were interested in the council and could commit the time needed.

¶33 With this in mind we began making a list of potential council members. We started with people we knew—former law school classmates, people we had worked with, and other lawyers we had come to know over the years. We tried to

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40. We do not want to minimize the fact that the Practitioners' Council takes time in a law librarian's already busy schedule. The time commitment, however, lessens considerably once the council is organized and the ball is rolling. Additionally, the benefit to legal research instruction has, in our opinion, been well worth the time.

41. The placement numbers also revealed that about fifteen percent of our graduates went into "Business." We decided not to include this segment in our composition determination as we deemed it unlikely that legal research was a large part of those graduates' job description.

focus on attorneys in the Provo and Salt Lake City areas, as many of our law stu-dents are likely to practice in these cities, and it would allow us to meet with the attorneys in person.[42] We also received some recommendations of attorneys who would be good candidates for our project.

¶34 After our list was compiled, we did some background research on the can-didates to determine how they would fit into the composition we desired. How big were their firms? Did they work for the government or a public interest entity? How long had they practiced? What type of law did they practice? From these questions we identified eight attorneys we were interested in having on the Practitioners' Council: two from government, two from small firms, and four from medium to large firms. From this group we hoped we could get at least six attorneys who would be willing to participate.

Initial Contact

¶35 We contacted each of the selected attorneys by phone and explained our idea. We made sure to mention our purpose in creating the Practitioners' Council, what we would be asking them to do, and the limited time commitment it would require. Our guiding document, mentioned above, was a great script for making sure we hit the important points. All the attorneys we talked to were very receptive to the idea of the council, and many were excited about the project.

¶36 The positive response we got indicated to us that attorneys are supportive of this type of attorney–law librarian collaboration and are willing to participate. There is no doubt attorneys are busy, but we found them willing to commit some time to a project they felt would be worthwhile.[43] With all of the dissatisfaction there is in the legal profession about how law schools are training law students to actually practice law, we think attorneys on the whole will be willing supporters of projects like the Practitioners' Council.[44]

¶37 After the attorneys accepted our invitation, we sent them a follow-up e-mail thanking them. We attached the guiding document we had created at the outset of the project as a reference. We also included a link to a short survey that we hoped would help us understand the information environment in which they were con-ducting legal research.

Defining the Information Environment

¶38 Before meeting with the Practitioners' Council, we wanted to define their information environments. Defining information environments is a critical start-ing point in today's legal research world. When print was king, the information environment of attorneys was fairly consistent. With the explosion of specialized

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42. Meeting in person was important to us because of the brainstorming activities we planned to conduct with the Practitioners' Council. *See infra* ¶¶ 50–58.

43. This did not mean that each of the attorneys was able to follow through with the time com-mitment. It ended up being a great thing that eight attorneys agreed to be a part of the council, as a few of them were unable to be as involved as they first thought.

44. *See, e.g.*, Steven C. Bennett, *When Will Law School Change?*, 89 Neb. L. Rev. 87 (2010) (written by a practicing attorney and calling for law schools to adopt programs that will give law students more real-world skills).

fee-based legal research systems, as well as free and low-cost systems, it can no longer be assumed that one attorney has a similar environment in which to conduct legal research as another.

¶39 The various surveys of law firm librarians and the few of practicing attorneys give us some idea of what the prevailing information environment is today.[45] Defining that environment, however, cannot be a stopping point. We must take the next step of understanding and evaluating how attorneys are using that environment to conduct legal research and what their expectations are for our students' legal research skills. Doing so will allow us to better prepare our students to perform legal research in today's practice.

¶40 To define the information environments of our practitioners, we created a brief, ten-question survey. We included questions such as: "During an average week, how many hours do you spend researching?" "Do you have access to Westlaw and Lexis?" "What other electronic resources do you use for research?" "What print resources do you use to conduct research?" The responses we received provided us with a clearer picture of the environments in which the attorneys we would be meeting with were practicing legal research. This helped us gain background information we needed to maximize the utility of the Practitioners' Council's most important activity, the face-to-face meetings.[46]

Face-to-Face Meetings

Advisory Board Feedback

¶41 When properly constituted, an advisory board represents a wide range of experience, opinion, and approaches to problem solving. In the business school setting, boards have proven to be a powerful tool to inform the curriculum and, in some cases, pedagogy.[47] But few articles have taken the time to describe specific methods used to develop meaningful feedback. As noted above, the members of our council were carefully chosen based on their experience, practice area, and personality. But distilling information from any group of highly intelligent, highly articulate, and highly trained people is always more complex than interacting with a random survey sample or randomized focus group.[48]

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45. *See* sources cited *supra* note 16.

46. *See* Davidson, *supra* note 33, at 571, ¶ 21 ("A qualitative approach does not foreclose the limited use of quantitative tools, either as a preparatory step to fieldwork or as supplementary information to add to the description. Indeed, prior research on information-seeking behavior has incorporated the use of multiple methods of data collection and analysis to triangulate research questions.").

47. *See* Gundars Kaupins & Malcolm Coco, *Administrator Perceptions of Business School Advisory Boards*, 123 Educ. 351 (2002) (reviewing both the literature of advisory boards and the results of their study of boards' perceived value); *see also* Brad Gilbreath et al., *Using Management Advisory Boards in the Classroom*, 25 J. Mgmt. Educ. 32 (2001) (discussing bringing boards directly into classrooms).

48. Once survey questions are set, there is no nuance, clarification, or adjustment for a respondent's interest level and experience. In the objective survey world, the responsibility for resolving ambiguity rests on the participants, who have to figure out what is being asked and the best way to answer. In a face-to-face interaction, members of the group can push back on the meaning and purposes of a question in ways that they cannot when the creators of the instrument are not in the room. Random focus groups lack the cohesiveness of groups intentionally selected for specific qualities. From our experience, group cohesiveness produces more specific and voluminous feedback, but that in and of itself presents a challenge when information needs to be distilled into actionable items.

¶42 An additional level of complexity arose from the primary reason we impaneled the group. Traditional objective surveys work best when you know what questions you are trying to answer. In fact, it is hard to imagine how to structure a survey without knowing what questions need to be asked. An overriding concern we had was that legal research practice was changing in ways that we could not always anticipate. While survey design is always difficult—the ambiguity of language leads to subjects' answering different questions than surveyors thought they were asking—the problem is compounded in a discipline that is so dependent on ever-changing information technology. We knew that we would need to ask questions, clarify responses, and develop consensus—and do it all quickly. And because the members of the council were all practicing attorneys, we knew that we would have to limit meetings to ninety minutes or less.[49] Since we wanted to maximize the value of our face-to-face meetings, we knew that standard brainstorming could only be a partial solution.

¶43 Alex F. Osborn is traditionally credited with framing modern brainstorming with four basic rules: "(1) Criticism is ruled out. . . . (2) 'Free-wheeling' is welcomed. . . . (3) Quantity is wanted. . . . [and] (4) Combination and improvement are sought."[50] Others have added (5) "One conversation at a time" and (6) "Stay focused on the topic."[51] Osborn emphasized that brainstorming worked better as a method of solving "problems which primarily depend on idea-finding—not for problems which primarily depend on judgment."[52] He also admitted that there were limitations to group brainstorming and suggested what he called the "ideal methodology for idea-finding": "a triple attack: (1) Individual ideation. (2) Group brainstorming. (3) Individual ideation."[53] Yet it was difficult to conceptualize how we could leverage this approach while we tried to limit the amount of time we asked members of the council to volunteer.

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49. In reality we always planned for one hour, and then let conversations linger into the additional half-hour.

50. ALEX F. OSBORN, APPLIED IMAGINATION 156 (3d rev. ed. 1963). While Osborn claims to have "first employed" what he called "organized ideation" in 1938 (*id.* at 151), brainstorming may date as far back as fourth century B.C. Athens. The war council discussed in the third book of the *Anabasis* illustrates a form of problem solving where ideation was valued. XENOPHON'S ANABASIS: BOOKS I–IV, at 143–58 (Maurice W. Mather & Joseph William Hewitt eds., 1962). When a Greek mercenary army found itself trapped far behind enemy lines, the solution was to meet and discuss ideas that might lead to a solution: "in view of our present position we decided to meet together ourselves and to invite you to join us, so that, if possible, we might come to some good decision." XENOPHON'S ANABASIS, *supra*, at 147 (translation by author Armond). Though Greek tradition did not necessarily value Osborn's "free-wheeling" discussion, and traditionally ended with a formal approval of the best ideas, the concept of group creativity appears to have been valued for millennia.

51. Robert Sutton, *Eight Tips for Better Brainstorming*, BUS. WEEK, July 28, 2006, at 24 (using ideas the author took from innovation consultants at IDEO).

52. OSBORN, *supra* note 50, at 158.

53. *Id.* at 191; Osborn's advice is based on a series of studies referred to in the *Wall Street Journal* that emphasized how individual test subjects came up with more ideas than subjects who were in groups. The studies clearly were uninformed by Osborn's directions, and Robert Sutton's response about the potential value of group synergy also illustrates how the cited studies missed Osborn's suggestion that both individual and group activity was preferable to only group brainstorming. *See* Sutton, *supra* note 51, at 24.

Stemming

¶44 Fortunately, one of us had prior experience serving on a board filled with highly intelligent, highly trained, articulate people. Being a member of a community council that included two physicians, two attorneys, a political scientist, a patent-holding microbiologist, a member of the state legislature, a former manager of systems support for IBM, and former vice presidents of Procter and Gamble and Mead Data Central provided exposure to a brainstorming process that combined pre-meeting introspection with the creative writing technique known commonly as sentence stemming.[54]

¶45 For the community council, a series of sentence stems was drafted dealing with participants' thoughts about the major issues facing our community. Some stems were very specific; others were as open ended as, "The major issue facing our community is . . . ." Participants were directed to seclude themselves in an environment without interruptions and then read each stem, completing the sentence at least three times and no more than five times. After pondering the general mission of the community council, responses to the stems were supposed to be emotive, "the first thing that comes into your mind." However, after the first and second ideas flowed, the third and any subsequent sentences usually followed considerable introspection.

¶46 The responses to the questions were e-mailed to the facilitator two weeks before the face-to-face brainstorming session. As groundwork for the formal meeting, the facilitator reviewed responses, looking for patterns and noting any distinct groupings. Councilors were directed to bring their written responses when the council was convened, and were led through a whiteboard discussion starting with the first question. Participants were asked to read their highest priority responses. This was not necessarily their first response, or even their favorite response, but it was directed to be the response they felt best contributed to the discussion. Every member of the council was asked to participate. After the first sets were summarized on the board, participants were asked to read the next response they wanted to share.

¶47 This process continued for just under two hours. Two features of the process stood out. The first was the overall quality of the ideas presented. Based on the divergent experiences of the members of the council, the literary style of the responses ranged widely. Some were terse, Hemingway-like statements of perceived fact. Others were high-flown Victorian multiple-clause-sentence paragraphs with

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54. This technique has elements of Andre L. Delbecq and Andrew H. Van de Ven's Program Planning Model and what would later become known as Nominal Group Technique (NGT). In *Group Techniques for Program Planning*, Delbecq and his colleagues summarize the social psychological limitations that reduce the efficacy of group brainstorming. Andre L. Delbecq et al., Group Techniques for Program Planning 24–25 (1975). In an earlier article, Delbecq and Van de Ven explained how their formal rules for conducting round-robin discussion following the writing phase encouraged much broader participation in the brainstorming activity. Andre L. Delbecq & Andrew H. Van de Ven, *A Group Process Model for Problem Identification and Program Planning*, 7 J. Applied Behav. Sci. 466, 470–72 (1971). The exercise we conducted might also be classified by some as brainwriting; however, it does not fit neatly in the traditional descriptions. *See* Arthur B. VanGundy, Techniques of Structured Problem Solving 73–75 (2d ed. 1988). Though VanGundy discusses preactivity stimuli, the problem statement expressed in a sentence stem is not discussed. *See* VanGundy, *supra*, at 76–79.

asides, specific caveats, clarifications, and qualified conclusions. In almost every case, the ideas presented were amazing—far beyond what individual council members could have generated by themselves in any optimal setting for thinking.

¶48 The second feature of the stemming exercise was driven by the social dynamic. In all survey and brainstorming sessions there is a persistent problem with conformational bias. People "tend to seek out information that confirms our existing views and hypotheses, and we tend to avoid or even discount data that might disconfirm our current positions on particular issues."[55] Osborn's brainstorming includes a "deferment of judgment principle," which is in some ways an attempt to fight this tendency.[56] Fortunately, the beauty of the stemming exercise was that it leveraged participants' sometimes conflicting propensities to contribute and to create by giving them a chance to look over their work product and decide which response helped further the discussion.

¶49 In the community council environment, several members described how, during the exercise, they felt a desire to let one of their favorite sentences wait for later discussion because they had an idea how another of their sentences could complement something already presented. Once momentum started building about a specific issue, the inclination to "contribute" (read conform) led to members' selecting ideas that would build on or clarify rather than refute a particular thought-thread. This co-opted the traditional battles of the articulate, strong-willed, and passionate by uniting their energies to try to solve very complex and difficult problems. The final product in the community council setting was a set of clearly defined questions and some amazing proposed solutions.

Stemming in the Practitioners' Council

¶50 Though a stemming exercise looked like it would be helpful, our time was more limited with the Practitioners' Council. We were optimistic that we could reduce the discussion session to forty minutes because our group was roughly half the size of the community council. The size of the group and the duration of the session are typically defined by the problems you are trying to identify and solve. Osborn suggested "the ideal number is about a dozen."[57] But others have referred to groups of two, four, or six as producing beneficial results.[58] Similarly, though most sessions we have participated in have taken hours, at least one author has suggested that "[a]bout 40 minutes is the optimum time for a brainstorming session."[59]

¶51 With that in mind, we decided that we would sit down and draft our instructions for the stemming exercise and then draft the actual stems. We followed the standard stemming method of encouraging quick, but repeated, responses, knowing that by the time the practitioners completed the third finished sentence, they would have slowed down and deliberated a bit. We asked the attorneys to

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55. MICHAEL A. ROBERTO, KNOW WHAT YOU DON'T KNOW 33 (2009).
56. OSBORN, *supra* note 50, at 191.
57. *Id.* at 159.
58. Om P. Goyal, *Brainstorming with Yourself, and Others*, 78 HYDROCARBON PROCESSING 179, 183 (1999).
59. JOHN ADAIR, DECISION MAKING & PROBLEM SOLVING STRATEGIES 72 (2007).

e-mail us their responses—though this required several follow-ups and reminders. In the end only about four-fifths of the participants responded in advance, but all brought their answers to the meeting.

¶52 The stems themselves were not very sophisticated. For our first set of meetings, we decided to use five stems that probed the attorneys' use of online resources, search behavior, and observations of weaknesses in law school legal research instruction.[60] After defining the five stems, we decided to organize them with the most concretely answerable stems first and then move to broader conceptual ideas. Our first five stems were:

1. The feature on Westlaw or Lexis that I use most often is . . .
2. Besides case law, the most important source in Lexis or Westlaw I use is . . .
3. The biggest research-related mistake I see inexperienced attorneys make is . . .
4. The single most important legal research skill that new attorneys need is . . .
5. The most important thing to remember when using Lexis/Westlaw is . . .[61]

¶53 While the first two stems came directly from ongoing discussion among legal research instructors about the most important features of LexisNexis and Westlaw that should be taught, the third question was an attempt to shine some light on an area we knew little about. As lawyers and librarians, we tend to define and solve problems that are brought to our attention by either clients or patrons. While some detective work is important, problems typically come to us, and we don't spend much of our time defining problems that might be systemic or a consequence of our otherwise exemplary problem-solving behavior.

¶54 Service industries have celebrated the ability to identify problems as an important management tool.[62] But their focus is often more fixed on a system as a whole than on a complex legal matter or a specific reference question that at least initially looks solvable. By asking our council what types of mistakes they had seen others make, we hoped to uncover gaps between what we thought we were teaching and what our students actually did in the early part of their practice. After setting the context with the third question, we attempted to generate more focused ideas about skills and tools with the fourth and fifth questions.

¶55 From our experience, the face-to-face discussion requires preparation and a certain amount of skill to produce useful results, with the former probably more important than the latter. Reviewing stemming responses ahead of time gives facilitators a sense of where the conversation might go in the meeting. More important, it allows the identification of follow-up questions, including questions to clarify a response that might appear to be a misreading of an essential point of an initial stem. As in any brainstorming activity, the pre-meeting review requires the suspension of criticism.

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60. Based on the time constraints of the attorneys, we decided to meet with the Provo practitioners in Provo and the Salt Lake practitioners in Salt Lake. This meant that we used each stemming exercise twice to cover both groups. This worked well, because we could focus our second effort a little better based on our first experience.

61. A copy of our original stemming exercise is included *infra* as appendix B.

62. *See* Roberto, *supra* note 55, at 6–9.

¶56 It also requires a healthy amount of skepticism. Existing behavior determined by library policy or practice may be indirectly or directly criticized in participants' responses. More commonly, not all observations will be productive. Knowing ahead of time that someone is proposing a three-week-long, sixty-hour-a-week, reality-TV-style internship as the best way to teach legal research helps you set reasonable expectations for the exercise, and gives you time to practice saying diplomatically "that's an interesting idea" without rolling your eyes. Though it may take practice to become unflappable, most of the ideas that you read will fuel your desire to do things differently and better. For the best results, as a facilitator you should fight any instinct to control or lead the group to a conclusion that you or your colleagues have already drawn.

¶57 After working with groups of people for years, we have found that it works best to have two facilitators in face-to-face meetings. Besides providing safety in numbers, a second set of eyes and ears leaves one person free to drive the discussion and the other to observe the temperament of council members. Participants often alter their previously submitted stems as a result of the group discussion. Summarizing a discussion that flows away from the initial written responses can be difficult. When your back is to the rest of the council as you write summary statements, it is very helpful to have a colleague keeping his or her eyes on members' body language. This helps the supporting facilitator raise clarifying and follow-up questions to improve or correct a summary statement. It also helps to have a second perspective on summarizing the ideas presented and documenting what actually transpired in the meeting when you review your notes at a later date.

¶58 Documentation can take many forms. In our initial meetings, we used a digital camera to take a snapshot of the whiteboard before we erased it and moved on to the next discussion. In subsequent meetings we used both the camera and audio records to make sure we had accurately documented the conversations. The audio files were transcribed and matched with the pictures to remind us what actually transpired. This saved us the time of trying to transcribe statements during the meeting and let us focus our attention more on the flow of ideas than on recording precisely what was being said.

Results

Lessons for the Classroom

¶59 The Practitioners' Council has been successful in connecting us with current legal research practice. It has provided us with new perspectives that have aided our legal research instruction. While many of the things we learned were not groundbreaking, the process has helped ensure that we remain grounded in legal research as it is actually practiced, which better prepares and motivates our students. A few examples of what we learned and changes that resulted are described below.

Court Rules

¶60 One of the first things we took away from the Practitioners' Council was a need to focus more on court rules in the first-year curriculum. Court rules may

have been one of the first things that stuck out in our discussions, because neither of us taught it very well. We both mentioned court rules in our first-year class-rooms, but were content to leave an in-depth discussion of the topic to the advanced legal research course. Our interaction with the council caused us to rethink the way we taught court rules to our first-year students and to develop exercises that would get our students into these sources in the first year. The exercises are brief, but give the students some hands-on learning to increase the chances of their retaining the information.

¶61 What we gained from the council in this instance was not that court rules existed or how to search them; it was the realization that practitioners rely on court rules to such a degree that they should be emphasized to our students in their first year. It was a reminder that while court rules may come up seldom in academic research, they are a constant in client-centered research. This refocusing is an enormous benefit of connecting with practitioners.

Context

¶62 Two of the five questions in our initial stemming exercise led to discussions emphasizing the importance of context in legal research. The third stem probed for the biggest research-related mistake practitioners saw inexperienced attorneys make, and the fifth stem targeted what practitioners felt was the most important thing to remember when using LexisNexis or Westlaw. In both discussions, a common theme developed around young, inexperienced, or just plain sloppy attorneys who mistook a collection of cases containing keyword phrases for the rule of law in a particular area.

¶63 While a general critique of research strategies was beyond the scope of our project, it is interesting to note that all attorneys on the panel expressed concern over how ubiquitous keyword searching has made it easy to mistake an outlying point of law as representing the field as a whole. Younger attorneys on the council expressed the realization that they had to guard against the bad practice, while the longest practicing member of the council expressed sympathy for young attorneys who were under time pressures to come up to speed in areas where they had never practiced before. He lamented the disappearance of a time when attorneys would read every case in the jurisdiction or field to make sure they developed a holistic understanding. When he started to practice in the 1970s, there were few affordable alternatives to reading numerous cases. With the dominance of electronic research models, the opposite is now true. From his perspective, electronic resources encourage an eclectic, as-needed approach, which can save an incredible amount of time when serving a diverse practice, but has the unintended consequence of limiting attorneys' conceptual understanding of the law as a whole.

¶64 As librarians, we have most often encountered this problem when student externs contact the library because they cannot find clear summaries in case law that articulate the rule they are arguing. The holdings of the cases they find online usually only deal with exceptions and limitations to the general rules. The general rules are often listed in cases beyond the first few results pages in Westlaw or LexisNexis. This is typically because the common law in the area of practice was settled long ago. Proper use of secondary sources would have helped prevent the

mistake, but excessive reliance on keyword searching in case law leaves some lawyers blind to the fact that they are actually missing the primary points they should be arguing.

Anecdotes and Motivation

¶65 One of the unanticipated results of the Practitioners' Council was the number of valuable anecdotes we gathered from the practitioners. Each of us has our own favorite war stories we tell in our legal research classes: the time we used the digest to find a case others could not; the time we forgot to Shepardize; the time we, or better yet another associate, ran up a huge Westlaw bill. These stories are valuable because they demonstrate the principles we are teaching. Students take an interest in these stories and tend to remember them more easily than an explanation of how a digest works.

¶66 Lawyers are generally good storytellers, and we found this to be true even when the topic was legal research. We gathered a wealth of anecdotes that were easily incorporated into our classroom discussions. When the topic of the importance of understanding an entire case instead of just looking for the perfect quote came up at one council meeting, one attorney shared that in a brief, opposing counsel had quoted a Utah case stating that a Missouri court held similarly to opposing counsel's position. Upon analyzing the case himself, our attorney discovered that the very next line of the case read something to the effect of "we disagree with the Missouri court." Opposing counsel had missed it completely.

¶67 These anecdotes rejuvenated us and our classroom discussions. Old examples from our time practicing either gave way to or were now surrounded by examples that occurred last month or last week.[63] And as we continue to meet with the council, our pool of examples continues to grow, allowing us to incorporate more real-world experience into our classrooms.[64]

¶68 Along similar lines, we quickly noticed that the Practitioners' Council helped pique our students' interest in what we were teaching. Because much of law school feels far away from legal practice, attitudes toward legal research instruction can suffer as well, despite the fact it is one of the more practical skills taught in law school. But as our students saw that we were reaching out to practicing attorneys and had a connection with the real world, they appeared more interested in what

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63. As discussed earlier, while recent practice experience is a benefit to law librarians teaching legal research, it cannot be the only solution, since every day we move further away from practice. The Practitioners' Council provides a solution to this problem by combining one's personal experience with other, more current experiences from practicing attorneys.

64. This demonstrates another benefit of the council—the gathering of perspectives and experiences from a number of attorneys. While each of us has our own unique experiences, our students are benefited even more when we gather and share information and experiences from various attorneys across an array of workplaces and practice areas.

we had to say.[65] This result is in line with educational research that finds that "perceived *relevance* is a critical factor in maintaining student interest and motivation."[66]

¶69 This played out in several ways within the classroom. For example, in the past, when teaching secondary sources, we have tried to give several reasons why these resources can help by providing background information, citations, search terms, and so forth. Now we introduce the topic by saying something like this:

> Attorneys we've met with recently told us the biggest research-related mistake they see inexperienced attorneys make is their failure to understand the context of the issue they're researching. They said they see many inexperienced attorneys jump right into searching case law without consulting some sort of secondary source first for background information.

¶70 Another example is when we teach about the Focus/Locate tools for narrowing searches while saving on costs. After teaching about these tools and why legal researchers would use them, we say, "The attorneys we've met with use the Focus/Locate tool often to narrow down searches and save money." Many other examples have arisen spontaneously in our classrooms as we reach topics we have discussed in the Practitioners' Council. These examples help give weight to what we are saying and provide extra motivation for students to focus on learning what we are teaching.[67] Students see that we are striving to make our teaching more meaningful and relevant to them, and this helps improve legal research instruction and learning.

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65. As much as we do not like it to be true, many people do not find legal research to be inherently interesting. Many students need some extra motivation to engage with the subject, and many authors have written about the importance of making instruction relevant to students' lives. *See* Ellen M. Callinan, *Simulated Research: A Teaching Model for Academic and Private Law Librarians*, 1 Perspectives: Teaching Legal Res. & Writing 6, 6 (1992) ("Relevance should be the guiding principle in research instruction because it fosters effectiveness. That which is relevant is retained. That which is retained can be applied."); Maureen F. Fitzgerald, *What's Wrong with Legal Research and Writing? Problems and Solutions*, 88 Law Libr. J. 247, 263 (1996) (adult students "need to relate tasks directly to preparation for future social and professional roles."); Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 Law Libr. J. 59, 64, 2002 Law Libr. J. 4, ¶ 17 ("giving relevance to the subject [shows] learners how the new knowledge or skills will be important to their lives now and in the future"); Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] like a Lawyer: Legal Research for the New Millennials*, 8 J. Ass'n Legal Writing Directors 153, 187 (2011) ("There is no better way to keep students engaged and motivated than to demonstrate that the skills they are learning in class are the ones they will need in the 'real world.'"); James B. Levy, *Escape to Alcatraz: What Self-Guided Museum Tours Can Show Us About Teaching Legal Research*, 44 N.Y.L. Sch. L. Rev. 387, 392 n.19 (2001) ("Adult orientation to learning is life—or work—centered. Therefore, the appropriate frameworks for organizing adult learning are life—and/or work-related situations, not academic or theoretical subjects." (quoting Frederic H. Margolis & Chip R. Bell, Managing the Learning Process: Effective Techniques for the Adult Classroom 17 (1984))).

66. Jeff Fox, *Establishing Relevance*, Teaching Professor, May 2010, at 1, 1.

67. Sandra Sadow & Benjamin R. Beede, *Library Instruction in American Law Schools*, 68 Law Libr. J. 27, 29 (1975) ("Often, [first-year students] lack the motivation to learn any more about legal research than they need to complete their first-year course requirements.").

Mediating Novices to Experts

¶71 As a result of the feedback we received in our first meetings in 2009, we focused our 2010 meetings on drilling deeper into our board members' research practices. Our inquiry was based on our desire to apply the educational psychology theories regarding deliberate practice and mediated learning experience (MLE) to our research instruction.[68] This meant that we needed to distill specific cognitive structures that could be taught to our students as the foundation for their ongoing development of skills, ideally through compelling practical assignments. To flush out the differences between novice and expert performance, we started by attempting to identify how our attorneys classified research problems. Specifically we asked them to describe particularly challenging research assignments, and then to describe those that they would characterize as easy.

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68. Almost a decade ago, Carol M. Parker referenced the work of psychologist K. Anders Ericsson, explaining:

> Studies of experts in various endeavors have identified some of the ways in which experts differ from novices and suggest that expertise is acquired through "deliberate practice." The term "deliberate practice" refers to the undertaking of learning activities that present "a well-defined task with an appropriate difficulty level for the particular individual, informative feedback, and opportunities for repetition and for correction of errors." Mechanical repetition—such as simply reading and rereading text—will not suffice; concentration is essential. Studies of acquisition of expertise suggest that about ten years of deliberate practice seem to be necessary to become an expert in an endeavor.

Carol M. Parker, *A Liberal Education in Law: Engaging the Legal Imagination Through Research and Writing Beyond the Curriculum*, 1 J. Ass'n Legal Writing Directors 130, 136 (2002) (footnotes omitted) [hereinafter Parker, *Liberal Education*]. Four years later, Parker identified the "practicing bar" as "an obvious place to look for answers" to the "key questions for legal education": "'what do expert lawyers know how to do?' and 'how can law schools facilitate deliberate practice of those skills?'" Carol McCrehan Parker, *Writing Is Everybody's Business: Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum*, 12 Legal Writing: J. Legal Writing Inst. 175, 183 (2006) [hereinafter Parker, *Everybody's Business*]. Parker cites Michael Hunter Schwartz's call for the application of self-regulated learning as a strategy to create expert law students and ultimately lawyers, but neither author directs much attention to the specific cognitive structures that distinguish novice from expert performance other than the latter group's often showing self-directed learning behavior. Parker, *Everybody's Business*, *supra*, at 182–83 (citing Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 Mich. St. DCL L. Rev. 447, 454–55, 463). Though both authors do an excellent job of explaining what the ultimate student outcomes should be, neither is very specific about how teachers actually contribute to those outcomes, other than describing them in detail to students.

Mediated learning approaches spend time looking at questions of how things should be taught, not just what should be taught. The theory of MLE, developed by psychologists in the late 1950s, is rarely directly discussed in terms of Ericsson's deliberate practice. For an interesting history of MLE, see Howard Sharron, Changing Children's Minds: Feuerstein's Revolution in the Teaching of Intelligence (1987). The failure to connect deliberate practice to MLE is unfortunate, since deliberate practice presupposes a coach, mentor, teacher, or trainer to develop cognitive structures that lead ultimately to self-identified, self-corrective behaviors. For more on Ericsson's work, in addition to the summation in Parker, *Liberal Education*, *supra*, see Gregg Schraw, *An Interview with K. Anders Ericsson*, 17 Educ. Psychology Rev. 389 (2005).

We find Feuerstein and his colleagues' rationale for the need for mediation, and ultimately its benefit, to be extremely valuable in the context of developing legal research expertise. *See* Reuven Feuerstein et al., Beyond Smarter: Mediated Learning and the Brain's Capacity for Change 25–37 (2010). Once the instructor's role has been defined in terms of mediated learning, then the task becomes an attempt to figure out just what makes an expert researcher.

¶72 As with the 2009 stemming experience, we found that the answers both confirmed our experience and expanded our understanding. While the "easy" spectrum did not surprise us—the most commonly referred to "easy" assignment was researching a statute—we were caught off guard when all the practitioners listed "research a statute" as their most difficult assignment as well.

¶73 The difference in reported difficulty centered on how the statute was applied. Two examples seemed particularly helpful. From the criminal defense attorney, we had the example of a death penalty case on appeal that ran into a cap on funds for the defense. After the cap was exceeded, an application was made for additional funds; however, at the same time the legislature passed a statute that not only limited the amount allocated to the appeal, but included a provision that left a defendant to self-representation when an attorney was forced to withdraw because of the potential ethical conflicts caused by a lack of sufficient funding. The "get tough" statute failed to state clearly whether it applied to cases that were already in process, or if it was completely prospective. In this case, the old statute was easy to find, the new statute was easy to find, but determining which statute applied was very difficult.

¶74 From the civil practice side, the hard problem dealt with what information from a county medical facility could be divulged to law enforcement officers without violating HIPAA.[69] The *U.S. Code* provision was straightforward enough, but because it did not speak specifically to the issue at hand, the certainty of the statute did not assure an easy time completing research. In this case, multi-jurisdictional research was needed to understand how other states had treated the problem. Ultimately, a task force was set up by the Utah Attorney General's office to develop a policy, since no case had been decided on the issue.

¶75 Besides the difficulties of subject matter jurisdiction and temporal application of statutory provisions, another area of difficulty reported was that of the time frame for an assignment. Based on a firm's litigation calendar, research can have either a short or long window for completion. Two-thirds of the practitioners reported difficult research problems related to time constraints imposed by the litigation clock. Though we were aware that many attorneys experienced stress trying to balance the demands of the practice, we would not have conceptualized the timing of the litigation, and its limit on the time frame for legal research, as a dimensional qualifier for the difficulty of a legal research assignment. Typically time pressures were just treated as a background stressor, not a dimension of legal research that should be taught directly to the students.

¶76 This underscored the limitation of a strictly academic approach to research training—the scientific enumeration of a checklist of skills like "research statutes." We who research daily do so through the lens of our experience. Like wearing eye glasses, occasionally we see the frame or a smudge on the lens—that is, we think about our training and strategy—but commonly we look through the structure and just perceive reality. Because as librarians we would classify the attorneys' examples of difficult problems as statutory applications of first impression, we had never thought to teach students that this type of problem, in reality, is just a par-

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69. Health Insurance Portability and Accountability Act, 42 U.S.C. § 300gg (2006).

ticularly tricky type of statutory research. The difficulty is not related to how to use a tool like the statute's index or annotations to find the text, but instead the challenge comes from the application of what is found. Finding is only the beginning of the legal research skill; application is what distinguishes expertise. This epiphany was a result of the feedback from the council.

¶77 The insight was especially valuable because we had been planning to expand our use of practical research assignments (practicums). The practicums had received positive evaluations from students, but they were not assigned until the middle of the second semester of the legal research and writing course. We had hoped to develop smaller assignments (micro-practicums) as a way "to develop a collection of authentic training tasks that can qualify as deliberate practice activities and support self-regulated learning, generation of feedback, and repeated practice of corrected performance."[70] What the Practitioners' Council taught us was that our checklist approach to legal research skills needed more refinement. Not only would we need to develop assignments that required finding a statute, the exercises would also have to teach the student how to develop sensitivity for how difficult the discovered statute would be to apply. Not only would time limits need to be part of the micro-practicums, but we would also need to teach students to be aware of how timing increases the difficulty of assignments. We were committed to implementing the Boulder Statement,[71] and the Practitioners' Council helped us to understand the metacognitive elements of a task that we were likely to take for granted.

Lessons for Creating and Running a Practitioners' Council

¶78 Taking an idea and making it a reality teaches you a lot about what works and what does not. This project was no different. We hope that those interested in giving the Practitioners' Council a try can learn from what we've done and make their experience even better than ours has been.

¶79 One thing to keep in mind is that dealing with attorneys takes patience. As attorneys ourselves, we anticipated this would be the case and were not surprised when certain attorneys could not meet their commitments to us.[72] One of the attorneys who initially agreed to help never responded after our initial few contacts. Another planned to attend our meetings, but was pulled away at the last minute on two occasions.[73] This taught us that it is best to have a bigger group of attorneys participating in case such situations arise. And if they all participate, a few extra attorneys on the council does not hurt.

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70. Tamara van Gog et al., *Instructional Design for Advanced Learners: Establishing Connections Between the Theoretical Frameworks of Cognitive Load and Deliberate Practice*, EDUC. TECH. RES. & DEV., Sept. 2005, at 73, 79.

71. Boulder Statement on Legal Research Education and Boulder Statement on Legal Research Education: Signature Pedagogy Statement, *available at* http://www.utexas.edu/law/faculty/pubs /bb26663_pub.pdf (last visited July 7, 2011) [hereinafter Boulder Statement].

72. Overall the commitment by the majority of attorneys was fabulous. They did what we asked them to do and came when we asked them to come, despite their busy schedules.

73. He felt so bad, however, he took us out to lunch and brought two colleagues along so we could all have a conversation about legal research. We forgave him.

¶80 We also learned that it is important to focus on what you really want to know in the face-to-face sessions. Most attorneys like to talk, which is generally good in a Practitioners' Council, but the time flies. During our first attempt at a face-to-face meeting, we had a whole agenda of things we hoped to discuss. We spent most of the time on the first few items and rushed through the rest. The discussion was great, but we did not get everything we wanted out of the meeting. For subsequent meetings we decided we would focus on only a few specific questions so that we could delve deeper.[74] Naturally we had to leave out certain questions we were curious about, but we felt much more satisfied with the depth of the conversation.

¶81 As mentioned above, we found that having at least two people serving as facilitators for the stemming exercise during the face-to-face meetings was essential. The same is true for the Practitioners' Council project as a whole. Our Practitioners' Council would not have become a reality without us both. Since this project was outside of both of our primary job responsibilities, it often found itself on the back burner. But it wouldn't be long before one of us would start talking about arranging a council meeting or bring up a question we thought we should ask the council. We could then split the workload of contacting the practitioners and making needed arrangements. We anticipate this collaboration will be a driving factor in the council's future success as well.

¶82 We also found that the practitioners enjoyed being informed of things we had done with their feedback. At the start of a new council session we tried to give them an overview of any changes we had made to our instruction based on their feedback. They seemed genuinely interested in this, and we believe it promoted a greater investment on their part. They could tell they were really helping to improve legal research instruction at BYU.[75]

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74. Our second stemming exercise, for example, consisted of only two stems: "In the past year, one of the most demanding problems I had to research was . . ." and "In the past year, one of the least demanding problems I had to research was . . ."

75. This willingness of practitioners to contribute to education is also documented in the context of advisory boards for engineering schools. *See* Stephen R. Genheimer & Randa Shehab, *The Effective Industry Advisory Board in Engineering Education—A Model and Case Study*, *in* 37TH ASEE/IEEE FRONTIERS IN EDUC. CONF., SESSION T3E, at 6 (2007), *available at* http://fie-conference.org/fie2007 /papers/1415.pdf. Genheimer and Shehab use four dimensions developed by R.E. Quinn and J. Rohrbaugh to review advisory board effectiveness. The four quadrants defined were the human relations model—a board that focused on the board itself in attempts to maintain group cohesion, based on the various personalities on the board; the internal process model—a board that focused internally on the actual administrative workings of the group, including communications, structure of meetings, and the quality of agendas; the rational goal model—a board that focused on planning and setting goals looking outside the board itself to the things that actually got done; and finally the open systems model—a board that focused outside itself to look at how it could best meet institutional objectives. *Id.* at 8–9. The authors conclude that "the effective advisory board will have all four dimensions of organizational effectiveness in place . . . ." *Id.* at 11. While we found it easiest to concentrate on the relations between board members, the planning, communication, and development of meeting activities led directly to the valuable feedback we received.

Future Activities

¶83 One of the things we especially like about the Practitioners' Council is that it is extremely flexible—it can be what we want it to be. To this point we have mainly focused on getting feedback through the stemming exercises in our face-to-face meetings. But we have many other ideas for utilizing the Practitioners' Council in the future that may appeal to law librarians wondering whether they want to create a Practitioners' Council of their own.

¶84 As discussed earlier, one of the reasons for soliciting feedback from practicing attorneys is that they are the evaluators of our students' legal research skills in the real world. In the future we hope to ask our practitioners to comment on student work product. During their second semester, our students' final project is a research scenario that results in a one- to two-page response. We would like to know how the best responses compare to what practitioners expect of a summer associate or even a young associate. This would give us a better idea of whether the work product our top students are producing is really what practitioners want to see.

¶85 We also hope to leverage the Practitioners' Council to add new research problems to our curriculum. In the past few years we have focused on adding more real-world research assignments to our curriculum.[76] We have used a number of resources—workbooks, research assistants, ourselves—to come up with research scenarios that help teach legal research skills while giving students a more realistic research experience. The Practitioners' Council seems like a natural place to find real-world research scenarios. While the practitioners may have to be vague on certain details, we believe we could adapt these scenarios into viable research problems.[77] They can even be introduced as issues recently encountered by a practicing attorney, which will likely enhance student interest.

¶86 We anticipate that other ideas for using the Practitioners' Council will come as we continue the project. In our minds, the flexibility of the Practitioners' Council is one of the reasons it is such a useful tool. While we have used it in certain ways that have been helpful to us, others may find very different approaches. However it is used, the most important aspect is the connection it creates between practicing attorneys and academic law librarians teaching legal research.

Conclusion

¶87 The ivory tower is the home of academic law librarians who teach legal research. But as legal research practice continues to change, we must reach outside

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76. This is in line with the recently released Boulder Signature Pedagogy Statement, which states that legal research educators "teach an intellectual process for the application of methods for legal research by: 1) Using a . . . mix of realistic problem types." Boulder Statement, *supra* note 71.

77. Current legal research education literature advocates collaboration with practitioners in creating problems. Kaplan & Darvil, *supra* note 65, at 184 ("Another way skills courses can effectively integrate research instruction is through the collaboration of skills faculty with . . . practitioners on the design of research problems. Because they are in the field . . . practitioners have a solid understanding of the types of issues new attorneys will face.").

of the ivory tower and connect with contemporary legal research practice. The Practitioners' Council has been a valuable tool for us to connect with attorneys who are in the thick of legal research practice. This connection has helped us improve our legal research curriculum, motivate our students, and align our instruction with current legal research practice.

Appendix A

Legal Research Practitioners' Advisory Council (LRPAC)

Purpose:
The Legal Research Practitioners' Advisory Council exists to assure that legal research instruction is well informed by contemporary legal research practice.

Justification:
Historically there have been three pillars to legal research curriculum:

1. The practice experience of law librarians,
2. Legal publishers' representation of beneficial application of their sources, and
3. Historical approaches to applying printed legal materials to traditional legal questions.

Missing from these approaches is a contemporary perspective on how practicing attorneys conduct research, what sources are most commonly used, which general approaches taught in law school are more or less useful, and what type of problems interns and junior associates should be prepared to solve based on the continually changing practice and legal information environments.

Constituency:
The council is made up of attorneys who practice in a variety of settings—small, medium, and large firms, as well as general and boutique practices. Attorneys are asked to volunteer their time to give feedback to legal research faculty, informally and formally. While we will carefully consider all feedback we receive, we cannot guarantee that it will be implemented.

Methods:
The LRPAC is asked to:

1. Be familiar with the goals of the first-year legal research and writing program.
2. Provide feedback on the types of research tasks interns, clerks, and associates are typically conducting at their firms.
3. Provide feedback about existing and proposed legal research assignments.
4. Provide feedback about specific research practices in their environment including sources and methods most often used.

Time Commitment:
Each attorney is asked to commit approximately five to ten hours per year as a member of the council. Several brief surveys about sources and methods used, thought questions/brainstorming sessions intended to better inform law librarians about lawyers' research behavior, and other correspondence to safeguard the relevancy of legal research instruction are planned. Interactive sessions will be conducted in person or via conference call.

Examples:

One example of LRPAC action would be to have members meet to review a set of core legal research sources that are covered in the first and second semesters. Members would give feedback about the frequency that sources are used in their environment, their preference for the format in which they conduct the research in those sources (electronic and print), and the method they used to record their research. Based on the feedback, participating legal research faculty would then evaluate the existing curriculum to determine the congruence with contemporary practice.

Another example would be to have LRPAC members help librarians brainstorm about the types of assignments that are typical for clerks or interns. This discussion would focus on the skills needed, and the types of assignments that might most appropriately assess student skills, as well as provide feedback from practitioners on the amount of time a typical assignment would be expected to take.

Appendix B

Stemming Exercise

Introduction to Stemming Exercise:

Below are five clauses. Please complete the sentence at least three times, but no more than five times. Do not deliberate; instead, just react to the question with the first thing that comes into your mind. If the same thing comes into your mind all three times you read the stem, just leave your first response. The responses will be the basis for our discussion on how to increase the value of legal research instruction at BYU.

1. The feature on Westlaw or Lexis that I use most often is . . .

2. Besides case law, the most important source in Lexis or Westlaw I use is . . .

3. The biggest research-related mistake I see inexperienced attorneys make is . . .

4. The single most important legal research skill that new attorneys need is . . .

5. The most important thing to remember when using Lexis/Westlaw is . . .