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BRIEF ANALYSIS TOOLS IN THE LEGAL RESEARCH CLASSROOM:

CHALLENGES & BEST PRACTICES

Taking a closer look at integrating brief analysis tools into the legal research curriculum.

BY MARY ANN NEARY & SHERRY XIN CHEN

The first brief analysis tool, CARA, was introduced to the market by Casetext in 2016, setting off a competition among research vendors to produce Artificial Intelligence (AI)-infused legal research tools designed to analyze a legal document. Following the launch of CARA, a number of companies have developed their own versions of such tools. In 2018, Ross Intelligence released EVA and vLex unveiled Vincent; in the following year, Westlaw's Quick Check and Bloomberg Law's Brief Analyzer came to the market. In the summer of 2020, LexisNexis rolled out Brief Analysis on its newly updated Lexis+ platform. Westlaw, LexisNexis, and Bloomberg Law have all provided brief analysis tools at no additional cost to their subscribers.

In general, brief analysis tools perform two main tasks after the document is uploaded to the platform: (1) validating if the cited authorities are good law; and (2) suggesting additional authorities that the original document might have missed. For an overview of the main features of selected brief analysis tools, please refer to the chart on page 12.

With brief analysis tools easily accessible on Westlaw, LexisNexis, and Bloomberg Law—the frequent partners of a law student's legal research life—one question for law librarians and legal instructors is whether they should introduce these tools in law school legal research classrooms. We believe the answer is yes,

and this article provides guidance for how best to do it.

Challenges and Integrated Instructional Approaches to Brief Analysis Tools

Brief analysis tools use AI technology to review a user's uploaded document and generate a report. Despite being known as "brief" analysis aids, the tools will analyze and create a report on any document that contains standard legal citations. So, students don't need to write a lengthy brief complete with a table of authorities to use brief analysis tools effectively. The resulting report contains an analysis of cited legal authorities; the brief analysis function also extracts main legal concepts, and it finds additional materials related to the brief.

Although promoted as a simple, quick, and easy fix to improve the quality of a legal brief, brief analysis tools, when first introduced to law students, may pose hidden pitfalls. As legal research instructors, in this article we discuss instructional



approaches to integrating brief analysis tools into the legal research curriculum. In the examples presented here, the instructor assigns students a topic to research, and their assignment work product is a memo on this topic. Note that this assignment is best planned for as a mid- to late-semester activity since students first need to have a strong grasp of search strategies, validation steps, and use of secondary sources. From a pedagogical perspective, the memo assignment drives students' foundational research; once students have a strong understanding of the topic, they are positioned to comprehend the brief analysis report. Our discussion centers on the main challenges of integrating the tool in a legal research setting and the instructional approaches to maximize students' successful application of the tool. Scaffolding the steps in the assignment is crucial to students' successful use of the tool, so instructors need to pre-teach and prepare students for reviewing the analysis report.

1 CREATING A TEACHING MOMENT BY PROMPTING STUDENTS TO COMPARE THEIR LIST OF AUTHORITIES WITH THAT GENERATED IN A BRIEF ANALYSIS REPORT

CHALLENGE #1: Embarking on their task, the first challenge students may face is if they are not familiar with the scope and limitations of the brief analysis tools. The strength and accuracy of the brief analysis tools are closely related to the comprehensiveness of the research platform's data collection and citator service. This correlation is made clear by a review of the brief analysis tools' validation function, as seen in the chart on page 12. Most brief analysis tools rely on the research platform's existing citator service (e.g., Westlaw's KeyCite, LexisNexis's Shepard's, and Bloomberg Law's BCite) to validate the authorities cited in the uploaded document. Although marketing materials emphasize the "simplicity" of the brief analysis tool, the resources and process involved in validating and analyzing a legal brief are not that simple. The different types of legal authorities contained in a legal brief are complex and diverse. They may include cases, statutes, regulations, and agency decisions at both federal and state levels; they may also come in different citation formats not easily recognizable by the platform. With a focus on case law research, most brief analysis tools do validate and flag cases cited in the original document; however, statutes, regulations, and agency decisions are sometimes left unchecked (as in Bloomberg Law) due to the limitations of the hosting platform's citator service. In addition, the timeline and coverage of different types of cited sources may also impact the quality and accuracy of the brief analysis tool. Not being aware of the limitations of the research platform's data collection and certain shortfalls of its citator service may create a false sense of security among students deploying the new tool.

INSTRUCTIONAL APPROACH #1: Instructors should build class time into the syllabus to review students' initial memo drafts and list of cited authorities. After uploading their memo to a

platform's brief analysis tool, students receive instant feedback on whether their memo includes authorities flagged for negative or questionable treatment in the courts. One immediate benefit of using the brief analysis tool on Westlaw or LexisNexis is that students see the validity of their cited authorities with familiar flags and notations as to current status, and are thus prompted to re-examine negative treatment or questioned authorities. This step yields a great teaching moment, because it reinforces the instructor's often-repeated directions to validate authority, and it serves as a self-check for any questioned or negative authority not caught during the students' initial research steps. It can also build students' confidence by noting the extent to which they located relevant authority and properly validated it. Students receive instant feedback through the analysis report as to whether there are additional sources of authority on the topic not cited in their memo.

Legal research instructors are familiar with law students' common queries in such an assignment: "When do I know when I have finished researching my memo topic? How do I know when I have uncovered all the relevant primary authority for the issue?" Typically, instructors inform students that additional research is unnecessary once multiple research strategies yield the identical authority. Performing this step in this assignment offers students the opportunity to obtain feedback from the brief analysis report and it reinforces instructor guidance. Here, instructors can prompt students to reflect on the success of their initial research strategies and promote deeper thinking about why their efforts did not locate a particular authority.

2 PROMPTING STUDENTS TO DIG DEEPER BY DETERMINING WHY ADDITIONAL AUTHORITIES ARE INCLUDED IN THE BRIEF ANALYSIS REPORT

CHALLENGE #2: Brief analysis tools provide an assortment of citator signals and suggest an array of extra materials for inclusion; the need to process, evaluate, and make final

decisions as to whether to incorporate the information creates a substantial burden. For law students to benefit from the analysis and materials generated by those tools, they must have a firm understanding of the organization of different types of legal materials and how those sources relate to each other. Law students who lack sufficient training and knowledge to interpret the resulting recommendations may suffer the consequences of information overload. They may experience the common dilemma of “not knowing when to stop the research,” which is exacerbated by the use of brief analysis tools. For example, the additional materials recommended may come from different jurisdictions, different levels of courts, or a mixture of primary to secondary sources. If students do not have a clear understanding of the applicable jurisdictions, the hierarchy and weight of different legal authorities, and the difference between

primary and secondary sources, they can easily feel lost in the abundance of information. In addition, due to the difference in data collection and the lack of standards in search criteria, the set of legal materials recommended by brief analysis tools varies in quality, quantity, style, and composition when the same legal brief or memo is uploaded to different platforms. This may further increase students’ confusion and elevate their level of uncertainty while using these tools.

INSTRUCTIONAL APPROACH #2: At this stage, instructors need to build on the previous class discussion and review of students’ memo research strategies and resulting list of authorities. As a pedagogical feature, this step in the assignment allows students to deepen their understanding of the topic and consider why their initial research failed in retrieving the additional relevant authorities noted in the brief analysis report. Students’

strong grasp of the legal topic and the source review criteria builds confidence in their research skills. These steps are best planned as an in-class group activity with instructor feedback to support students in analyzing the report. Doing so will encourage students to dig deeper and review their topic analysis, since the brief-checking tool may return irrelevant or peripheral sources.

3 HELPING FUTURE LAWYERS MEET A DUTY OF TECHNOLOGY COMPETENCY WHEN THE TECHNOLOGY IS NOT TRANSPARENT

CHALLENGE #3: The last challenge is related to the transparency, or lack thereof, regarding the criteria used to generate additional relevant authorities—the other main function of brief analysis tools. Since the driving AI technology is often proprietary information, law students are granted little insight into the black box of how the AI technology is used. While discussing

FUNCTIONS AND FEATURES OF SELECTED BRIEF ANALYSIS TOOLS

Product Name	Main Functions and Features	Jurisdictions Covered	Extra Analysis/ Features	When the tool became available
Bloomberg Law - Brief Analyzer	(1) Validates if cited authorities are still good law using BCite; (2) Suggests additional content that includes court opinions, similar briefs, and practice guidance; (3) "Focused Searches" feature allows you to enter keywords to find other related opinions.	U.S. federal & state	For cases recommended, provide both (1) the outcome of relevant issues within the recommended case, and (2) the reasons why the case is recommended.	February 2019
LexisNexis - Brief Analysis	(1) Validates if cited authorities are still good law using Shepard's; (2) Suggests additional content that includes cases and similar briefs.	U.S. federal & state		July 2020
vLex - Vincent	(1) Validates if cited authorities are still good law using vCite Citation Check; (2) Suggests additional authorities; (3) "Additional Suggestions" feature further expands your search by including case law, legislation, regulations, administrative decisions, books, journals, blogs, and newspaper articles.	U.S. federal & state; some foreign & international	Able to analyze the documents in both English and Spanish and the law in more than nine countries, including Spain, the United States, Canada, Mexico, Chile, and Colombia.	September 2018
Westlaw - Quick Check	(1) Validates if cited authorities are still good law using KeyCite; (2) Suggests additional content that includes cases, similar briefs, or memoranda and secondary sources; (3) "Quotation Analysis" feature allows you to compare case quotations to discover inaccuracies or changes.	U.S. federal & state	For cases recommended, provides both (1) the outcome of relevant issues within the recommended case, and (2) how the recommended case is related to cases already cited in your document.	July 2019
Westlaw - Quick Check Judicial	(1) Allows you to upload multiple briefs to compare authorities cited; (2) Generates report that includes relevant authority not found in uploaded briefs; (3) Performs cite and quotation checks on all cited documents against the Westlaw database.	U.S. federal & state	Performs quotation analysis as well; allows you to run multiple briefs and generate one report.	August 2020

algorithm accountability in their November/December 2019 *AALL Spectrum* article “Inside the Black Box of Search Algorithms,” the authors state that “In legal search, accountability means sufficient transparency to establish trust between the legal database providers and the researcher, and it means providing sufficient help in understanding how algorithms affect search results to ensure that legal researchers can be effective in their search strategies.” Not knowing how “relevancy” is being ranked and calculated, students may find it difficult to evaluate whether to include the recommended authorities in their final product. As an encouraging sign, some of these tools do provide hints as to why the case is selected for recommendation. For example, Westlaw tags the recommended case if it is “frequently cited,” from “high court,” or decided within the “last two years;” and Bloomberg Law suggests whether the additional case “contains a point of law found in the argument” or “contains similar language.” When applicable, both platforms also display the outcomes of related legal issues in the recommended cases. A continued effort to improve the transparency of search criteria and provide a clear presentation of the information will aid students’ efficient utilization of the brief analysis tools.

INSTRUCTIONAL APPROACH #3:

Instructional goals at this stage should be geared toward alerting students to the hidden processes built into the tool. Generally, instructors will have discussed the nature of the search algorithms driving legal research platforms’ natural language search capability earlier in the semester. Students will be familiar with the idea that research platforms incorporate algorithm-controlled features whose inner workings cannot be discovered, and they will be able to transfer this awareness and be cautious about placing all of their trust in AI-powered brief analysis tools in their research efforts.

Incorporating brief analysis tools into the legal research curriculum elicits a discussion of client and work

product confidentiality. Given that this assignment involves uploading a draft memo to a platform’s brief analysis tool, instructors should direct students to review the platform’s statements on the protections provided for their work product. Here, instructors can point to the platform’s assurances that uploaded documents are not retained following the generation of the report. This is also an opportunity for students to review the American Bar Association (ABA) Model Rule of Professional Conduct 1.1 involving a lawyer’s technology competence. ABA Formal Ethics Opinion 477R addresses the need to secure protected client information, as well as the need for lawyers to understand the features of the technologies used in practice. Now that brief analysis tools are common on research platforms, it is reasonable practice for attorneys to incorporate this opportunity to perform a self-check of their work product prior to submitting a brief or memo. Since the Westlaw Brief Analysis tool allows researchers to upload briefs from both sides of an issue using its Judicial Check tool, the resulting report generates citation suggestions for both sides of an issue. It is a logical extension of the duty of technology competence to encompass a resource that identifies the weak points in an opponent’s brief.

Recommendations

Students need to see that the brief analysis tool, despite being powered by AI, is not an infallible sage, but rather an additional method of expanding and reviewing their research results. Discussion and review of the report as a whole class group, as outlined in these challenges and instructional approaches, provides an excellent method of reinforcing this concept. While the process of examining the report can trigger students’ insecurities about their research skills, this is undeniably a tool that students will encounter in practice. It is incumbent on legal research instructors to lay the foundation of knowledge essential to understanding such tools before students begin their law practice

careers. In the legal profession, attorneys have coped with the transition to cloud-based research platforms, the ubiquity of natural language searches, and now the introduction to system-generated legal brief critiques. Law librarians, as experts in legal research knowledge and instruction, have been partners, facilitators, and educators in each step of the process. At the new frontier of brief analysis and other AI-infused tools, law librarians should take on this additional role to help law students apply these tools wisely—knowing their pitfalls, but building on their strengths—to become competent practitioners. ■

- IM Information Management
- R-A Research + Analysis
- T-T Teaching + Training

READ

Susan Nevelow Mart, Joe Breda, Ed Walters, Tito Sierra, and Dr. Khalid Al-Kofahi’s article “Inside the Black Box of Search Algorithms” from the November/December 2019 issue of *AALL Spectrum* at bit.ly/ND19blackbox.

ADDITIONAL RESOURCES

ABA Model Rules of Professional Conduct Rule 1.1
bit.ly/MA21ABAprofconduct

ABA Model Rule 1.1, Comment [8]
bit.ly/MA21ABArule1

ABA Formal Ethics Opinion 477R (2017)
bit.ly/MA21ABAethics



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