

PUTTING ONE FOOT IN FRONT OF THE OTHER: THE IMPORTANCE OF TEACHING TEXT-BASED RESEARCH BEFORE EXPOSING STUDENTS TO COMPUTER-ASSISTED LEGAL RESEARCH

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Editor's Note: Another Perspective on the Brutal Choice of CALR Access

Professor Paul Beneke recently argued in the pages of *Perspectives* that entering law students should be given immediate access to the full range of computer-assisted legal research (CALR) options when they arrive at law school.¹ This position is thought-provoking and interesting, but there are several persuasive arguments that suggest that the tradition of having students learn text-based research before exposing them to CALR is sound. Teaching the two research methods separately does not run counter to our universal goal of teaching students to be proficient in both approaches. In fact, we are convinced that staggering students' exposure to different research methods by introducing text-based research before CALR is more likely to lead to a higher level of overall research proficiency among a higher percentage of first-year law students.

There are three primary reasons that lead us to this conclusion. First, complete competence in text-based research remains vital. We suspect that the level of competence using text-based resources that we now expect of our students is likely to decrease if they have immediate access to CALR.

¹ Paul Beneke, *Brutal Choices in Curricular Design ... Give Students Full CALR Access Immediately*, 8 *Perspectives: Teaching Legal Res. & Writing* 114 (2000).

Next, the reasoning process used in developing research paths for text-based resources is more easily illustrated in the classroom. When students begin their research by using CALR, there is a sense of serendipity involved.² Finally, we believe that law students should learn from the very beginning of their professional careers that the quickest and easiest path to completing a project is not necessarily the best or most complete path. The demands on a student's time are certainly great and anything seen as a shortcut will be embraced, but this shortcut mentality is both a professional and personal liability that we ought not reinforce. We discuss each of these positions in further detail below, and in the process of our discussion we address many of the arguments put forth by Professor Beneke. While we share his enthusiasm for the use of new technology—both in the classroom and in the profession—we tend to think that having students put one foot before the other is ultimately in their best interests.

The Importance of Text-Based Research

The use of text-based resources for legal research continues to be a vital skill for practicing attorneys. In many practice environments, attorneys are restricted in their access to CALR, either by financial or by practical concerns. Contrary to what the commercial CALR outlets would like us to believe, it is often not financially feasible for practitioners to use their services. Additionally, CALR often misses important sources of law that thorough text-based research will yield. While computer databases are becoming more complete as time goes by, there are still frequent instances where CALR fails to yield important sources. As a result of these considerations, the use of text-based legal research remains an important skill for any practicing attorney, and we are remiss if we fail to bring home this fact to our students.

Many attorneys represent clients who cannot afford to pay the exorbitant fees charged by for-profit computer research outlets. Other attorneys are finding out that their clients will refuse to pay for CALR. More and more clients maintain that they cannot justify paying the fees that commercial CALR outlets charge, even if this means paying for

² We owe this description to a conversation one of the authors recently had with Jan Levine.

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more hours of an associate’s time to do the research in a library. As a result, new associates often find that they are restricted from using the commercial computer databases that they became addicted to during law school. They must then relearn how to conduct text-based legal research, if they ever learned how to do it thoroughly in the first place. If we instill the fundamental importance of learning good text-based research strategies from the very beginning by concentrating our students’ efforts on these strategies, they are likely to retain them longer. Skills teachers in upper-level courses should reinforce this initial concentration at every opportunity.

In Professor Beneke’s *Perspectives* article, he suggests that limiting students’ access in the way we suggest is irrelevant, as many of the materials that students can obtain through commercial CALR outlets can be found on free services on the Internet. While it is true that there are numerous resources available online, not all of these resources are as reliable or as thorough as commercial outlets. Because of the editorial and citator functions of commercial CALR outlets, it is doubtful these free online services would—or should—ever replace them. Part of what we should teach our students is how to discriminate between useful and authoritative sources and those that are not. One way to do this is to give them a thorough grounding in the official text-based sources available to them.

There is a more immediate and practical side to Beneke’s position. He suggests that the problem with restricting students’ access—either by withholding or by limiting their passwords for commercial CALR services—is that they can always access the information on the free services. Further, Professor Beneke contends that the limited-access passwords provided by the vendors are ineffective due to quality-control problems at their home offices that mistakenly allow many students to engage in comprehensive or full searches. This can lead to feelings of unfairness among members of the class. The implication of this position is that we should not stick our finger in a dike that is doomed to crumble. We find this position unpalatable. We believe there are simple solutions to these problems. At both Brandeis and Temple—as at most institutions—students receive no passwords until later in the fall term (after the

use of print sources has been covered). This prevents some students from having an unfair advantage over others. If this is impossible at your law school, we suggest you simply make it an honor code violation for anyone to use the electronic sources before permission has been given by the instructor. While it is certainly the case that there will always be a handful of students who will violate the rules, ours is a profession of self-policing. We can instill this directly by holding students accountable for their actions.

Understanding the Research Process

It is undoubtedly true that students who are entering law school today are, generally speaking, much more comfortable with the use of technology both in the classroom and out. We agree with Professor Beneke that students should be encouraged in this, and that we should reinforce the notion that technology can serve as an important professional tool that can increase productivity and efficiency. It does not follow, however, that this position necessitates giving entering law students immediate access to online research products. In fact, teaching students traditional text-based research before exposing them to CALR can be useful in that it is somewhat easier to illustrate possible research paths in text-based media.

When we teach students how to research legal problems, we have a couple of goals. First, we are attempting to show them how to find relevant and useful resources that can help them answer the questions posed by the problem they are working on. We are also, however, forcing them to think through the logic of how these relevant and useful resources fit together in a coherent field of authority. Actually working through this process, seeing how the different resources fit together, and understanding where there are gaps and how they might be filled are all exceedingly important exercises for students to undertake. By using text-based resources, we can more easily illustrate in a way that is fairly easy to grasp exactly how this process works. In other words, it is far easier to make the logic of how the process of research is undertaken explicit by using text-based legal resources.

When students turn to CALR, they need not

think through the process of how different research paths fit together, how they transect, and how they can tell if they are being comprehensive in their research. All of this is hidden by the Boolean logic of the search programs. Typically, when students use CALR outlets they need only pick a database and enter a few general search terms. This invariably yields a large number of documents—usually very large, as students tend to use more general search terms early in their training—which may or may not contain the information that they ultimately need. On its face, this may not seem much different than having a student look in a regional (or, heaven forbid, a decennial) digest under a general term such as *negligence*. Both yield a great deal of data that may or may not be useful. The difference, though, is that we can explain—in a way that first-year law students who are not also computer scientists or logicians can understand—how what they have found fits into a comprehensive picture of available relevant resources.

It may be the case that students would still see the logic we are discussing here if they were to learn both text-based research and CALR simultaneously, but we doubt it. This is based on the nature of the students themselves. An increasingly large number of the students currently entering law school not only understand and are comfortable with technology, but also expect to learn by using technology. They get their news online, shop online, stay in touch online, conduct business online, and play games online. Given this propensity, it seems as though this generation of law students is more likely to prefer CALR over books. Because it is important that students be able to think through the process of research and understand the rationality involved in doing so, it is critical that we teach print sources before the CALR. We believe that their motivation to engage in this process seriously would be extremely reduced if CALR is introduced at the same time as text-based resources. If we stagger their exposure in the manner we suggest, a manner that traditionally yields sound results, students are much more likely to learn the print sources thoroughly.

The Quickest Path Is Not Always the Best

The final reason that compels us to maintain that students would benefit from having their

access to CALR withheld relates to the fact that technology has the allure of offering quick shortcuts to seemingly time-consuming activities. In general, this is certainly true—at least to some extent. Using computers can decrease the time that we all spend on tedious tasks, and we actively encourage our students to use high technology both in and out of the classroom. Taking this too far, however, creates a dangerous presumption—a presumption that is potentially disastrous to law students, both to their work as students and to their work as professionals after they graduate.

When students enter law school, one of the first things they are likely to notice is that the demands on their time are varied and great. There is a tendency, then, for students to want to adopt any sort of shortcut that they can. Some shortcuts are not what they seem, however. Shortcuts can conceal the true complexity of an issue and have the effect of lulling us into complacency about the amount of effort that is truly required for a given project. This is one of the reasons why doctrinal faculty invariably advise their students to stay away from commercially produced briefs and outlines.

Exposing students to CALR too early in their law school careers would likely give them the impression that they can do all their research quickly and painlessly. Given that CALR databases are incomplete and considering that Boolean searches are not as comprehensive as our students might assume, it seems suspect to allow this sort of impression to linger. We are certain that all those who advocate exposing first-year law students to CALR, like Professor Beneke, attempt to drive home the point that text-based research is important at every opportunity. This message is bound to get lost, however, in the allure of the quick fix that CALR represents. By introducing text-based research first, we reinforce the notion that having the skill to use that body of resources is important. Such knowledge is an important foundation for students' thorough understanding of how all legal resources help them in their tasks as professionals. Holding the introduction of CALR devices and techniques in abeyance until after students have mastered text-based research techniques does not diminish skills that students need to have; it gives us time to set a strong foundation in place that students will need if they are to be successful in their chosen profession.

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Conclusion

The debate about whether CALR resources ought to be introduced early in a law student's career is surely a worthy and important topic for discussion. Many of the things we suggest may not seem as persuasive in the future as CALR resources become more reliable and comprehensive. At this point, however, having students master text-based research before they are exposed to CALR seems to be the most sound way to ensure that they learn each completely and thoroughly. Students need to learn text-based research methods thoroughly, as many will find that their CALR access is limited once they enter the work world. It is also important to have students understand the logic behind their research paths. Focusing on text-based research at the beginning of their first year will make this more likely. Finally, legal research and writing professionals would be remiss if we allowed our students to think that taking shortcuts wherever possible is a healthy habit to form. Professor Beneke makes strong arguments for the importance of giving first-year students immediate access to CALR resources, but we are convinced that we ought to guide our students as they take their first steps in legal research.

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