DAVID L. ARMOND* AND SHAWN G. NEVERS**

LOOKING BEYOND THE STACKS

STAYING CONNECTED TO CURRENT LEGAL RESEARCH PRACTICE

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"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 perceived disconnect between 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.

Part of the problem is that many law librarians who teach 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 they should look for ways to stay connected to current legal research practice. As they do, legal research instruction will improve and will better prepare students for the legal research assignments that await them in law practice.

The desire for our legal research instruction to be informed by current legal research practice led us, as BYU law librarians, 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 insights 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, when coupled with our knowledge, experience, and professional judgment, it is a valuable tool for ensuring our students are well educated in legal research.

WHY A PRACTITIONERS COUNCIL?

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

For example, in Patrick Meyer's recent survey of law-firm librarians, only five of 162 respondents were from firms ranging from one to 25 attorneys. The number was so small that the small-firm results were not summarized for the article.[1] This leaves a gap in understanding current legal research practice for academic 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 took them with firms of fewer than 20 attorneys.[2] 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, since the legal research environment in those firms often differs in the research tools available as well as the research tasks assigned.[3]

One factor favoring the use of attorneys was that attorneys are the ones who evaluate our students' work product in the real world and determine just how good their research really is. We wanted to be in touch with their expectations as well as gather their impressions of students' and new associates' research skills. This would allow us to have a better feel for what our teaching might be lacking and how we could best prepare our students to succeed.

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."[4] This might have been a concern if we planned to rely wholly on their feedback to shape our courses. However, we 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.[5] Consistent feedback from practicing attorneys is an area that is lacking in current legal research education.[6]

In addition to focusing on practitioners, another important characteristic 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 it 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.[7]

Another critical characteristic we hoped our project would possess, which ultimately led us away from interviews, was 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 continued connection to current legal practice we were seeking. We also hoped such a relationship would produce a greater investment for the attorneys 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 also to get feedback on things we were currently doing or ideas we were interested in trying.

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 was out of these ideas that the Practitioners Council was born.

THE PRACTITIONERS COUNCIL

···· GETTING STARTED

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. This document began by stating the council's purpose: "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."

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.

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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 sensitive to the attorneys' busy schedules. We decided to ask them to commit to only 10 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.[8] We were also pleased when our library director pledged some financial assistance so that we could offer our council members lunch.

···· COMPOSITION OF THE COUNCIL

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 70 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 20 attorneys. Approximately 15 percent took jobs with the government or in public-interest work. Using these numbers, we were able to get a better idea of what we wanted our council to look like.[9]

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 to 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.

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 focus on attorneys in the Provo and Salt Lake City areas, since many of our law students are likely to practice in these cities and the proximity would allow us to meet with the attorneys in person.[10] We also received some recommendations of attorneys who would be good candidates to help us.

We identified eight attorneys we were interested in having on the Practitioners Council: two from the government, two from small firms, and four from medium to large firms. From this group we hoped at least six attorneys would participate.

···· INITIAL CONTACT

We contacted each of the selected attorneys by phone and explained our idea, making sure to mention our purpose in creating the Practitioners Council, what we would be asking

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them to do, and the limited time commitment it would require. All the attorneys we talked to were very receptive to the idea of the council, and many were excited about the project.

There is no doubt attorneys are busy, but we found them willing to commit some time to a project they felt was worthwhile.[11] With all the dissatisfaction there is in the legal profession about how law schools are training students to actually practice law, we think attorneys on the whole will be willing supporters of projects like the Practitioners Council.[12]

FACE-TO-FACE MEETINGS

····ADVISORY BOARD FEEDBACK

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 powerful tools for informing the curriculum and, in some cases, pedagogy.[13] 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.[14]

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 we could not always anticipate. While survey design is always difficult—the ambiguity of language leads to respondents 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 quickly. Because the members of the council were all practicing attorneys, we knew that we would have to limit meetings to 90 minutes or less.[15] Since we wanted to maximize the value of our face-to-face meetings, we knew that standard brainstorming could be only a partial solution.

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."[16] Others have added (5) "One conversation at a time" and (6) "Stay focused on the topic."[17] 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."[18] 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."[19] Yet it was difficult to conceptualize how we could leverage this approach while limiting the amount of time we asked members of the council to volunteer.

····STEMMING

Fortunately, one of us had prior experience serving on a community council, which had provided exposure to a brainstorming process that combined premeeting introspection with the creative writing technique known commonly as sentence stemming.[20]

For the community council, a series of sentence stems was drafted dealing with participants' thoughts about major issues facing the community. Some stems were very specific while others were as open ended as "The major issue facing our community is . . . ." Participants were directed to seclude themselves without interruptions and then read and complete each sentence stem 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 ideas usually followed considerable introspection.

Responses to the questions were emailed 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 convened and were led through a whiteboard discussion starting with the first question. Participants were asked to read their highest priority response. This was not necessarily the 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.

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. In almost every case the ideas presented were impressive—far beyond what individual council members could have generated by themselves in any optimal setting for thinking.

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 confirmational 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."[21] Osborn's brainstorming includes a "deferment of judgment principle," which is in some ways an attempt to fight this tendency.[22] 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. The final product in the community council setting was a set of clearly defined questions and some excellent proposed solutions.

····STEMMING IN THE PRACTITIONERS COUNCIL

Although 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 down to 40 minutes because our group was roughly half the size of the community council. With that in mind, we sat down and drafted our instructions for the stemming exercise and then drafted the actual stems.

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, their search behavior, and their observations of weaknesses in law school legal research instruction.[23] After defining the five stems, we organized them so that the most concretely answerable stems were first, followed by broader conceptual ideas. Our first five stems follow:

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 . . . .

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.

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.

RESULTS

THE PROCESS HAS HELPED ENSURE THAT WE REMAIN GROUNDED IN LEGAL RESEARCH AS IT IS ACTUALLY PRACTICED, WHICH BETTER PREPARES AND MOTIVATES OUR STUDENTS.

····LESSONS FOR THE CLASSROOM

The Practitioners Council 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 the changes that resulted are described here.

Context

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 about 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.

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 on the council expressed sympathy for young attorneys who were under time

pressures to come up to speed in areas 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. 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.

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 that 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

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 a summer associate we knew rang 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.

Lawyers are generally good storytellers, and we gathered a wealth of anecdotes from the council that rejuvenated us and our classroom discussions. Old examples from when we practiced either gave way to or were supplemented by examples that had occurred the month or the week before. 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. This demonstrates another benefit of the council: the gathering of perspectives and experiences from a number of attorneys.

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 removed from legal practice, attitudes toward legal research instruction can suffer, despite the fact it is one of the more practical skills taught. 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 we had to say.[24] This result is in-line with educational research showing that "perceived *relevance* is a critical factor in maintaining student interest and motivation."[25]

Many other examples have arisen spontaneously in our classrooms as we teach 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.[26]

Mediating Novices to Experts

As a result of the feedback we received in our first meetings in 2009, we focused our 2010 meetings on drilling deeper into our council 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.[27] 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 flesh out the differences between novice and expert performance, we started by attempting to identify how our attorneys classified research problems. We asked them to describe particularly challenging research assignments and then to describe those that they would characterize as easy.

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.

The difference in reported difficulty centered on how the statute was applied. One example involved 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 also included a provision that left a defendant to self-representation when an attorney was conflicted out of the representation due to lack of 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 and the new statute was easy to find, but determining which statute applied was very difficult.

Besides the difficulties of subject-matter jurisdiction and temporal application of statutory provisions, another area of reported difficulty was the time frame for an assignment. Based on a firm's litigation calendar, research can have either a short or a 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 while trying to balance the demands of the practice, we had not 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.

This underscored the limitation of a strictly academic approach to research training—the scientific enumeration of a checklist of skills like "research statutes." 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 is, in reality, just a particularly 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 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."[28] 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, but the exercises would also need to teach students to develop sensitivity for how difficult the discovered statute is 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.

····FUTURE ACTIVITIES

Something we especially like about the Practitioners Council is that it is extremely flexible—it can be what we want it to be. Up to this point we have focused mainly 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 if they want to create a Practitioners Council of their own.

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 students' work products. 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 products our top students are producing are really what practitioners want to see.

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.[29] 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 can adapt these scenarios into viable research problems.[30] They can even be introduced as issues recently encountered by a practicing attorney, which will likely enhance student interest.

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

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 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.

*Senior Law Librarian, Howard W. Hunter Law Library, Brigham Young University, Provo, Utah.

**Head of Reference Services, Howard W. Hunter Law Library, Brigham Young University, Provo, Utah.

NOTES

1 Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys,* 101 Law Libr. J. 297 (2009).

2 Twenty-nine of 79 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 website or on the firm's website.

3 *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).

4 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." Morris L. Cohen,

Research Habits of Lawyers, 9 Jurimetrics J. 183, 183 (1969).

5 In a recent article focused primarily 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).

6 The American Association of Law Libraries (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/main-menu/Member-Resources/grants/research-grants/research-agenda.html. 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).

7 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 5, at 570.

8 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.

9 The placement report numbers also revealed that about 15 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 descriptions.

10 Meeting in person was important to us because of the brainstorming activities we planned to conduct with the Practitioners Council.

11 This did not mean that each of the attorneys was able to follow through with the time commitment. 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.

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

13 *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).

14 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 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.

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

16 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 in which 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: "[I]n 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.

17 Robert Sutton, *Eight Tips for Better Brainstorming,* Bus. Week, July 28, 2006, at 24. (using ideas the author took from innovation consultants at ideo).

18 Osborn, *supra* note 16, at 158.

19 *Id.* at 191; Osborn's advice is ironic 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 of 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 17, at 24.

20 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 summarized 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 73–76 (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.

21 Michael A. Roberto, Know What You Don't Know 33 (2009).

22 Osborn, *supra* note 16, at 191.

23 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.

24 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) ("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).).

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

26 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.").

27 Almost a decade ago Carol McCrehan 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 McCrehan 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 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 on 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 ironic, 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.

28 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.

29 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 on Legal Research Education: Signature Pedagogy Statement, *available at* www.utexas.edu/law/faculty/pubs/bb26663_pub.pdf (last visited July 7, 2011).

30 Current legal research education literature advocates collaboration with practitioners in creating problems. Kaplan & Darvil, *supra* note 24, at 32 ("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.").