On-Line Legal Research Workshops

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ABSTRACT

Like riding a bicycle, playing tennis, or driving a car, legal research is a skill, and like any other skill it is learned by doing and not by listening to a lecture, though lectures are indispensable for introducing the skill. The mental processes applied in electronic legal research may differ from those applied to book legal research, but because both electronic and book research are skills, a guided workshop in electronic legal research may be based on similar principles to that underlying a workshop in book legal research with appropriate modifications.

The aspects of the electronic legal workshop proposed here are as follows: (1) scheduling as soon after the introductory lecture and treasure hunt exercise as possible; (2) guided questions which both lead students through a process, but which also give them freedom and independence to make choices; (3) a realistic research problem which requires reflection about what has been found as opposed to simply finding an answer, but which is not as complex as the research problem for the typical open memo; (4) work in small groups or pairs; (5) immediate discussion and feedback on the strategies employed in the research exercise.
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INTRODUCTION

Professors and librarians who teach legal research have often observed that students learn how to research by actively researching rather than by listening to a lecture on how to research. To drive home this point, commentators have employed a variety of comparisons. They tell us that learning how to research is like learning how to ride a bicycle, or play tennis, or drive a car, or swim. Lectures on these activities might teach a person a lot about them, but few have learned how to ride a bike, develop a topspin, make a left-hand turn in two way traffic, or do a backstroke from a lecture. Exactly the same is true of legal research because performing such research, like all of these activities, is a skill, or more accurately, a set of skills. Lectures may be effective for explaining substantive or doctrinal material, but a skill is typically acquired by hands-on

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1 Associate Professor of Law, Barry University School of Law. I owe a debt of gratitude for the work of my research assistant, Kathryn Thorner, who contributed much to the development of this paper.
2 K.B. Gerdy, Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment, 94 LAW LIBR. J. 59, 60 (2002), uses the bicycle analogy; 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, 401-02 n.43 (2001) (citing B.K. Dyer, Whatever Happened to Legal Writing at Utah, 26 J. LEGAL EDUC. 338, 339 (1974)), is partial to the tennis analogy; Maureen F. Fitzgerald, What's Wrong with Legal Research and Writing? Problems and Solutions, 88 LAW LIBR. J. 247, 258-59 (1996), goes with the analogy of driving a car or flying an airplane; and most recently, S.A. Moppett & Rick Buckingham, Library Research Labs: A Hands-On Approach to Taking the First Step with Your Students to Reflect Good Practice in Legal Education, 14 PERSPS. 73, 73 (2006), have opted for the swimming analogy. The point is clear enough, performing legal research, like all these activities, is learned by doing.
3 James B. Levy, Better Research Instruction Through ‘Point of Need’ Library Exercises, 7 LEGAL WRITING: J. LEGAL WRITING INST. 87, 93 (2001), states, “All commentators agree that legal research is a skill.” (citing Wesley Gilmer, Jr., Teaching Legal Research and Legal Writing in American Law Schools, 25 J. LEG. EDUC. 571, 571 (1973) (stating, “The skills of legal research and legal writing are akin to the skills of playing . . . the piano and guitar, and the skills of driving an automobile.”)); I. Trotter Hardy, Why Legal Research Training Is So Bad: A Response to Howland and Lewis, 41 J. LEG. EDUC. 221, 223 (1991) (stating, “legal research is a skill’’); and Michael J. Lynch, An Impossible Task but Everybody Has to Do It: Teaching Legal Research in Law Schools, 89 LAW LIBR. J. 415, 429 (1997) (noting that legal research, “[l]ike most skills . . . must be used or it will decay.”).
Articles by Levy and by Moppett & Buckingham have proposed that students can most efficiently and effectively begin to develop their book legal research skills through workshops that allow them to solve research problems in groups, with guiding questions, and with immediate access to and feedback from the class professor or a librarian. The workshop approach and the suggestions of these commentators provide a vital means of initiating and developing a “feel” for doing legal research in books beyond the preliminary introduction encompassed by lectures and the so-called “treasure hunt” or bibliographic approach. However, these articles only address the teaching of book research, not electronic or on-line research, which is likely to become the dominant type of research utilized by students. The instant article builds on the work of Levy and Moppett & Buckingham and proposes that, despite the widely noted differences between book research and on-line research in regard to how they are most effectively done and taught, book research and on-line research share a similarity that is crucial for teaching

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4 This is another matter upon which commentators are in agreement. Ursula H. Weigold, *The Attorney-Client Privilege as an Obstacle to the Professional Development of Law Students*, 33 PEP. LAW REV. 677, 690 (2006) (stating, “For lawyers, repeated experience is the leading source of learning for the skills of oral and written communication, client relations, and fact gathering.”); Levy, supra note 2, at 393 (stating “Learning to use the law library is a skill. The best way to teach it, like any other skill, is to provide students with classroom instruction followed immediately by closely supervised practice of that skill in order to reinforce the classroom lessons.”) (footnotes omitted)); Fitzgerald, supra note 2, at 264 (“According to the literature, skills courses are best taught in small-group settings where students are able to practice skills and obtain immediate feedback.”). Moppett & Buckingham, supra note 2, at 77, point out that the “hands-on approach is consistent with today’s students’ expectations of their learning environment; as students who have grown up with instant messaging, e-mails, and limitless Internet resources, they expect to ‘try things rather than hear about them.’” (quoting Carole A. Barone, *Technology and the Changing Teaching and Learning Landscape: Meeting the Needs of Today’s Internet-Defined Students*, AAHE BULL. (May 2003)).

5 Levy, supra note 3; Moppett & Buckingham, supra note 2.

6 See infra notes 46-53 and the discussion in the accompanying text.

7 There has been some provocative commentary regarding the differences of thought processes applied in book legal research and electronic legal research. Carrie W. Teitcher, *Rebooting the Approach to Teaching Research: Embracing the Computer Age*, 99 LAW LIBR. J. 555, 559-60 (2007), characterizes students who are dependant on electronic research as “‘finders’ (of something)” who are “increasingly less discriminating at evaluating what they found.” Consequently, the students “were becoming poorer
either: both types of research are skills, so that students for the most part learn how to
perform both through doing and not through listening. Therefore, just as students most
efficiently and effectively begin to develop their book legal researching skills through the
workshop method advanced by Levy and Moppett & Buckingham, so also do they most
efficiently and effectively begin to develop their on-line legal research skills through a
workshop method paralleling in many respects the workshop approach for book research
advocated by these authors.

After the introduction, Part I of this article will present my own experiences in
arriving at the workshop method of teaching legal research. Part II will present the
workshop method for books as practiced by Levy, and Moppett & Buckingham, and its
benefits and advantages over lectures. Part III will then outline in detail the electronic
workshop I am developing, emphasizing the similarities and differences from the book
workshop approach, the student reactions to an experimental electronic research
workshop, the beneficial results of the method, and changes I plan to make to the class
based on student evaluations.

PART I: TEACHING LEGAL RESEARCH IS DIFFICULT

When I began to teach legal writing, I did not have to teach legal research, except
to the extent that research instruction was incidental to my writing assignments. The law

‘thinkers.’” Id. Teitcher further distinguishes the two types of research, “Traditional research sources are
organized around topic headings and indexes and are typically presented in a linear form with a beginning,
a middle, and an end. In contrast, the Internet and hypertext foster a search technique that is fluid,
multidirectional, and interactive.” Id. at 567 (quotations and citations omitted). “Without the hierarchical
structure of books, students cannot see the larger picture and understand the overall context of what they
are searching for. Thus, without a clear understanding of the law, their Internet search results are
necessarily limited.” Id. at 567-68. See also, Sanford Greenberg, Legal Research Training: Preparing
Students for a Rapidly Changing Research Environment, 13 LEGAL WRITING: J. LEGAL WRITING INST. 241,
258-65 (2007); and Diana Donahoe, Bridging the Digital Divide Between Law Professor and Law Student,
8 I began my legal writing teaching at the Florida A&M University College of Law.
school provided a required first year course in legal bibliography taught by the school’s librarians. They were responsible for research, and I didn’t envy them that responsibility. Later, I found myself in a school where the responsibility for teaching legal research was transferred, at least temporarily, to the legal writing staff. My colleagues and I then had the challenge of deciding how to teach legal research and integrate it into the legal writing curriculum.  

I soon realized that Levy’s statement, “Teaching legal research is difficult,” is a perfect example of understatement. Confronted with the prospect of teaching legal research, I first drew upon my recollection of how it was taught in classes I had observed when I was a student of legal writing. The approach I most often saw was to lecture students. During the lecture, the instructor would illustrate the research process by holding up a copy of a volume from a legal encyclopedia, or digest, or state code, explain the information found therein, and then pass the volume around to the students, perhaps citing the pertinent pages they should look at. Sometimes the professor would make use of handouts containing photocopies of sample pages so that the students could follow the

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9 The 2008 SURVEY RESULTS of the Association of Legal Writing Directors and the Legal Writing Institute reflect the variety of arrangements Law Schools currently use to teach basic legal research. “The great majority of programs integrate research and writing instruction (151 programs). At 74 schools, legal research is taught by LRW faculty. At 52 schools, it is taught by librarians (up from 45 in 2007). At 66 schools, both LRW faculty and librarians teach legal research, and at 24 schools, teaching assistants and other students are responsible for teaching research.” ALWD/LWI Survey Highlights, ii, Teaching Research, Question 18, available at ALWD, http://www.alwd.org/surveys/survey_results/2008_Survey_Results.pdf (last visited August 9, 2009). This variety of approach may be a symptom of indecision on the part of law schools regarding the status of legal research. See Steven M. Barkan, Should Legal Research Be Included on the Bar Exam? An Exploration of the Question, 99 LAW LIBR. J. 403, 404 (2007) (stating, “While the importance of legal research is frequently acknowledged, most U.S. law schools have not devoted serious attention to training students to perform this essential lawyering skill. . . . training is typically limited to the first or second semester of law school, usually offered by a reference librarian, a legal writing instructor, a student teaching assistant, or by the representative of an information vendor.”)  

10 Levy begins his article, Better Research, supra note 3, at 87, with this observation. In his article, Escape to Alcatraz, supra note 2, at 391, he states, “Teaching legal research is especially difficult.”  

11 Levy, supra note 2, at 392, identifies lecturing as one of the typical ways in which legal research is taught with “less than satisfying” results.
professor’s discussion of what they would find in the index of a legal encyclopedia or in the annotation of a statute. Or the professor showed these sample pages with an overhead projector to point out the features under discussion more clearly.\textsuperscript{12}

Instruction in electronic legal research, though it concerned and made use of computers, screen projectors, data bases, and the internet, did not really depart very much from the lecture approach. Until just a few years ago, these lectures would take place in a computer lab. However, now that most every law student has a laptop which accompanies the student to school every day, these lectures may be given in regular classrooms with some technical or audio/visual enhancements. A librarian or representative of Westlaw or LexisNexis typically tells the students how to access the online research service, how to navigate within it, what databases they will find useful, how to do a Boolean search\textsuperscript{13} in these databases, how many hits they should get in a sample search, and what results they should have.\textsuperscript{14} A computer screen projector now makes clear what the students should be viewing on their laptops. Thus the students follow the instructors’ directions, keystroke per keystroke, occasionally looking up to check that they are on the same page, so to speak, as the instructor.

The librarians and representatives whom I observed demonstrated an impressive knowledge and command over the materials. They also exhibited great creativity in their

\textsuperscript{12} The technique of taking students through a research process with copies of pages from the relevant legal reference books may be found in several legal research texts. \textit{See, e.g.}, CHRISTINA L. KUNZ, et al., \textsc{The Process of Legal Research} (7th ed. 2008), \textit{passim}; and MORRIS L. COHEN et al., \textsc{How to Find the Law} (9th ed. 1989), \textit{passim}.

\textsuperscript{13} “Boolean searches allow you to combine words and phrases using the words AND, OR, NOT and NEAR (otherwise known as Boolean operators) to limit, widen, or define your search. Most Internet search engines and Web directories default to these Boolean search parameters anyway, but a good Web searcher should know how to use basic Boolean operators.” About.com: Web Search, \url{http://websearch.about.com/od/2/g/boolean.htm} (last visited, Aug. 10, 2009).
selection of engaging issues, or sample questions that would shed some light on the research necessary for the writing assignments which the students had to complete, and they often incorporated humor to whet the interests of the students for what was often very dry material. More importantly, these lectures presented information that was and still is basic and necessary to get the students started on electronic research. Therefore lecturing has a place in the teaching/learning process of the electronic legal research skill.

Confronted with the task of teaching research, however, I tried to emulate what I thought were the best techniques of these instructors. In order to gain credibility with the students, I considered it crucial to develop the expertise I had witnessed, whether in devising the most efficient research strategies or knowing the latest developments in Westlaw, LexisNexis, and Loislaw. Although I adopted some of the very same methods that I had observed, I thought I could improve on them in various ways: by formulating research questions that could illustrate how several resources may compliment one another, or could show students how different approaches led to the same results.

But I was dissatisfied. My overall impression was that the lectures did not motivate students. Instead, the students were remarkably passive. They followed my instructions mechanically. They listened to what I said, tapped out the keystrokes I indicated, and perhaps checked my projected computer screen to be sure they were in sync with me. They took few or no notes at all. Above all, I did not get the questions or observations from the students that I have always associated with a successful class in which the students are engaged and thinking. I doubt they retained very much. It did not

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14 I base this description on the scripts from the Westlaw and LexisNexis representatives Kimberly Wohlenberg, and David Delrahim respectively, who have ably taught at the Barry University School of Law and who have graciously shared their scripts with me.
seem to matter how well-informed, articulate or entertaining I was or thought I was. But the truth of the matter is, these were also my observations regarding student reaction to the very best research lecturers I had seen. I didn’t improve on anyone’s ability to boost student interaction, or, I am afraid, student learning.

PART II: THE BOOK LEGAL RESEARCH WORKSHOP

As a result of my dissatisfaction, I became convinced that courses which attempt to teach legal research would be most effective if they supplemented lectures and treasure hunt exercises with some sort of research experience. I began to read legal educational literature on methods of teaching legal research, and my reading confirmed my own inclination to implement a practice-oriented approach to legal research.

A. The Levy Approach

The first article to attract my attention was Levy’s Better Research Instruction Through ‘Point of Need’ Library Exercises. After noting the consensus among commentators that “legal research is a skill,” Levy states, “The best way to teach it, like

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15 Levy, supra note 3, at 87 (stating, “[S]tudents … do not get much out of passively listening to a lecture on legal research when they may not practice these skills until many days, or even weeks, later.”).
16 Id. at 87-88 (stating, “[T]he hours spent preparing the most scintillating lecture ever delivered on legal research will be of little benefit to students if they delay the start of their assignments which they almost always do.”).
17 The importance of legal research skills, of course, was underscored by the AMERICAN BAR ASSOCIATION, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), commonly known as The MacCrate Report. See Section B. Overview of the Skills and Values Analyzed, Skill § 3, Legal Research. Yet, it is a perennial complaint of practitioners that law students coming out of law schools are not sufficiently competent in this area. Ian Gallacher, Who Are These Guys?: The Results of a Survey Studying the Information Literacy of Incoming Law Students, 44 CAL. W.L. REV. 151, 152 n.5 (2007) (citing Kathryn Hensiak, et al., ASSESSING INFORMATION LITERACY AMONG FIRST YEAR LAW STUDENTS: FINAL TECHNICAL REPORT 2 (2004) (stating, “[M]any [incoming] law students do not have basic research skills.”); Tom Gaylord, CHICAGO-AREA LIBRARIAN SURVEY 2, 5 (2007) (71% of respondents believed that new attorneys were not able to research effectively and efficiently); Sanford N. Greenburg, Chicago-Area Attorney Survey 7 (2007) (54% of respondents believed that new attorneys “seldom” or “never” were aware of helpful legal research print resources prior to in-house training, 57% of respondents believed that new attorneys were “seldom” or “never” able to use print legal research resources efficiently prior to in-house training, and 44% of respondents believed that new attorneys were “seldom” or “never” able to use fee-based online legal research resources efficiently prior to in-house training)).
18 Supra note 3, at 93.
any skill, is to demonstrate it for students, give them a chance to try it for themselves, and then give them immediate feedback at the moment they are engaged in the activity.”

It is when students are engaged in trying out the activity for themselves that a “teachable moment” presents itself, because it is at this moment that students “are most receptive to learning.”

Levy also points out that students need to be motivated in order to learn a difficult and exacting skill like legal research. This is what he calls the “so what” factor. If students believe that the skill matters to their professional needs and development, they are more likely to learn it. When, for example, students are engaged in a realistic library research exercise, the information they need to find the law ceases to be an abstract part of a lecture divorced from anything needed to be done at the moment, and instead becomes vital information that students want to have in order to perform the elementary tasks of the profession they seek to eventually practice.

Levy opts for the “process-oriented” approach. “This approach seeks to teach students how to use the law library in the context of solving hypothetical legal

19 Id. at 91 (citing David Perkins, SMART SCHOOLS: FROM TRAINING MEMORIES TO EDUCATING MINDS 45 (The Free Press 1992) (comparing good teaching with good coaching: give students (1) a clear explanation of the performance expected, (2) an opportunity to try it for themselves, and (3) prompt feedback; ERNEST R. HILGARD & GORDON H. BOWER, THEORIES OF LEARNING 481, 562-563 (3d ed., Appleton Century Crofts 1966) (effective learning depends upon (1) active student engagement in the activity; (2) frequent repetition of the skill; (3) reinforcement from the teacher)).

20 Id. at 92 (citing Barbara Bintliff, Teachable Moments . . . “Shepardizing Cases,” 4 PERSPS.: TEACHING LEG. RESEARCH & WRITING 19 (1995) (defining a teachable moment as “a brief window of opportunity when - because they have a specific need to know right now - the students or lawyers asking the questions may actually remember the answers you provide.”)).

21 Id. at 93 (citing Jane Thompson, Teaching Research to Faculty: Accommodating Cultural and Learning-Style Differences, 88 LAW LIBR. J. 280, 284 (1996) (defining the “so-what” factor as the need of adult learners “to feel that the training is relevant to their work, and they will place any information that they learn into the framework of their experiences to date.” (citing FREDRIC H. MARGOLIS & CHIP R. BELL, MANAGING THE LEARNING PROCESS: EFFECTIVE TECHNIQUES FOR THE ADULT CLASSROOM 17 (Training Books 1984))).

22 Id.
problems.” The “process oriented” approach is responsive to the “teachable moment” concern in that it allows the instructor to answer questions and provide feedback while students are actually engaged in the research process and are therefore most receptive to instruction on how to solve their immediate research problem. The approach also addresses the “so what” concern as long as the exercise is a realistic one which the student can readily perceive as the kind of problem a lawyer typically might have to resolve. As Levy points out, however, no one research problem is likely to require reference to all the resources lawyers ought to know how to use. Therefore, a drawback of the process oriented approach is that students will not be required to consult some of important sources or make use of some of the details of the sources they will use.

Levy’s exercise provides students with a map, a flow chart, and a research log, all of which supply students with research information at their “point of need,” or moment when they most need it and are most likely to learn it. Levy also would provide students with access to instructors who “would walk through the library with each student as they work on their assignments to answer questions and correct their mistakes as they

23 Id. at 95. Levy contrasts the process oriented approach with the bibliographic approach, defined by Helene S. Shapo, The Frontiers of Legal Writing: Challenges for Teaching Research, 78 LAW LIBR. J. 719, 725 (1986) as including “lectures to large groups of students, usually once a week over the semester or a shorter period of time [followed by] short-answer exercises that require them to use the library resources discussed in the lecture.” (cited by Levy, supra note 3, at 95 n.29). The classic arguments for the process and bibliographic approaches may be found in the debate between the Wrens who promoted process and Berring and Vanden Heuvel who defended the bibliographic approach: Christopher G. Wren & Jill Robinson Wren, The Teaching of Legal Research, 80 LAW LIBR. J. 7, 8 (1988); Robert C. Berring & Kathleen Vanden Heuvel, Legal Research: Should Students Learn It or Wing It?, 81 LAW LIBR. J. 431, 448 (1989); Christopher G. Wren & Jill Robinson Wren, Reviving Legal Research: A Reply To Berring and Vanden Heuvel, 82 LAW LIBR. J. 463 (1990); Robert C. Berring & Kathleen Vanden Heuvel, Legal Research: A Final Response, 82 LAW LIBR. J. 495 (1990). For an overview of the debate, see Paul Douglas Callister, Beyond Training: Law Librarianship’s Quest for the Pedagogy of Legal Research Education, LAW LIBR. J. 7 (2003).

24 Levy, supra note 3, at 95.

25 Id.

26 Id. at 96.

27 Id. at 97.
come up.”

The map shows the students the library location of the books they will need to consult for the research problem. The flow chart contains instructions such as, “Begin by Formulating Search Words,” and provides suggestions for brainstorming about the search terms. On the left, the flow chart has a box containing the brainstorming tips. From that box, arrows emanate to the right, each pointing to a box placed within a column of boxes. Each box in this column is labeled for a source which the professor wishes the student to consult. One box is labeled, “cases,” another, “statutes,” and yet another, “secondary sources: American Jurisprudence.” Within each box there is further guidance. For example, within the box for a particular source is the name of the index for that source. That would be the “Descriptive Word Index” for the cases box, or the “Index Digest” for American Law Reports. To the right of each box are instructions on how to use the resource. For instance, to the right of the cases box would be instructions on the use of “Digest Topics” and “Key Numbers.”

The Research Log provides still more instructions directing students to research stations throughout the library, explaining what resources are found at each station and how to use them, and finally requesting the student to record the relevant materials found at that station. There are cross references among the map, the flow chart, and the log so that students might go from one to the other to reinforce their understanding of the process.

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28 Id. at 92.
29 Id. at 100.
30 Id. at 102.
31 Id.
32 Id.
33 Id.
34 Id. at 99.
B. Moppett & Buckingham

The second article that has influenced my teaching is *Library Research Labs: A Hands-On Approach to Taking the First Step with Your Students to Reflect Good Practice in Legal Education*, by Moppett & Buckingham.  

These authors suggest that sending first year law students into the library, “with its vast volume of books,” after merely talking to them about legal research, is like “telling children how to swim and then sending them to jump off the edge of the pool into the deep end.” In view of this, the authors developed library research laboratories for their law school’s Legal Practice Skills program. As the authors describe the process, the students in each section are divided into groups of three to five, and each group is presented with a set of questions and a set of books. The set of books includes digest volumes, a volume of the official reporter, and a volume of a regional reporter. The students are required to (1) read a short fact pattern and select keywords, then look them up in the Descriptive Word Index; (2) select the topic and key number and read the issue summaries under these to locate a specific case; (3) look up the case in the official and unofficial reporters and answer questions developed to illustrate differences between the two versions; and (4) use other topics and key numbers from the case to find other cases on the same issue in the Digest. Facilitators in the person of the section’s professor and a designated librarian liason are present to respond to questions and check on the progress of each group. Although the students did not have to turn in answers, at least one person in each group

35 *Supra* note 2, at 73.
36 *Id.* at 75.
37 *Id.*
38 *Id.*
39 *Id.* at 75-76.
40 *Id.*
had to record the group’s answers so that the facilitator could check them.\textsuperscript{41}

Moppett and Buckingham go on to show that this approach reflects the Seven Principles of Good Practice in Undergraduate Education which the Institute for Law School Teaching began to apply to legal education in 1998.\textsuperscript{42} They argue that their approach: (1) “encourages student-faculty contact” in the interaction between the groups of students working on a research problem and the facilitators there to respond to students’ questions and difficulties; (2) “encourages cooperation among students” in the team effort which the groups of students exert in sharing information to achieve the common goal of working out the research exercise; (3) “encourages active learning” in the hands-on process-oriented activity of actually researching a legal problem rather than listening about how to research; (4) “gives prompt feedback” in the responses of the facilitators to the questions and the research results the students have produced; (5) “emphasizes time on task” in that the students must accomplish the task within the time allotted for the laboratory; (6) “communicates high expectations” in that the students are made to understand that they will be expected to answer similar questions later in graded assignments; and (7) “respects diverse talents and ways of learning” in that the approach accommodates the learning style of tactile learners who learn best by using research materials rather than listening to lectures or reading books and articles on such materials.\textsuperscript{43}

\textsuperscript{41} Id. at 76.
\textsuperscript{42} Id. at 75 n.5, (citing Arthur W. Chickering & Zelda F. Gamson, Seven Principles of Good Practice in Undergraduate Education, AMERICAN ASSOCIATION OF HIGHER EDUCATION BULLETIN 3 (March, 1987); Gerald F. Hess, Seven Principles for Good Practice in Legal Education: History and Overview, 49 J. LEGAL EDUC. 367, 367-68 (1999)).
\textsuperscript{43} Id. at 76-77 nn. 19-30 (citing Susan B. Apel, Principle 1: Good Practice Encourages Student-Faculty Contact, 49 J. LEGAL EDUC. 371 (1999); David Dominguez, Principle 2: Good Practice Encourages Cooperation Among Students, 49 J. LEGAL EDUC. 386 (1999); Gerald F. Hess, Principle 3: Good Practice Encourages Active Learning, 49 J. LEGAL EDUC. 401 (1999); Terri LeClerq, Principle 4: Good Practice
C. Three Issues

Both articles recommend that students be given time to perform a research exercise with guidance: Levy provides a map and flowchart with instructions and questions for each resource to be used and recommends an instructor be available to answer questions as they arise, while Moppett and Buckingham provide a set of questions, a set of books, and access to the section professor and a librarian who act as facilitators answering questions should students get confused or stuck. In regard to online research, both recommendations of guided questions or instructions and access to the personal guidance of a professor or librarian are desirable and easily implemented. I would include both. Moppett and Buckingham add the feature of group work. This addition has merit not only for book research, but also for online research. However, the use of these methods raises several issues worth discussing.

1. Not a Treasure Hunt

One issue concerns the type of research exercise that should be assigned in a research workshop. Levy discusses the so-called “treasure hunt” (also known as the “scavenger hunt” or “Easter egg hunt”) exercise and associates it with the bibliographic,
as opposed to the process-oriented, approach of teaching legal research. The treasure hunt exercise is “designed to familiarize students with the law library by asking them to locate a particular resource and then answer a series of questions about it.” Typically, students are asked to find a particular case, statute, or regulation and then retrieve some detailed factual information from the face of the source such as the judge who wrote the opinion, the year when the statute become law, or the title under which statutes addressing a particular area of law are to be found. While it is true that such research exercises require students to familiarize themselves with various book resources to find the answers, such searches for short, factual answers do not develop the ability to derive search terms from a legal question or short fact pattern, or the ability to decide what terms would most likely lead to cases or statutes that would answer the questions presented, or to identify the holding in a case, or see the relevance of a statute to a legal issue, or synthesize or distinguish cases. As Helene S. Shapo argued in her critique of such exercises, the major weakness of [the treasure hunt] exercise is that even the more sophisticated versions are simulations. They do not require the students to use the sources they find to produce anything more than short answers. [In an integrated legal research and writing course] students engage in their own research experiences as part of the problem-solving activity their writing assignments require. This process requires the students to define issues, plan research strategies, evaluate the authoritative value of the materials they have found, and engage in further research as their writing reveals analytical weaknesses. In short, they learn to do research as part of the process of putting the result of their research to work.

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46 Levy, supra note 3, at 94.
47 Id.
48 Helene S. Shapo, The Frontiers of Legal Writing: Challenges for Teaching Research, 78 LAW LIBR. J. 719, 726 (1986), defines the treasure hunt as “short answer exercises that require [students] to use the library resources discussed in the [research lecture].” (quoted by Levy, supra note 3, at 94 n.29).
49 Shapo, supra note 23, at 726 (quoted by Levi, supra note 3, at 96 n.37). See also Terry Jean Seligman, Beyond “Bingo!”: Educating Legal Researchers as Problem Solvers, 26 WM. MITCHELL L. REV. 179, 180 (2000) (stating, “Mastering the ability to tackle complex legal research problems means more than merely moving beyond the kind of assignments that produce the “Bingo!” response with its accompanying
The “treasure hunt” approach never requires a student to apply thought or generate writing for the information the student finds. The short answers do not require the student to formulate an answer of several sentences, or perhaps a paragraph, that presents an accurate, coherent and cogent answer to the question posed. It is true that many of the skills now under discussion are associated with legal writing as opposed to research; nonetheless, there is a certain interface between writing skills and research skills where the student must interpret what is needed to answer a question, devise a research strategy to find the right information, evaluate what has been found, determine the need for further research, and finally formulate an answer based on the research. The student’s ultimate formulation of an answer is the written embodiment of the research effort.

The open memorandum, where students are required to do their own research to support the answer to a legal question or the analysis of a fact pattern, is the vehicle through which many of these skills are developed. Levy uses the library research exercise to support the research that the students must do in their open memo assignment. However, the open memo exercise often presents a fairly complex legal issue on which a great deal of the student’s grade is riding. There is a gap between the expectation of clear and easy results. The professor helps students develop needed skills by implementing a problem-based context for assignments, providing enough legal research experience, sequencing assignments to offer increasing challenges while supporting success, and encouraging reflection on and planning of legal research.”.

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50 Levy, supra note 2, at 410 (stating, “[M]any instructors prefer to use a ‘process oriented’ research exercise. This approach teaches students how to use the law library in the context of solving a hypothetical legal problem, usually performed in connection with an ‘open universe’ writing assignment during the first semester of law school. Instructors often ask students to record the results of their open memo research in a log or diary that may be turned in with the final draft at the end of the semester. Readings and class lectures explaining how to use the law library usually accompany the research portion of the assignment.” (citations omitted)).

51 Supra note 3, passim.

52 The open universe office memorandum or open memo is usually a major writing assignment in the first semester of law school. The following description is typical. “The open research memorandum assignment is generally . . . eight to fifteen pages, and . . . students must find and select the best authority
complex and involved research that must be done for the open memo project and the
treasure hunt exercise, which often involves nothing more complex than picking out the
judicial author of an opinion, or the year in which a statute was enacted. Instead of
depending on the open memo exclusively to develop those skills at the interface between
legal research and the legal writing process, instructors of research and writing may adapt
the kind of workshop suggested by Levy and Moppett & Buckingham to provide the
research practice that bridges the gap between the treasure hunt and the open memo. In
order to bridge this gap, the research exercise should be simpler and more straightforward
than that found in a typical open memo. On the other hand, the exercise should require
students to do more than provide a short, treasure hunt type of answer copied from a
source. It might challenge students to recognize the holdings in one or more cases or to
take a statute’s rule of law and apply it to a fact pattern so that students would not only
have to find the legal materials, but also show an understanding of how the materials
relate to the question or fact pattern and express this relationship in an answer that
requires several sentences if not a paragraph or two.53

2. Group Work

The second issue concerns the group work approach advocated by Moppett &
Buckingham. Group work is a good idea for a legal research workshop for several

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53 Gerdy, supra note 2, at 67-68, discusses the benefits of “ill-defined” questions which have complicating
factors that simulate real life legal issues and require students to be creative in applying their knowledge of
research tools. Gerdy, id. at 70-73, also provides criteria for formulating good research questions. Both
discussions provide insights into how to develop good research problems. My purpose in formulating
research exercises requiring more or less one-page of written discussion is to emulate real life research
reasons. In law school, unless students are allowed to participate in a law firm approach to assignments in the legal writing class, or unless they compete in moot court or trial team, they seldom have an opportunity to work cooperatively in groups or teams for the purpose of achieving a common goal. First year students are likely not permitted to discuss with one another or anyone else their research for memo assignments under the threat of prosecution for violating the school’s honor code. It is certainly important that students demonstrate that they are independently capable of doing the research required in the assignments. However, the exclusion of cooperative effort in researching or writing all memos or briefs can generate a misleading view of the way in which attorneys work. Within a law firm, attorneys generally share their research and knowledge and often collaborate on documents to be filed with a court.

The legal research workshop provides a good opportunity to give first year students some experience with team work on a legal problem. At this point, students are still learning how to research. Most, if not all, do not yet know how to use the legal reference books and databases, let alone how to apply the concepts with which they must now resolve legal problems. In such a situation, students are likely to feel very insecure

54 “Students rarely are required to work in groups toward common goals. Moreover, students tend to be highly competitive with each other over grades, class rank, and other rewards such as law review. Law schools need to encourage more cooperation, collegiality, and interpersonal work.” Timothy W. Floyd, Legal Education and the Vision Thing, 31 GA. L. REV. 853, 860 (1997).

55 This is the rule at the Barry University School of Law. Brigette LuAnn Wilauer, Comment: The Law School Honor Code and Collaborative Learning: Can They Coexist?, 73 UMKC L. REV. 513, 527 (2004), argues that in their strictness and ambiguity, law school honor codes can be detrimental to collaborative learning. “Five law school honor codes prohibit collaboration among students unless expressly authorized. These codes are compelling illustrations of why law school honor codes need revision in order to facilitate a learning environment in which students can become the best students and professionals. These codes often prohibit students from collaborating on any ‘academic endeavor.’”

56 Floyd, supra note 54, at 859-60 (stating, “Lawyers seldom work in isolation from other people. In any legal matter they always have a client. In addition, the vast majority of law school graduates will work
and self-conscious about what they don’t know, so much so that they pretend to know what they don’t, and as a result, fail to learn what they pretend to know. Developing greater confidence, then, can be conducive to learning, and some of that confidence can be cultivated by allowing students to check with others, who are similarly learning, on how to find what they need from the books and the databases. In this way, students find out that others, like them, don’t know everything. The concerns that weaker students may receive some advantage which they do not deserve from working with stronger students has some justification, but such concerns are minimized if the research exercise is not heavily weighted in the final grade, or not counted at all.

3. Guidance

There is a final issue which merits some thought regarding the amount of guidance to give students in the research workshop exercise. As indicated above, Levy provides a flow chart and a log with fairly complete instructions on where to find the necessary books, how to use them, and what to record from them. Moppett & Buckingham provide students with a set of questions and a set of books to use in together with others in a law firm or other organization. In representing their clients, lawyers often work together with lawyers representing other parties.

These group benefits stem from the interaction of the students, as well as how they work together. Students get to know each other better and learn how to work with each other. Further, the group atmosphere allows students to share knowledge, hear different opinions, and learn how others write and learn. The group environment provides students with both support and inspiration.” Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 Ariz. St. L.J. 957, 1000 (1999) (citations omitted).

One suggestion for minimizing the “freeloader” problem is “to have all students in a group sign statements in which they declare that they have ‘meaningfully participated’ in the group effort.” Alice M. Noble-Alegire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 3 NEV. L.J. 32, 59 n.98 (2002). However, one commentator sees value in rewarding collaborative efforts with a grade. Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Professionalism, Ethics, and Commitment to Public Service from the Inside Out*, 25 TULSA L. REV. 237, 262 n.135 (2000). “Students have to see their collaborative efforts reflected in traditional indicia of law school success. For example, grades on a collaborative assignment could be awarded collectively, so that each person on the team has an incentive to add value to...
performing the research exercise. The amount of guidance provided by the instructions and preselected books may be so detailed as to replicate the situation discussed earlier in which students follow the lecturer or instructor step by step in researching a particular question. If students are going to develop the skills of identifying the legal issues, the key words, the relevant cases and statutes, their holdings and rules, it is crucial that they have sufficient freedom and independence to work out for themselves the steps they need to take, the books and data bases they must access, the research decisions they must make, and the legal concepts, holdings and rules they must apply. It is necessary for professors to think about and experiment with the right amount of guidance for their particular students and for the particular research exercises assigned. It would be ideal to present several research workshops that gradually wean students from all the guidance provided by their instructors. However, time constraints limit the amount of time that can be devoted to workshops. Professors who formulate these workshops, then, will have to choose research guidance questions that provide the optimal amount of difficulty to fill the gap between the treasure hunt and the open memo, given the difficulty of the problem, the ability of the students, and the time allotted for research instruction.

PART III: THE ON-LINE LEGAL RESEARCH WORKSHOP

A. Preliminaries

In spite of its shortcomings, the introductory lectures on electronic legal research are nevertheless an indispensable part of the teaching process, and the quality of these

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59 Text accompanying notes 27 to 34 supra.
60 Text accompanying notes 35 to 41 supra.
lectures is a prime factor upon which the success of a research workshop depends. 61

Either the law school librarian or the Westlaw and Lexis representatives may provide these lectures. The library faculty should cover not only the basics of how Westlaw and LexisNexis function (also covered by the representatives), but librarians should also cover other commercial alternatives, free resources on the internet, and internet research in general. 62 The Legal Research and Writing program at Barry provides lectures by the library faculty in the fall and certification lectures by the vendor representatives in the spring. If there is any concern about the interest the vendor representatives may have in promoting their particular products, lectures from the librarians can provide the necessary correctional balance. 63 It is a good practice for the legal writing faculty to familiarize itself with the substance of these lectures in order to know what the students are being taught so that the writing instructors can appropriately complement the material in the writing projects they assign. 64 I have found both library faculty and vendor representatives quite cooperative in sharing their lectures and scripts. And if the students

61 Fitzgerald, supra note 2, at 263, outlines with admirable clarity the steps in teaching a skill: (1) Teach the basics of the skill; (2) Provide an example of the skill; (3) Allow students to practice the skill; (4) Provide feedback to students. The introductory lecture teaches the basics of the skill, and thus is an indispensable part of the process of teaching the skill.

62 See 2008 SURVEY RESULTS, supra note 9, on who teaches legal research. Though there is controversy about whether and to what extent the legal writing teacher, the librarian, or the commercial data base representative should teach legal research, there is general agreement that student teaching assistants, though they may have a role in supporting the instruction, should not teach legal research since they are likely to be the least experienced, trained, and professionally prepared to do this teaching. See Ian Gallacher, Forty-Two: The Hitchhiker’s Guide to Teaching Legal Research to the Google Generation, 39 AKRON L. REV. 151, 172 (2005) (stating, “Having legal research taught by teaching assistants is probably the least successful approach to research education.” (citations omitted)).

63 For objections to having vendor representatives teach electronic legal research, see Shawn G. Nevers, Candy, Points, and Highlighters: Why Librarians, Not Vendors, Should Teach CALR to First-Year Students, 99 LAW LIBR. J. 757 (2007).

64 As standards for retention, promotion and tenure, several law schools require a legal writing professor to demonstrate a command of legal research and proficiency and knowledge in and the ability to convey this subject matter to students. See Melissa H. Weresh, Form and Substance: Standards for Promotion and Retention of Legal Writing Faculty on Clinical Tenure Track, 37 GOLDEN GATE U.L. REV. 281, 298-99 (2007). Certainly, knowledge and interest on the part of the legal writing faculty are crucial aspects of integrating research and writing.
understand that they will very soon make use of the information from the lectures in a
workshop setting, it is likely that they will not be content to receive the information
passively, but rather will devote more active attention and interest to the lectures.

Levy underlines the point that the workshops should be given as soon as possible
after the introductory research lectures.65 Certainly, it is wise to schedule the research
exercises when the information from the research lectures is still fresh in the minds of the
students. However, I would still recommend that between the lectures and the workshop
the students do a treasure hunt exercise. The purpose of doing these exercises before the
workshop would be the same for book research and on-line research.66 They give the
students some practice in working with the respective resources and thereby provide a
good preparation for the more advanced research problem to be addressed in the research
workshop.67

B. The Research Problem

For the research problem, I drew on my early experience as a judiciary law clerk.
Perhaps it was among my first assignments to research the pro se section 1983 claims of
state prisoners complaining in forma pauperis of conditions where they were

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65 Supra note 3, at 92 (stating, “[I]t is not enough to engage students in the material; they also need feedback
from the teacher at the moment they try [to perform legal research] for themselves. This is sometimes
referred to as the ‘teachable moment’ because it is the time students are most receptive to learning. In the
context of research instruction, this would mean that teachers would walk through the library with each
student as they work on their assignments to answer questions and correct their mistakes as they come up.”
(citations omitted)). When I started experimenting with an online research workshop, for scheduling
reasons I found it necessary to give the research workshop during a class near the end of the first year
course, long after the students had been introduced to the data bases. Consistent with Levy’s
recommendation, twenty-nine percent of the students recommended that the class should be taught earlier
in the semester or in the fall semester.
66 At Barry, students are required to do two such exercises, one after the book research lectures, and one
after the electronic research lectures.
67 Even critics of the “treasure hunt” exercise concede that it has its use and place in the teaching of legal
research. See, e.g., Gallacher, supra note 62, at 206; Levy, supra note 3, at 94; Lynch, supra note 3, at
434-35;
incarcerated. Federal courts are required to screen a prisoner’s civil complaints against
government officials and dismiss the complaints if they are “frivolous, malicious, or fail
to state a claim upon which relief may be granted.” Furthermore, the federal courts
construe such complaints liberally, meaning that the court will not require the complaint
to state a cause of action with the precision and clarity normally expected from an
attorney, but will examine the alleged facts, however inartfully pleaded, to decide
whether they state a claim, even though the cause of action might not be specifically
identified. This type of problem gives the students the opportunity to take a crudely
stated complaint, analyze the basic facts alleged, and determine whether those facts
satisfy particular elements of any cause of action. The assignment and complaint I
formulated are as follows:

Imagine that you are the law clerk of a federal district court judge who has
received the pro se complaint provided below from a prisoner in a state
penitentiary. The judge wants you to answer the following questions. Can
the denial of toothpaste be a violation of a prisoner’s constitutional rights?
Based on what law? Is there a standard or a test that I can apply to decide
whether there is a constitutional violation here?

The judge explains that as a federal judge he must screen the civil
complaints of state prisoners who seek money damages from government
officials to determine whether the complaint states a claim upon which
relief may be granted. This particular prisoner has shown he has no
balance in his prisoner account, so that he is indigent and proceeding in
forma pauperis. He depends entirely upon the prison to supply him with

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68 William H. Danne, Jr., Comment, Note, Prison Conditions Amounting to Cruel and Unusual
prisoners have proceeded against offending state prison officials in common-law actions for damages,
injunctions, or writs of mandamus; contempt proceedings; suits for monetary, declaratory, or injunctive
relief under the Civil Rights Act, 42 U.S.C.A. § 1983; . . .”)
70 Fernandez v. U.S., 941 F.2d 1488, 1491 (11th 1991) (stating, “Pro se pleadings are held to a less
stringent standard than pleadings drafted by attorneys. We therefore liberally construe Fernandez's
assertions to discern whether jurisdiction to consider his motion can be founded on a legally justifiable
base. (Federal courts are obliged to “look behind the label” of a pro se motion to determine if a cognizable
remedy is available).” (quotations and citations omitted)); Haines v. Kerner, 404 U.S. 519, 520 (1972)
(holding a pro se complaint “however inartfully pleaded,” “to less stringent standards than formal pleadings
drafted by lawyers”).
hygienic supplies like toothpaste. Finally, the judge tells you to construe this pro se complaint liberally. Federal courts apply less stringent standards to pro se complaints than they do for complaints drafted by attorneys. Your job, then, is to help the judge decide whether the prisoner has alleged facts that would meet the elements of a claim even though the prisoner might never state exactly what the claim is.

The judge adds that you are to concentrate on the substantive issue. He has another clerk researching technical issues regarding whether the prisoner’s administrative remedies have been exhausted or whether the Warden is a proper defendant in this lawsuit.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF FLORIDA

Joe Smith

v.

Edna Maxwell, Warden
Marion County Correctional Facility

1. I am a prisoner on death row in the Marion County Correctional Facility in Lowell, Florida.
2. I beat up another prisoner, so they put me in administrative isolation for a month.
3. During that month, they didn’t give me enough toothpaste. I didn’t have enough toothpaste to brush twice a day even though I asked for more toothpaste every day I was in isolation. That violates my constitutional rights.
4. Because of that my teeth are rotten. I’m in pain all the time. When they finally let me see a dentist, he had to pull two teeth. That violates my constitutional rights.
5. I demand my constitutional rights.

/Joe Smith/71

This is one of many complaints a federal prisoner might make under section 1983. Other examples would be lack of access to the courts because of an inadequate legal library, or inadequate time to read in the library, or objections to the food provided to the prisoner.
for reasons of religious practice. There are, of course, other fact patterns that might provide a realistic research problem that could arise in a legal practice, such as an issue regarding a dog bite, or a foreign object in a burger that injures a diner at a fast food eatery.

In order to focus the class on the research which the instructor wants them to do, it may be necessary to exclude issues. I would reiterate the advice found in the problem itself that the judge is not interested in issues of whether the prisoner’s administrative remedies have been exhausted or whether the Warden is the proper defendant, even

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71 All the materials for the research problem, and also the raw answers to guidance questions and to the questionnaire are on file with the author.
73 The dog bite rules of a given state depend on its statutes and court opinions. In Florida, application of the state’s dog-bite statute to a fact pattern can be a good source of a research problem. Fl. St. § 767.04 (2009). Almost all the states have adopted the consumer expectation test for determining whether a foreign substance found in food or drink should subject the food producer to liability. The issue may generate a good research problem requiring an explanation of how the standard should be applied to a given set of facts. In Florida, the leading case on this subject is Zabner v. Howard Johnson’s, Inc., 201 So. 2d 824 (Fla. Dist. Ct. App. 1967).
75 In the research problem, I made the Warden the defendant of the lawsuit. However, courts will dismiss a § 1983 suits against a supervisory official unless some link between the official and the unconstitutional treatment is alleged. Wright v. Doe, 54 F. Supp. 2d 199, 203-04 (S.D.N.Y. 1999) (stating, “A defendant will be liable under Section 1983 only when he is personally involved in the violation. Personal involvement of a supervisory defendant may be shown by evidence that the defendant (1) directly participated in the violation, (2) failed to remedy the wrong after being informed of the wrong through a report or appeal, (3) created a policy or custom under which unconstitutional practices occurred, or allowed such a policy or custom to continue, (4) was grossly negligent in supervising subordinates who committed the wrongful acts, or (5) exhibited deliberate indifference to the rights of inmates by failing to act on information indicating that unconstitutional acts were occurring.”). For Florida, see Bailey v. Bd. of County Comm’ns, 956 F.2d 1112 (11th Cir.), cert. denied, 506 U.S. 832 (1992); Blair v. Coates, No. 8-07-CV-1781-T-30MSS, 2008 WL 151866, slip op. at *2-3 (M.D. Fla. Jan. 15, 2008).
though these may be legitimate matters to research and may indeed be dispositive on whether the complaint has stated a cause of action. Rather, I wanted the students to decide whether deprivation of toothpaste under the facts alleged in the complaint could be a violation of a constitutional right. For reasons that I will present below, I did not provide much introduction to the area of law because I wanted the students to decide for themselves what they needed to know to provide an authoritative and informed answer to the judge’s questions, and to find that necessary information for themselves.

C. The Guidance Questions

Aside from the problem, I provided the students with a set of guidance questions. These were rather open ended, allowing the students to decide what commercial service they would use, if any, what data bases they would search, and what terms and connectors they would apply. I wanted the students to decide for themselves how to conduct the research through trial and error, and to decide when they have found material that was responsive to the questions the judge asked. In their answers to the guidance questions, I wanted the students to say something about their strategies and reasons for going about the research as they did. This involved telling me what terms and connectors they used for the Boolean search, why they used these terms and connectors, how successful they were in obtaining a limited number of relevant hits, and what was their thinking in the changes they made to their Boolean searches. Here, then, are the questions that I asked:

1. Identify the data base you decide to use in order to find the law that may be pertinent to the questions posed in your assignment. Why did you choose this data base?

Kunz, supra note 12, at 50-59, provides an excellent discussion of Boolean searches.
2. Develop an initial term and connector search or a natural language question search for identifying the materials relevant to the question posed above. Provide an explanation of why you chose the particular terms and connectors or natural language question you used.

3. How many hits did you get? Examine your results. Do you need to revise your terms and connectors? Why or why not?

4. If you need to revise your terms and connectors or question for another search, do so, and continue such revisions and searches until you have identified the materials that you can use to answer the questions above. Answer the following:
   a. What was your rationale in making changes in your terms and connectors or questions?
   b. Provide the terms and connectors or question that finally produced the materials you found useful in answering the judge’s questions. Why do you think these particular terms and connectors or question worked?

5. Are there any other types of data bases and sources you might look into to find answers to your questions? If there are, select such a data base or source.
   a. Identify the data base or source. Why are you using it?
   b. What terms and connectors or question search are you using?
   c. What do you find in it?

6. Do you want to try any other research technique to find more information? If so, what? Why? If you have time, go ahead and try it and describe what you are able to find.

7. If you haven’t done so already, start looking for the answers to the questions in the materials you have found. Do you think you should check for any subsequent case history for any of these cases? If so, what is your rationale for doing so?

8. Provide the answers to the questions in the assignment. The format of your answer doesn’t matter, you may use a paragraph or number your answers. In the course of your answers or provide at least three cases that you have found most helpful in answering the questions.

These proved to be too many questions for the students to answer in the one hour I allotted to the research. Some students did manage to answer them all and provide an answer to No. 8. However, most of them did not answer all the questions, and either did not have enough time to do No. 8 or only managed a very rudimentary answer. In the questionnaires, twenty-one percent of the students said that there were too many
questions or they needed more time. In view of this, it is advisable to cut down the number of questions or provide more time for the students to perform the research. However, as argued infra, the answers to the guidance questions may not be as important as the discussion about the research that follows.

D. The Class

Some time before the class, I let the students know that although they will be handing in their research work, there will be no grade. Of course, a grade could be assigned, but my recommendation would be to make it nominal. Imposing stress during the early stages of practicing a skill is counterproductive to developing the skill in that it distracts from the attention the students need in order to practice. A grade is also likely unnecessary if the students are sufficiently motivated to work diligently on the project, and I think this is true of the research workshop. Substantial grades may also undercut the cooperative nature of the assignment. There will be plenty of opportunity to grade students on research skills in their open memoranda and other writing assignments.

I instruct the students to bring in their laptops for the research workshop. I distribute the exercise by email to the students a few hours before the beginning of the research class. In that way, I know the students will have the exercise available on their laptops, but it is unlikely that they would prepare much ahead of time, though they might have a look at the problem. At the beginning of the class, I divide them up into pairs

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78 See infra note 81 and accompanying text for a discussion of the questionnaire and its questions. 79 Ellie Margolis & Susan L. DeJarnatt, Moving Beyond Product to Process: Building a Better LRW Program, 46 SANTA CLARA L. REV. 93, 125-26 (2005) (stating, “Delayed grading is consistent with the process model of teaching LRW. . . If students are to construct meaning through the process of writing, then feedback, coming from professor-as-fellow-writer rather than professor-as-evaluator, is much more conducive to learning. Feedback without an accompanying grade gives the students more freedom to focus
rather than groups of three or four as do Moppett & Buckingham in their book research laboratory. Groups of more than two students might be effective for working with books around a table in the library, but would, I believe, probably present some awkwardness for students working off a laptop. I give the pairs of students the option of working together on one laptop or working separately on two laptops and sharing information. I advise each pair to assign the task of recording answers to one of its members.

The LRW classes at Barry are all one and a half hours in length. After making the introductory remarks excluding the issues I do not want the students to address, I explain that they would have one hour to work on the research exercise. I ask them to answer the guidance questions I provided with the exercise. The students could type their answers, one for each pair, right beneath the guidance questions in the attached email file I sent to them before class. At the end of the period, they email these files back to me. If they prefer to handwrite their answers, I provide a hard copy of the guidance questions with space for them to answer the questions so they can hand in their answers to me at the end of class instead. I explain that at the end of the hour of researching, we will have a discussion in which the groups will share their techniques for finding case law on the issue, and also share the results they got. This discussion would last about twenty minutes. At the end of class I provide a questionnaire with questions asking students to assess the exercise. In order to elicit the most honest answers I can from the students, I

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80 Supra note 2 at 75.
81 These were my questions:

1. Did you find the class useful? If you did, in what way? If you didn’t, why do you think it was not useful?
follow the procedures Barry has implemented for class evaluations. I appoint a student to
distribute the questionnaires, and then absent myself from the classroom while they are
being disseminated and while the students answer the questions. The designated student
then collects the questionnaires, places them in an envelope, seals it, and after class,
delivers the envelope to the Dean’s Assistant who keeps the envelope until after I have
handed in grades for the class.

During the time in which the students are researching, I go from one pair to
another, asking how they were doing, and answering any questions they might have.
This leads me at times to sit with one pair or another for an extended period of time,
working with them through their searches as they find the materials and develop the
answers to the judge’s questions. I was pleased to find the students’ interest and activity
in performing this research exercise was very different from what I observed during
lectures on legal research. They read the assignment with active interest and animation.
They talked about the techniques discussed in the lectures, such as identifying research
terms. They fed off one another to get the assignment done as a team. There were
moments when a student would exclaim, “Got it!” upon finding a relevant case.82 The
situation gave me the opportunity to work with students and get to know them on a more

2. Was any part of the class particularly useful? Which part was it? Was any part
   of the class particularly not useful? Please identify?
3. Would you recommend that the professor use this class in the future?
4. Would you recommend that he modify it? How?
5. Would you recommend he develop more classes like this?
6. On a scale of 1 to 10, 10 being a high quality class, and 1 being low quality, how
   would you rate this class?
7. Please include any other comment you wish to make. Use the back of this sheet
   if you need to.

82 Although this is close to the “Bingo!” reaction which Seligman questions, supra note 49, some
   excitement at finding a relevant case is not inconsistent with thoughtful evaluation of the information
   afterwards.
personal and informal level. I could jump in and ask, “What did you find?” “How did you find it?” “How does this help you?” and “How are you going to use it?”

Most important of all, they asked questions. These questions were very revealing. It is often difficult for someone who has done a great deal of legal research to anticipate the problems and level of difficulty which students who are just getting started may experience. Through their questions I learned about the problems they encountered which I had failed to anticipate, or omissions in my preparation. The answers which they handed in also indicated areas that I needed to review. For instance, many students ignored Eleventh Circuit case law, and only had citations to other circuits. While case law outside of the Eleventh Circuit might be acceptable as persuasive authority, the lesson they still needed to learn was to give priority to authority within the jurisdiction first.

E. Results

The students had a great variety of approaches to the research. They were permitted to use any online resources they cared to, so some chose Lexis, some Westlaw, Loislaw, free web sites, and Google. Forty percent did searches in the Federal and State combined case law data bases, seven percent searched in the U.S. Supreme Court data base, thirty-three percent searched in the Eleventh Circuit data base. Thirty-three percent did Headnote and Topic searches. Thirteen percent searched in secondary sources.

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83 Moppett & Cunningham, supra note 2, at 76-77 & n.5, review the benefits of this approach based on Hess, Seven Principles, supra note 42, at 367-68.
84 “As a professional, you are too far removed from the first year experience to anticipate all the blind alleys your students will explore or to accurately predict the time it will take them to conduct the research. Based on your research assistants’ experience, you can fine tune the problem to make it more effective and to decrease the level of frustration your students will experience.” Grace Tonner & Diana Pratt, Selecting and Designing Effective Legal Writing Problems, 3 LEGAL WRITING: J. LEGAL WRITING INST. 163, 167 n.9 (1997).
Eighty percent of the students used term and connector searches, while fourteen percent did searches in natural language. Only one pair reported a sufficiently small number of relevant hits with the first search. Everyone else had to revise their search strategies and run more searches.

The students had a variety of rationales in formulating their searches. Because it was time consuming to record and explain the formulations of their search terms and connectors, and because recording those rationales was not, after all, the end product of their work, many of the responses to the guidance questions were somewhat incomplete and unclear. However, the responses showed that the students understood that their task was to figure out how to use the terms and connectors to identify cases that had facts similar to those in the *pro se* complaint and to narrow down the results without sacrificing relevant cases. For instance:

We used <prison> and <correctional facility> to search the two main ways of referring to prison, because this is directly related to the complaint of the prisoner. The prisoner was complaining about receiving <constitutional rights>, which is why we searched that term.

And another pair wrote,

We chose [prison rights] initially because any prisoner’s claim challenging the constitutionality of his right to toothpaste would follow under this topic.

However, this pair later abandoned the term, “prison rights,” and found success with a natural language search and a terms and connectors search using other terms.

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85 The results were taken from two sections of Legal Research and Writing which contained a total of thirty-nine students.
Other comments were:

As we found relevant search terms and started learning more about the subject, we narrowed our searches accordingly.

Our strategy was “to narrow the searches down to things that were applicable to what I was looking for and to make it more realistic to look at the cases!”

“I mostly just utilized the ‘More Like This’ option to narrow down the list of cases that were useful to me.”

Though the reasoning of the written responses to the guidance questions was rudimentary, the verbal descriptions of the research strategies during the discussion segment were much more complete and lucid. It may be best to think of the responses to the guidance questions as notes because of the time limitations and because these answers to the guidance questions were really of secondary interest and importance to the substance of the information the students were seeking. As notes, they were helpful during the discussion segment for reminding the students of what they did and why.86

In the discussion segment of the Workshop, I asked basically the same questions found in the guidance questions. The class discussion allowed us to continue the exchanges we had while the students were researching the exercise, but with input and reactions from the entire class rather than from two students at a time. In discussing how they researched the problem verbally as opposed to in writing, the students were able to explain at greater length and in more detail what they had done. Some were quite eager to share their success stories, and others to get explanations as to why their approaches

86 Of course, the students could also track their searches through the tracking devices found in both Westlaw and LexisNexis.
did not prosper. I would ask a pair who thought they were successful to volunteer sharing their process, and I would place their successive searches on the whiteboard along with the number of hits each search generated, then ask the students to give me details about the most relevant cases found among those hits. The strategies and how well they succeeded or failed became evident. Time did not permit me to examine the research processes of all the pairs, however.

If a student mentioned section 1983, I might ask what he knew about that statute or what role it had in the prisoner’s legal action. If the student didn’t know, perhaps another would. In any event, when we got to the answer, I would ask the students if they thought it was important to know what a section 1983 action was before finalizing an answer to the assignment. The purpose of this line of discussion was to make the students develop awareness and judgment about what they needed to find out and know. It could also raise the question of whether it would be easier to derive this background information from book sources or on line. My intention was to make the students realize that electronic research might provide information that is fragmentary and that it was important to familiarize oneself with the general area of law in which one is researching. Of course, this discussion might not occur had I given the students a great deal of introductory preparation, which might include explaining what a section 1983 action is. To the extent I provided more introductory information about the problem, my approach would have been more consistent with the lecture method as opposed to the practice method I am advocating. This issue, that is, the degree to which the professor depends on providing information through a lecture as opposed to having the students find the information through practice, turns on what the professor feels is most appropriate for the
particular research problem and the particular students.

What the students found most valuable about this exercise was the exposure to the ideas of their mates on how to do the research. In the Evaluation Questionnaires, the majority of students indicated that their exposure to the variety of research approaches was the most useful aspect of the exercise.\textsuperscript{87} Verbally, students told me they learned things about the commercial databases they did not know before and discovered that there were other ways to find the answers for which they were looking. In developing their searches to produce a limited number of relevant hits, the students also found that fewer hits and more relevant hits depended on such factors as how specific the terms they used were to the case, how accurately the terms reflected the issue of law, and how carefully they used the connectors to define the arrangement of terms most likely present in relevant documents.

The discussion also served to analyze the results. In other words, we discussed what cases were most responsive to the judge’s questions, and how to apply the case law we found to the fact pattern. This part of the discussion required the students to think about what they had found, whether they could use that material, or whether they needed to continue their research. It happened that there was some disagreement about whether a case in which a prisoner did not receive enough toothpaste for two daily brushings as opposed to one could meet the standard of cruel and unusual punishment. Though four pairs of students out of fifteen did not mention the Eighth Amendment, all of them either explicitly, or by citing case law, found that the general standard was the “cruel and

\textsuperscript{87} See the Questionnaire Responses section, III.F,\textit{ infra}.
unusual’ punishment clause of the Eighth Amendment, and that the Supreme Court had established deliberate indifference to an objectively serious medical need as the test to be applied. Most learned that this could apply to supplies for hygiene, such as toothpaste. One student, however, found case law indicating that in regard to a fungible hygienic item such as toothpaste, prison officials are only required to supply the “minimal civilized measure of life’s necessities.” The student reasoned that toothpaste sufficient for one brushing a day met this standard. Others argued that the facts pleaded in the case were sufficient to state a cause of action and further discovery would determine whether the amount of toothpaste allotted Mr. Smith was sufficient for preventing serious tooth decay.


91 This student cited to Houston v. Freeman, No. 2-07-CV-0386 PS, 2008 WL 975049, slip op. at *2 (N.D. Ind. April 7, 2008). In this case, the plaintiff claimed that the inmates of the facility where he was incarcerated only received “small tubes of toothpaste” and “indigent inmates were unable to replace their toothpaste.” Id. at 4. The court held, “[W]ith the possible exception of denial of toothpaste to indigent inmates, the policy alleged does not deprive prisoners of the minimal civilized measure of life’s necessities. It may be that some indigent inmates ran out of toothpaste, could not afford to buy more, and suffered harm, but [the plaintiff] does not allege that he was indigent, and he may not assert the rights of any other inmate because he lacks standing to do so.” Id. Thus, the court actually excepted the indigent prisoners from the “civilized measure of life’s necessities” standard in that indigent prisoners were unable to purchase more toothpaste if they needed it.
In spite of a relative unanimity in the law that they found, the students presented a wide variety of cases from different jurisdictions to support the law. This is certainly a flawed outcome. It is perhaps attributable in part to the short allotment of time to do the exercise, which was one of their criticisms of the workshop. Perhaps the students did not have the time to discriminate among the cases in regard to mandatory and persuasive authority. Their inexperience in researching and answering a legal question in such a short period of time also may have contributed to this.

Allowing the students to independently work out the answers to the research problem in an environment where there is some guidance, immediate feedback, group or peer support, and finally, where the students do not have the stress of a substantial grade, is an experience that is conducive to developing research skills at an early stage in their legal careers. This independence of thought and variability in results can be sources of problems in that the professor cannot anticipate and therefore assess all the approaches the students will take and the possible results they will come up with. Nor does the professor exercise anything like complete control over the steps the students take. It is advisable then, that before doing the exercise, the professor become as familiar as possible with different ways students might research the exercise, and try out as many different approaches as seem within reason. In this way, the professor will be as well-prepared as possible for what the students may do. However, no professor will ever be able to anticipate everything that the students may try.\textsuperscript{92} Though most of these wayward efforts may not bear fruit, it is by making mistakes that students learn.

\textsuperscript{92} For example, if the professor chooses to identify a real prison, as I did, as the institution in which the section 1983 plaintiff is incarcerated, a student who Googles might well find the name of the actual warden of the facility and the policies regarding toothpaste established there. Depending on how realistic the professor wishes to make the exercise, the professor might take those facts of the case into account.
F. Questionnaire Responses

The response of students to the workshop was very positive. Eighty-one percent of the students found the online workshop to be useful, as opposed to nine percent who did not. Seventy-five percent of the students recommended that this class be taught regularly, as opposed to six percent who thought it should not be taught. Seventy-six percent of the students thought it a good idea to teach a series of classes in this way.

Suggestions for improving the class were as follows: teach the class earlier in the semester: twenty-nine percent; shorten the number of questions or provide more time: twenty-one percent; provide more feedback to students on the answers they gave: eighteen percent. Students found that the most useful aspect of the exercise was to learn the research techniques which their peers used, sixty-nine percent.

In view of these responses, I plan to give this workshop directly after the introductory lectures and bibliographic exercises provided by the librarians for online research. I now plan to devote two classes to the workshop, rather than one. During the first class, I would provide the introduction and allow the students to use the balance of the hour and a half class to do the research and answer the guidance questions. During the second class, I would spend a half hour to forty-five minutes on the discussion, and then give the pairs the remaining time to answer Question No. 8, which in essence would answer the judge’s questions. I would collect the answers to Question 8. These should be relatively short, and since they are prepared by pairs of students, would number only half the members of the class. I should be able to review them and return them with general comments by the next class.

Some students suggested that they should receive an authoritative answer at the
end of the exercise. The feedback issue, I believe, concerned a model answer for
Question 8. In the future I would provide this answer in two forms: first, in the class
room discussion, by leading the students to think about the issue of highlighting Supreme
Court and Eleventh Circuit opinions; and secondly, by drafting and distributing an
aspirational model answer which students would be given upon completion of the second
workshop class.

The students’ recognition of the value of learning the research strategies that their
peers employed seems to me very significant. It indicates that in this exercise, students
learn new ideas of how to research from one another. The research workshop, then, not
only provides an exercise in which students practice using the resources and techniques
to which the research lectures have introduced them, but they also learn the importance of
being open to methods other than those they themselves use. They learn that researching
the law is not only an individual activity drawing from one’s personal expertise, but also
a collaborative activity in which varying approaches can contribute and enhance the
result.

CONCLUSION

The performance of legal research is a skill, and like any other skill it is learned
by doing and not by listening. Lectures on legal research are made more stimulating and
engaging when students have the expectation of using the lecture information in the very
near future. The mental processes applied in electronic legal research may differ from
those applied to book legal research, but because both electronic and book research are
skills, a guided workshop in electronic legal research may be based on similar principles
to that underlying a workshop in book legal research with appropriate modifications.
The aspects of the electronic legal workshop proposed here are as follows: (1) scheduling as soon after the introductory lecture and treasure hunt exercise as possible; (2) guided questions which both lead students through a process, but which also give them freedom and independence to make choices; (3) a realistic research problem which requires reflection about what has been found as opposed to simply finding an answer, but which is not as complex as the research problem for the typical open memo; (4) work in small groups or pairs; (5) immediate discussion and feedback on the strategies employed in the research exercise.

If practice does indeed develop the skill, then professors of legal research and writing should consider the idea of expanding the workshop program to several research problems which would require the use of different research sources and which would progress incrementally in relative difficulty. With these research experiences, students should be better prepared to address the research assignments that await them in their future profession.