

“First-year students should be given full access to LEXIS and Westlaw the day they enter law school.”

GIVE STUDENTS FULL CALR ACCESS IMMEDIATELY

BY PAUL BENEKE

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Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other "brutal choices" that should be considered in future issues.

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For the past several years, my school, like most others, has made it a practice to delay distribution of Westlaw® and LEXIS® passwords to first-year students until they have learned how to research using print sources. Furthermore, even when first-year students were given passwords, they were so-called "limited" access passwords, providing access to some, but not all, of the databases and functions on Westlaw and LEXIS that are available to second- and third-year students, who have "full" access.

While I used to agree with this practice, I think it is time for law schools to end it. First-year students should be given full access to LEXIS and Westlaw the day they enter law school. They should be taught to use these computer-assisted legal research (CALR) services at the same time they receive instruction on print sources. Moreover, students should be allowed to complete all research assignments using whatever sources they choose, especially if they can explain the reasons for their choices.

I explore the reasons for my change of heart in this article. In the end, I believe limiting access to Westlaw and LEXIS creates more problems than it solves.

Limiting Access Is Irrelevant

Limiting students' access is increasingly irrelevant; nearly all of the most important databases and functions available on Westlaw and LEXIS are now available free on the Internet. This is probably the best reason for allowing students immediate access to Westlaw and LEXIS. For instance, the federal government and many state governments maintain Web sites where users can access statutory or case law databases. Thomas, a Web site maintained by the Library of Congress, has databases that contain federal legislative history.¹ The United States Supreme Court itself very recently announced that it is opening its own Web site, where the public will have access to its decisions.

Many commercial Web sites not only maintain legal databases themselves, but also collect and provide links to databases maintained by governmental and educational entities. These sites, better known as "portals," are similar to Westlaw and LEXIS in that they allow access to multiple legal databases through one Web site. Perhaps the best known of these portals is FindLaw.² While the databases available through these Web sites lack the editorial enhancements offered by Westlaw and LEXIS, such as West's headnotes for cases, they typically do allow users to conduct free-text searches of legal databases in much the same fashion they can search a database on Westlaw or LEXIS.

Westlaw and LEXIS are not completely irrelevant, of course. The citators available on these services—KeyCite® and Shepard's®—are important tools not freely available on the Internet. However, even these citators may not be essential. For instance, for a student to find every case in a given jurisdiction that has cited a particular case, all the student need do is run a free-text search in a case law database for that jurisdiction using the name of the case. Assuming that the database is up-to-date, the search should list every case that a citator would. The list admittedly would not describe the treatment the

¹ Library of Congress, Thomas: Legislative Information on the Internet (visited Apr. 15, 2000) <<http://thomas.loc.gov/>>.

² FindLaw (visited Apr. 15, 2000) <<http://www.findlaw.com/>>.

cited case received in the citing case, as KeyCite and Shepard's would. However, as I teach my students, reliance on these descriptions alone is at best risky. Students should read the citing cases for themselves.

Limiting Access Is Ineffective

Password limits often prove ineffective. Each fall representatives for Westlaw and LEXIS explain that the passwords they distribute to our students will provide the students with only limited access until a specified date, at which point the limitations will be removed. However, experienced teachers have learned that supposedly limited-access passwords have in fact allowed students full access. This problem is magnified when some, but not all, students have such access; students with limited access naturally feel that they are at a disadvantage.

I do not believe that the representatives with whom we deal intentionally mislead us. Rather, the problem is due to a lack of quality control at the home office. Either the passwords are delivered to the representatives without the limitations, or, if they are delivered with limits, the limitations are later deactivated prematurely at the home office unbeknownst to the representative. The bottom line is that once the passwords are in the students' hands, law faculty no longer control the access students have to the databases and functions on Westlaw and LEXIS. And, as experience has taught, West Group and LEXIS have no interest in limiting students' access to their services.

Limiting Access May Interfere with Goals of Non-LRW Faculty

Limiting students' access to LEXIS and Westlaw runs the risk of interfering with the goals of non-legal research and writing (LRW) faculty. Other faculty who teach first-year students want those students to have access to Westlaw and LEXIS at the beginning of the year. They often assign students to read cases or other authorities that are not in the students' casebook. Understandably, it is far easier to provide students with a citation and expect the students to find the

authority on their own, using Westlaw and LEXIS, than it is to make copies of the authority.

The risk of interfering with the interests of other faculty by denying students access to Westlaw was heightened during the 1999–2000 school year, due in large part to West's decision to integrate Westlaw with The West Education Network® (TWEN®). This online service allows law school faculty to create Web sites for their classes. For the 1999–2000 school year, students could access TWEN only by using the same passwords they used to access Westlaw. The main advantage of tying TWEN to Westlaw for students and faculty is that once students have entered the faculty member's Web site, they can link directly to an authority within a Westlaw database without entering another password. Because most law faculty who used TWEN during the 1999–2000 school year began using it the first day of class, students of those faculty needed Westlaw passwords the first day of class. If some first-year students are given access to Westlaw, fairness dictates that all first-year students be given access to Westlaw, even if some of those students are not taking a class from a faculty member who is using TWEN.

LEXIS offers a service similar to TWEN, called Virtual Classroom. In contrast to TWEN, for the 1999–2000 school year students could access Virtual Classroom even if they did not have a password. However, this distinction does not really mean that it is possible to delay distribution of LEXIS passwords to students. First, just as TWEN allows students to hyperlink to an authority within Westlaw, Virtual Classroom allows students to link to an authority in a legal database maintained by LEXIS. Before they can do this, however, students must enter a LEXIS password. Thus, even though students do not need a LEXIS password to enter a faculty member's Web site on Virtual Classroom, students do need one to link to any authority that is cited on the site. Second, once students are provided with Westlaw passwords for TWEN, the same students must be provided with passwords to access the LEXIS research service.

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Print Resources Are Becoming More Scarce

Limiting students’ access to Westlaw and LEXIS is becoming increasingly more difficult to defend as print sources become more scarce. Many law school libraries now order fewer copies of print sources, largely, if not totally, in response to the fact that many of these same sources are available online through Westlaw and LEXIS. For instance, law libraries have decreased their subscriptions to Shepard’s. The resulting scarcity of print sources frustrates students who are asked to complete research assignments without using an online source.

Limiting Access Can Lead to the Appearance of Unfairness

Limiting students’ access to Westlaw and LEXIS can lead to the appearance of unfairness. Many law schools ask Westlaw and LEXIS to provide first-year students with limited access in the fall, and then to expand that access to full access in the spring. Under this system, students who complete but do not pass LRW in the fall return the next year to retake the class with full access to Westlaw and LEXIS. First-year students, rightly or wrongly, perceive these returning students to be at an advantage. A related problem arises when first-year students become friends with second- or third-year students who have full access. The first-year student in this situation is naturally tempted to “borrow” the friend’s password. I may be overstating the problem, but, like my students, I worry as much about the appearance of fairness in my classes as I do about its reality.

Recommendations

Rather than limiting students’ access to Westlaw and LEXIS and focusing on print sources first, I recommend that we teach research strategies for online sources at the same time we teach research strategies for print sources. Given the increasing prevalence and importance of the Internet and the number of resources available for free on the Internet, it no longer seems justifiable to delay instruction of online sources. The Internet is fast becoming the research tool of

choice in many professions. The law should be no different.

Online instruction should include Westlaw and LEXIS. However, it should not be limited to these services. Students should be educated about the availability of free resources on the Internet and about how to use these resources efficiently.

At the same time we teach students about Westlaw and LEXIS, we should also emphasize the various costs associated with using these services. Even if students have access to Westlaw and LEXIS when they enter the marketplace, their access may be limited because of the relatively high cost of these services. We should educate students regarding how they can use free online resources to supplement or supplant the traditional services and hold down their costs. Regardless of the access students will have to online sources after their first year, they still need to learn the utility of print sources. For certain kinds of research, it is still easier to use print sources. When I am researching administrative regulations, I find it far more convenient to use a print source. The print source allows me to easily move back and forth between the pages of the volume where the relevant regulations can be found. The print source also allows me to see the context within which a specific regulation appears. When I’m researching regulations online, by contrast, I experience delays moving from one regulation to the next because of the time it takes to download each regulation. In addition, context is often lost online because the online source is usually capable of displaying only one regulation at a time.

For other kinds of research, however, some combination of print and online sources is the most efficient way to research. For example, when I’m researching case law online for a particular statute, I find it convenient to have a copy of the print volume where the statute can be found sitting next to me.

Students should understand the benefits of using print sources; they should be shown that their understanding of print sources will increase their understanding of online sources. Indeed, in my opinion, teaching print sources and online sources at the same time—rather than

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separately—has the effect of increasing students' understanding of research strategies generally. For instance, I have found that students more easily understand how to use the West Key Number System® if instruction on how to use the system in print digests is immediately followed by instruction on how to use it online.

Our goal should be to teach students how to be smart consumers of print and online resources in combination. Limiting access to Westlaw and LEXIS is not only ineffective and ultimately irrelevant, but also runs counter to this goal. Instead of limiting access, we should provide first-year students with immediate and full access to Westlaw and LEXIS, let students know about the drawbacks and benefits of these services in light of the other resources available to them, and allow them to make intelligent and informed decisions about their research strategies.

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