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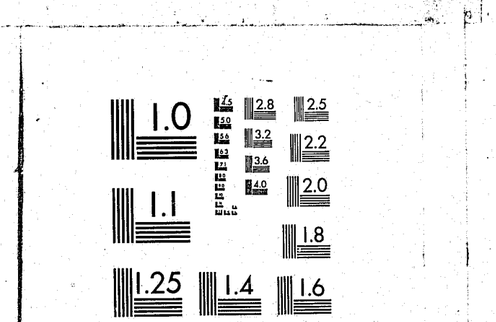

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An Evaluation of Computer Assisted Legal Research Systems for Federal Court Applications

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AN EVALUATION OF COMPUTER ASSISTED LEGAL RESEARCH SYSTEMS FOR FEDERAL COURT APPLICATIONS

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Federal Judicial Center
September, 1977

NCJRS

MAR 15 1978

ACQUISITIONS

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EXECUTIVE SUMMARY

This report describes a Federal Judicial Center study evaluating the use of computer assisted legal research (CALR) systems in federal courts. Three systems were examined. One contains a data base of the full text of federal cases, including concurring and dissenting opinions; cases from several of the largest states; and some specialized libraries. The second system comprises headnotes to all federal and state cases that appear in the federal and regional case reporters. A third system, developed by a government agency, is a hybrid of the first two: it contains federal cases in full text, and headnotes to federal and state cases. Although the latter system is currently not available outside of that government agency, it was tested to some extent.[1]

The evaluation was intended to determine whether the major CALR systems would improve the efficiency or the quality of legal research performed by officers and employees of the U.S. courts. Also, assuming CALR systems proved cost-effective, which system would be most useful for federal court applications, and what number and placement of terminals would be required to meet federal court needs?

At various times during the evaluation, five full-text and four headnote system terminals were installed in federal courts around the country. In some courts both types were installed, in others only one.

Also, in the Fifth and Ninth Circuits, legal research specialists were employed to assess the feasibility of providing computerized legal research service to off-site judges and their staff from a central terminal site.

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[1]Later in the text, the first two systems are referred to as the "major" systems.

Several types of data were collected. Judges, law clerks, staff attorneys, and other potential court users were surveyed to determine their opinions and impressions of the systems. The number of uses, hours used by each user, each class of user, and each terminal location were analyzed in detail. Also, each user was to complete a form describing the type of problem researched and the results of the research query. These data were collected and analyzed. Finally, the Center constructed and ran two field experiments to test computerized versus manual legal research and to test the full-text against the headnote system.

The evaluation revealed that computerized systems do save time, compared to manual research, but not enough time to justify the cost of such systems solely on the basis of time saved. Evaluation of user estimates showed that approximately ninety minutes were saved each time the full-text system was used and about thirty-five minutes each time the headnote system was used. Thus, the data generally showed both systems were faster than manual research, and the full-text system saved more time than did the headnote system. Most other measures of time saving also supported this finding. The data also suggested that for some types of problems, neither computerized system saved time over manual research.

Both major systems were found to improve research quality in that users felt the computer helped them find cases that might not have been discovered manually. The full-text system produced this improvement much more often than did the headnote system.

Usage levels of the systems at various evaluation sites showed the full-text system was used more than the headnote system. Where users had a choice between systems, comparisons showed ratios ranging from three to nine times more use of the full-text system.

The usage data also disclosed tremendous variation among users. At one site, for instance, one appellate judge's law clerks used the full-text system an average of about five times more than another appellate judge's clerks. In another comparison, one year an

appellate judge's law clerks averaged a few minutes' use per month; the next year, new clerks for that judge averaged two to three hours per month.

Only about 8 percent of the uses at the federal appellate level, and 15 percent at the district court level, involved searching a state data base. Thus we concluded that presence or absence of state data bases need not be a determining factor in system selection.

The data indicated that nonresident users' needs were well met by having a legal research specialist at the main circuit office run problems on the computerized systems and call back or send back the answers. Some appellate judges called in as many as eight problems per month: across circuits where this service was provided, the average was approximately three per month per judge. This type of usage was growing towards the end of the evaluation period.

Other comparisons between the two major systems included user training, system reliability, types of questions best suited for each system, and general user response. These comparisons consistently showed the full-text system was much preferred to the headnote system.

As a result of the evaluation, it was recommended that the federal courts adopt the full-text system and subscribe to seventeen terminals located in Boston, New York (Foley Square), Brooklyn, Philadelphia, Pittsburgh, Richmond, New Orleans (Appellate Courthouse), Miami, Houston, Cincinnati, Detroit, Chicago, St. Louis, San Francisco (Appellate Courthouse), Los Angeles, Denver, and District of Columbia. Further, under the derived allocation formula, the Ninth Circuit is entitled to another terminal, but no recommendation was made as to its placement.

Another recommendation was that in the central offices of the Fifth and Ninth Circuits, a full-time legal research specialist be employed to provide computerized legal research service to nonresident judges and their staff. In all other circuits (except the District of Columbia Circuit, where all judges reside at the terminal site), part-time personnel should be employed, or a person

already employed by the courts should be made available part-time, to handle off-site user service. Someone on the library staff might well perform this function.

Other recommendations included locating terminals as close as possible to the courthouse library, and training nonresident law clerks in the system's operation by direct experience, instructional manuals or videotape, to maximize their off-site use of the system.

I. PURPOSE AND BACKGROUND OF CALR EVALUATION PROJECT

The late 1960s and early 1970s have produced various legal information retrieval systems and concepts, designed to enable legal researchers to locate relevant statutes and precedents thoroughly and efficiently.

Presently, there are two principal systems available. One, a headnote system, is based on the headnotes generated by indexing the plethora of cases produced by American courts.[1] With this system, a researcher can use the computer to search the headnotes for those containing a set of words or phrases designated by the searcher. When such a headnote is found, the computer flashes it on a cathode ray tube; it can also begin printing this information in a few seconds.

The other principal system is a full-text system. It allows the legal researcher to search the full text of opinions and statutes in order to find the cases, statutes, or other materials containing the specified words or phrases. As with the headnote system, when such materials are found they can be displayed and printed. Full-text systems generally show the sought words in their original context. The user sees a portion of text--usually forty words before those specified and forty after--with the sought words highlighted on the screen.[2]

Both principal systems are interactive; that is, the researcher can communicate directly with the computer. For instance, after commanding the computer to find all cases containing the words "jury trial" and "back pay," the researcher might realize, reading the first case flashed back, that an additional word or two describing the problem is necessary to get more relevant cases. Since the researcher is already at the terminal, all that need be done

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[1]General descriptions of the systems and their vendors have been used within the body of the report as an additional step to ensure the evaluation's objectivity.

[2]Often called KWIC, Key Word(s) In Context.

is to modify the search command and instruct the computer to search for the cases or materials responding to the modified request.

The various systems use different search methods to retrieve cases or headnotes, and they retrieve in different sequences. In the full-text system, cases containing only the exact unweighted combination of words in the search command are returned, in inverse chronological order, by circuit and level of court.[1]

The headnote system uses a ranking method, based on presumed relevance, to order the display of headnotes.[2] The identified headnotes contain the designated search words; their sequence is based on the search words' frequency of occurence. Thus, if the search consists of four words, "jury," "trial," "back," and "pay," headnotes in which these words occur most frequently will be flashed on the screen first, regardless of chronology or court level.[3] The headnote system can search headnotes in other ways. For instance, the order in which headnotes are returned can be affected by creating a search in which some words are given more or less importance than others.

There is another variation in a hybrid system developed by a government agency. This system's data base

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[1]Thus, unless a single specific case is sought, a 1976 Supreme Court case would appear on the screen before a 1974 Supreme Court case or a 1977 district court case. A 1976 3rd Circuit case would appear before a 1975 2nd Circuit case or a 1977 district court case.

[2]To search all federal cases, one must search at least three different data bases: Supreme Court, appellate courts, and district courts. With the full-text system, one can search the courts separately or together.

[3]With the headnote system, searches can be requested in natural language. For instance, one might ask, "Under what conditions are attorney-client privileges available to the spouse of a criminal defendant?" A headnote containing just one of these nouns is returned as meeting the search request.

contains the full text of federal cases and the headnotes for state cases, as well as some internally-generated materials such as selected briefs submitted by agency attorneys in cases before the United States Supreme Court. The hybrid system software is much more versatile in searching headnotes than that of the headnote system. For instance, a researcher can ask the hybrid system to use more complex arrangements of words and phrases than are possible with the headnote system. In a few ways, the hybrid system's software is more versatile than the full-text system's. For instance, searches can be made for words within particular sentences on the hybrid system, but not on the full-text system.

Each system returns some similar and some different types of information. The headnote system, in addition to providing full headnotes, also gives the number of headnotes retrieved, the relative weighting (importance) of headnotes retrieved, and a list of the case citations for headnotes retrieved. The full-text system, if requested, provides citations to cases meeting the search request; the full text of cases found; including concurrences and dissents; or a few lines from the case text surrounding the search words. The full-text system will also give the number of cases retrieved. The hybrid system provides all the information given by full-text and headnote systems, as well as the number of occurrences of the search words in each document retrieved, the length of each document retrieved, and more complex information about the search requests than is given by either of the other systems. Table 1 summarizes the differences among the systems, including some not specifically discussed in the text.[1]

The variety of potentially available computer assisted legal research (CALR) systems led the Board of the Federal Judicial Center, in 1974, to request a pilot

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[1]There are many other subtle differences between the systems, ranging from hours of operation to the way case names are listed. These differences are not discussed, because very few comments about the value and utility of the systems were based on these types of differences. Such issues as full text versus headnotes, currency of data base, comprehensiveness of data base, forms of search commands, and others discussed in the text seemed to most affect users' opinions on which system operated fastest and most efficiently.

TABLE 1

BASIC FEATURES OF EXISTING CALR SYSTEMS

Feature	Full-text	Headnote	Hybrid
Basic Data Base	Full text of federal courts and most major states, including 8 of 10 largest states	Headnotes for all national and federal reporters	Full text of federal cases, headnotes for state and federal cases
Access	Interactive	Interactive	Interactive
Information Returned in Addition to Citations and Either Headnotes or Full text of Cases:	KWIC,* case counts	Headnote counts, headnote ranks, key numbers	KWIC, case counts, length of cases retrieved, number of occurrences of search words
Terminal	Custom-made for CALR	Slight modification of standard IBM terminal	Custom-made for CALR
Data Base Currency	3 to 4 weeks	1 to 4 months	1 to 4 months
Additional Federal Materials in Data Base	Tax, federal trade and securities libraries; U.S. Code; unpublished Fed. Ops. since 1973	U. S. Code	Selected briefs, other internally generated materials
Past Coverage of Data Base	U.S. S.Ct. to 1925; F.2d. to 1945, Fed. Supp. to 1960. State and administrative data bases are variable. Usually administrative data bases back to original enabling or creating legislation and cases interpreting them.	All levels of federal courts to 1961, state data to 1966	Eventually, all federal cases back to 1787

*Key Word In Context, described in text at p. 1.

project that would evaluate the potential utility of these systems for federal courts. In early 1975, Center staff prepared an evaluation plan. Since the hybrid system was not sufficiently developed to permit rigorous testing and comparison to the full-text and headnote systems at that time, nor was it available outside of its sponsoring agency, the Center decided not to include it in this study.

The purpose of the initial pilot project was to evaluate the two major CALR systems--the full-text and headnote systems--and compare them to each other as well as to traditional, manual legal research tools. The project was intended to determine whether the degree of improvement in research quality and efficiency justified the increased cost. Other project objectives included determining which system was best suited for court applications, finding out with which types of legal research problems CALR research is most helpful, developing a value measure of CALR's unique capabilities, and obtaining a better understanding of CALR's possible impact on the judicial system itself.

Until this time, no CALR system had been fully, rigorously field tested. Prior testing had consisted of seeking brief opinions from actual or potential users. There had been no systematic analysis of usage data, extensive surveys of CALR users and other research consumers, or systematic experimentation in field settings.

The systems' critics, users and vendors had made a range of claims. The full-text system was five to thirteen times faster than manual research, according to the opinions of early users. 68 percent of the early users said the full-text system was better or much better than conventional research, in terms of accuracy and completeness.

Would federal court users reach similar conclusions? An article in Juris Doctor suggests there have been many complaints about a full-text system.[1] (The article does not

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[1]Stephen Singular, "Computers and the Law: Second Series," Juris Doctor, Feb., 1975, pp. 53-57, at p. 55.

specify the complaints in detail.)

William L. Blaine criticizes CALR from a slightly different point of view.[1] He wants to answer "one of the hackneyed claims of the computer proponents... that computer searching is better because no indexer stands between the user and the material...The user is thereby free to search with complete freedom and, inferentially, able to conduct research that is more thorough or faster." Briefly, he argues that somehow an indexing must be done to select relevant cases. Blaine argues that speed and accuracy will be lost in this process of a user creating his own index. For instance, he claims that "much of research is irrelevance-spotting and the conclusion that information is irrelevant to the user's needs." He feels that irrelevance-spotting is easier manually than with a computer because with word search systems used on CALR, much time will be spent rejecting irrelevant material.

Although cost, speed, and type of data base--full-text of cases vs. abstracts or headnotes--are major issues, Philip Slayton, in a report for the Department of Communications of the Government of Canada,[2] made some other potentially crucial points about CALR systems. Specifically, he argued:

> retrieval systems have been developed with little regard for how lawyers actually think;
> retrieval systems may impose certain alien logical structures on the verbal symbols of law, and thereby affect legal thought and ultimately substantive law;

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[1]William L. Blaine, Case and Comment, Sept.-Oct., 1972, pp. 23-28.

[2]Canada, Department of Communications, Electronic Legal Retrieval: A Report Prepared for the Department of Communications of the Government of Canada 1974, 46 pp. For a summary of this report, see Philip Slayton, "Electronic Legal Retrieval--The Impact of Computers on a Profession," Jurimetrics Journal 14 (No. 1, 1973), pp. 29-40.

> retrieval systems cannot be used satisfactorily to retrieve legal concepts;
> retrieval systems (unlike an ordinary library situation) do not allow for random conceptual searching, a creative process meeting a crucial need of both the practicing lawyer and judge;
> retrieval systems may seriously affect the stability of the doctrine of legal precedent by keeping information out of the system and by encouraging through information overload rejection of information as the basis for legal thought.[1]

Slayton adds, regarding computers, "...At the very least their contribution to the legal profession is slight and... quite possibly their effects are decidedly unfavorable. Even the legal information problem they were originally constructed to solve may not really exist, and if it does exist, the cure may be worse than the disease."

The Juris Doctor article quotes an expert as saying, "the full-text system is hellishly expensive."[2] In terms of federal court needs, are there significant differences in costs of such systems? The evaluation project attempted to, among other things, analyze the issues of accuracy and completeness and cost as they pertained to usage in the federal courts. With these considerations in mind, three pilot sites were initially chosen. Washington, D. C., was chosen to test the full-text system versus the headnote system, partially because there were many appellate and district judges in one courthouse. Cincinnati was chosen because the full-text system began in Ohio, and the bar there has had several years of experience with CALR. Also, the state's decisions and statutes could be searched

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[1]These criticisms are dissected and partially answered in the abstract in Ejan Mackaay, "Book Review of Electronic Legal Retrieval by Philip Slayton," 15 Jurimetrics Journal (No. 2, 1974) pp. 108-111; and Jerome S. Rubin, "Fear and Trembling in the Groves of Academe," ibid., pp. 112-114.

[2]Singular, "Computers and the Law," p. 54.

using the full-text system. Denver was initially chosen to compare the full-text system vs. the batch system (developed by a different government agency than the agency that developed the hybrid system); but later, when this comparison was dropped, the Denver site was kept. It was a good site for analyzing the impact of non-availability of state data bases. The full-text system data base as yet contains no cases from the states in the Tenth Circuit. Also, Denver had staff attorneys on site: staff attorneys were thought to be potentially the most frequent users.

Three additional sites were added in spring, 1976. The headnote system was installed in the New Orleans appellate courthouse, and the full-text system was installed in the appellate courthouse in San Francisco. These two sites were chosen to determine the best way of providing a CALR system's benefits to nonresident judges and law clerks. Legal research specialists were hired at these two sites to solve problems, which were called in by off-site judges and their staffs, on the CALR systems. This service differed from that offered by the batch system in that the response time was considerably lower and the users, in many cases, were able to develop continuing relationships with the legal research specialists. Also, we thought the presence of such a researcher might encourage resident users and increase the level of resident usage.

The third additional site was the U.S. District Courthouse in Detroit. That location was intended to provide better assessments of a CALR system's utility in a district court. Although some district court usage data had been developed for resident district judges--in Cincinnati at the Sixth Circuit site and in Denver at the Tenth Circuit site--few judges were involved. Further, headnote system use by both appellate and district judges in the District of Columbia had been low, possibly for reasons extraneous to the system itself. Another site for the headnote system might yield different results. To gather more comparative data on the two principal systems, the full-text system was installed beside the headnote system in New Orleans, and the headnote system was installed with the full-text system in San Francisco, in October, 1976.

Finally, in November, 1976, two hybrid system terminals were obtained for evaluation, since that system had begun to show considerable development and appeared to be approaching the full-text and headnote systems' capabilities. Since the evaluation project was ending and the hybrid system's evaluation period was going to be short, it was installed at two sites where there were already seasoned CALR users--Denver and New Orleans.

Table 2 summarizes the information on terminal locations.

TABLE 2

TERMINAL LOCATION, INSTALLATION, AND OPERATION DATES FOR EVALUATION

	Full-text	Headnote	Hybrid
May, 1975 to Feb., 1977*	D. C. Circuit (Washington, D. C.) 6th Circuit (Cincinnati) 10th Circuit (Denver)		
May, 1975 to April, 1976		D. C. Circuit	
June, 1976 to Feb., 1977	9th Circuit (San Francisco)	5th Circuit (New Orleans) U. S. District Court (E.D., Michigan; Detroit)	
Oct., 1976 to Feb., 1977	5th Circuit	9th Circuit	
Nov., 1976 to Feb., 1977			5th Circuit 10th Circuit

*End of evaluation period.

II. RESEARCH QUESTIONS AND METHODOLOGY

Three basic techniques were used in the evaluation: surveys of direct and indirect users; usage data; and systematic comparisons of factors such as potential time saving and changes in research quality.

The surveys were intended to elicit users' opinions on various aspects of CALR systems. Although "hard" data, such as number of hours used, tell much about a CALR system, it is ultimately users' attitudes, opinions, and evaluations that will indicate whether any system works well or not.

These surveys sought not only general impressions of the CALR system, but also answers to other questions, including: 1) the quality of training in the use of the systems; 2) users' impressions of the systems' potential value, even if they did not use the systems to the maximum extent; 3) factors affecting the respondents' use or nonuse of the system; 4) how skilled in using the system the respondent became; and 5) what kinds of problems were best solved by the system.

Judges were also surveyed, to obtain their opinions on the time saving and research quality improvement aspects of CALR systems. The judges were also asked about their general impressions of the systems.

A third type of questionnaire was sent to users who had called in problems to the legal research specialists in the Fifth and Ninth Circuits. The purpose of this survey was to determine the level of satisfaction with the service and whether the off-site user thought there would be any additional value in having a terminal in the courthouse where he or she was located.

There is a twofold purpose in analyzing the number of hours systems were used and the number of problems run

on the systems by law clerks, staff attorneys and other court staff. First, the usage patterns indirectly answer questions about the value and utility of the systems. The patterns can be used to support or refute the collected opinion data. Second, usage patterns are useful in developing guidelines to implement a nationwide system. Specifically, the data help determine criteria for the number and location of needed terminals, and the manner in which terminals should be used (direct access or through a trained researcher).

Usage reports were obtained each time a problem was run to assess the value of running a problem on a CALR terminal, while the result was fresh in the user's mind. The data collected in the usage report bore on not only the basic issues of saving time and improving research quality, but also on several side issues, which must be considered in determining the actual and potential value of a CALR system. These other issues included system features that were used, the purpose of the research, and whether there was any waiting time. The usage report also showed problems encountered in using the system, such as too much waiting time or too many irrelevant cases produced.

The last type of data collected compared various types of legal research systems. CALR and manual research were contrasted for speed and for quality of the memo produced. The two principal types of CALR systems were systematically compared for two factors: which produced more relevant cases for a given problem, and which could be operated faster in solving the problem.

In this section, the research methods and techniques will be described in detail.

Surveys

Law clerks, staff attorneys and other staff

At several points during this project, questionnaires were sent to the various systems' users. The full-text system users in the District of Columbia, Sixth and Tenth Circuits received questionnaires in August, 1975,

and again in June, 1976. These two surveys covered both the 1974-1975 law clerks and the 1975-1976 law clerks, as well as staff attorneys. Questionnaires about the headnote system were sent to District of Columbia Circuit users in August, 1975, and to Fifth Circuit and Detroit users in October, 1976.[1] The headnote system users in the District of Columbia Circuit returned very few of the August, 1975, questionnaires due to their low levels of system use. The response rate from the Fifth Circuit and Detroit headnote system users in October, 1976, however, was over 80 percent.

Response rates of the full-text system users are shown in Table 3. The second survey produced a very high response rate. The lower response rate in the first survey is due to the fact that many law clerks left the court before the questionnaires reached them.

The instrument used for all but the June, 1976, survey of District of Columbia users is shown in Appendix I. For the October, 1976, headnote system users survey, the same instrument was used, but the system name was changed. Appendix I also contains the instrument sent to District of Columbia users; it asked some slightly different questions than did the other instrument.

Judges

Although very few judges used the CALR systems directly, they were ultimately the users of the systems' product. Consequently, a questionnaire soliciting their views of the CALR systems was sent in April, 1976.

These questionnaires were sent to appellate judges in the District of Columbia[2] and to on-site appellate and

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[1]No user survey was made in the 9th Circuit because trained legal researchers were responsible for most of the usage there, and most of the users trained in May, 1976, had left by Oct., 1976.

[2]D.C. district judges were not surveyed because the average usage among their law clerks was so low, we thought they would have little basis for answering the questions.

TABLE 3

RESPONSE RATE OF CALR USERS TO OPINION QUESTIONNAIRE

Full-text Users

Users	August 1975 No. Sent	August 1975 No. Returned	August 1975 Percent Returned	May 1976 No. Sent	May 1976 No. Returned	May 1976 Percent Returned
D. C. Circuit	58	25	43%	41	33	81%
6th Circuit	16	12	75%	23	17	74%
10th Circuit	18	12	67%	22	20	91%
TOTAL	92	49	53%	86	70	81%
Class of Users						
Appellate law clerks	34	23	68%	40	37	92%
Staff attorneys	9	6	67%	12	11	92%
District law clerks & others	49	20	41%	34	22	65%
TOTAL	92	49	53%	86	70	81%

Headnote Users

Users	August 1975			October 1976		
D. C. Circuit	58	13	22%			
5th Circuit				9	8	89%
Detroit				24	19	69%
TOTAL				33	27	82%

district judges in the Sixth and Tenth Circuits. The response rates were: District of Columbia, four of nine; Cincinnati, three of four; Denver, six of eight. In this population of thirteen appellate judges, only five had used the system themselves at some time. None had used it for more than a couple of hours during the first twelve months the systems were available, however. All judges were queried about the full-text system; District of Columbia judges were also asked about the headnote system.

Questionnaires of this nature were not sent to any judges at other sites for two reasons. First, in the Fifth and Ninth Circuits, very few judges had personal law clerks who were using one of the systems: access at these two sites was mainly through the trained legal research specialist. Furthermore, judges in those circuits who did use the system were sent a nonresident user's questionnaire, which is discussed below. Second, since the responses to the first survey were so sketchy and seemed to be a function of law clerks' perceptions, it was decided not to further impose on any other judges by sending them questionnaires.

Nonresident Users

In May, 1976, terminals were installed in San Francisco and New Orleans, mainly to examine how best to provide CALR services to nonresident judges. It was becoming clear that the Administrative Office's prior assumption, that a CALR terminal was needed in nearly every courthouse, was not valid, because the usage levels seemed to suggest the federal courts would need fewer than twenty terminals overall. In New Orleans, a recent law graduate was hired to assist on-site users of the headnote system terminal and to expedite indirect access for nonresident judges and their staffs. In San Francisco, a second-year law student was employed full-time to perform the same tasks on the full-text system terminal. Letters to potential off-site users in both circuits, encouraging them to use this new facility, were sent at various times, as shown in Appendix I.

In both circuits, use of the terminals began slowly. From June until September, a traditionally slack time for law clerk research due to the transition between

one group of law clerks and another, comparatively little use was made of the systems except by the Ninth Circuit appellate judges. In the fall, large numbers of district judges in both circuits began to use the terminals. Fifth Circuit appellate judges also began to regularly use CALR.

In late November, 1976, a brief letter was sent to all off-site Fifth and Ninth Circuit judges who had used the systems. The letter, included in Appendix I, asked the judges about the quality of service and whether there would be any additional value in having on-site terminals in their courthouses. More than half the judges in the Fifth Circuit and approximately 45 percent of the judges in the Ninth Circuit responded. Many judges had their law clerks write the reply, but there was little difference in responses between law clerk and judge respondents. Many respondents to this survey added general comments on the CALR system, although such comments were not solicited.

Usage Data

Hours used and number of uses

The vendors of various CALR systems provided information from which data were generated on the number of hours and uses per month per person trained.[1]

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[1]The usage invoices for the two principal CALR systems' were put in machine-readable form for analysis. The headnote system invoices were punched by a commercial keypunch firm, as were the full-text system invoices prior to March 1, 1976. After that date, the full-text system vendor provided the invoices in machine-readable form.

Appendix II contains a detailed compilation of the full-text system usage data by circuit, by judge, by type of user (appellate judge, staff attorney, etc.), by various averaged periods and by month. The headnote system usage data also appears in Appendix II. It is compiled by judge for Detroit, and by class of user for New Orleans.

The headnote system invoice does not give the usage directly by problems run. Instead, it gives sign-ons, or data bases searched. Thus, if a user had 10 sign-ons in a month, one would not know how many types of problems were run by that user without making estimates about usage patterns, unless the user noted the type of problem when signing on to the terminal. The full-text system invoice was very clear about the number of sign-ons for each year.

Another problem with the headnote system was that

Usage Reports

Each time a person used a CALR terminal to research a problem, the user was supposed to fill out a usage report, shown on page 18. Despite numerous letters, visits, and consultations with judges, circuit executives, and other court staff, the agreements to send in usage reports were seldom kept; many law clerks showed great disdain for the procedure. During the last four months of evaluation at the District of Columbia, Sixth, and Tenth Circuits, usage reports were filed for approximately 60 percent of the CALR uses.[1] The results from usage reports filed prior to May 31, 1976, however, suggest that those filed are representative of all potential usage reports. The consistency of results across circuits and across types of systems supports the position that the usage report data collected from the District of Columbia, Sixth, and Tenth Circuits is not likely to be a biased sample. The number of usage reports received is shown in Table 4.

When the terminals were installed in the Fifth and Ninth Circuits and in Detroit, in May and June, 1976,

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the vendor did not provide users with individual I.D. numbers. Instead, users were asked to use the first 6 numbers of their Social Security numbers. Many users did not do this, thus, the usage by judges in Detroit, as shown in Appendix II, is suspect. Many law clerks signed-on sometimes with their Social Security numbers and sometimes with other groups of letters and numbers, despite their being asked several times to use their Social Security numbers.

[1]After April 30, 1976, the full-text system terminals in the D. C., 6th, and 10th Circuits were put on operational status with the understanding that there would still be continuous monitoring of the usage results. Only in the 10th Circuit was even a small attempt made to honor this agreement. The 6th Circuit, except for one law clerk who was extremely cooperative throughout his clerkship totally stopped sending the reports. Most of the D. C. Circuit users stopped sending them in, too.

CALR USAGE REPORT

Revision 5

USER_____DATE_____197___CIRCUIT_____

JUDGE_____ (is final user of research).

System (Circle one) Full-Text Headnote
File Descriptor_____(Descriptor used in signing on to terminal. Usually, file name or number.)

Problem_____

_____

Circle all appropriate results

Results

1. Found nothing at all, unfortunately.
1a. Found nothing & am glad. Just checking to be sure there are no cases.
2. Found nothing new.
3. Found cases that I probably would have found without the computer.
4. Found cases that I probably would not have found without the computer.
4a. Found very recent cases I definitely would not have found without the computer.
5. System not working.
6. System took too long.
7. Too many irrelevant cases produced.
8. Not enough relevant cases produced.

Type of Research

1. Research for an opinion
2. Research for a motion
3. Research for a question arising during trial or a hearing
4. Other (specify)_____

Purpose of Research

1. Searching mainly for recent cases not yet reported
2. Searching for an opinion of a particular judge
3. Searching to see if missed anything during manual research
4. Searching on computer as a substitute for manual searching

Time

How much time, if any, did you save by using the CALR system?
_____hours.

Availability

Did you have to wait to use the CALR system? Yes__No__How long?____

we made an agreement to have the usage reports monitored and sent in. All three sites honored this agreement for a high percentage of uses. The usage report rate in the Fifth and Ninth Circuits averaged over 80 percent, probably because the legal research specialist ensured that each user filed a report. (The specialist ran most of the problems and, therefore, filled out most of the reports.)

Systematic Comparisons

The full-text system vs. manual

CALR systems and manual research were systematically compared to determine whether CALR systems save time and improve research quality. This field experiment was to involve both CALR systems. The experiment was conducted to test the following hypotheses:

a) Computer plus manual legal research systems are faster than manual systems alone.

b) Computer plus manual legal research systems will cost less per unit of product than manual systems alone.

c) Computer plus manual legal research systems provide higher quality products than manual systems alone.

d) Computer plus manual legal research systems are more satisfying for the user and for the consumers of the legal information than are manual systems alone.

These hypotheses refer to computer plus manual systems because the CALR systems alone are not viewed as total research tools.[1] Some work with traditional materials is generally required, due to data base limitations (either the data base does not contain cases from a relevant jurisdiction, or it does not go back far enough in time).

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[1]In the text, we refer to the test as CALR vs. manual, although we mean CALR plus manual vs. manual alone. In this experiment, CALR users could supplement CALR use with manual research.

TABLE 4

NUMBER OF USAGE REPORTS BY LOCATION

User	System	No.	Period Collected[a]
D.C. Circuit	Full-text	253	Aug., 1975-Sept., 1976
D.C. Circuit	Headnote	8[b]	Aug., 1975-June, 1976
6th Circuit	Full-text	226	Aug., 1975-Sept., 1976
10th Circuit	Full-text	243	Aug., 1975-Oct., 1976
9th Circuit	Full-text	707	May, 1976-Nov., 1976
9th Circuit[c]	Headnote	---	----------
5th Circuit	Full-text	88	Oct., 1976-Nov., 1976
5th Circuit	Headnote	198	June, 1976-Nov., 1976
Detroit	Headnote	137	June, 1976-Nov., 1976

[a]Users in the 6th and D. C. Circuits filed few reports after May, 1976; none were sent in after Sept., 1976.

[b]This number is so low that results from these usage reports are not included in any subsequent tables.

[c]9th Circuit users of the headnote system turned in very few reports in the first month the system was installed. In addition, their use of the terminal for Dec., 1976 to Jan., 1977 was so low that only 10 usage reports were generated in those two months.

The experiment was to be carried out in three circuits: the District of Columbia, the Sixth and the Tenth. We could not reach an agreement on the experiment with the District of Columbia appellate judges, however, and an alternative agreement with the District of Columbia district judges was never implemented. Thus, only the Sixth and Tenth Circuits produced any comparative memoranda. Further, since only the District of Columbia had the headnote system terminal at the time of the experiment, no comparative data were produced for that CALR system.

In the experiment, two law clerks were to do the same piece of research using different methods randomly assigned: one would use a CALR system; the other, traditional manual methods. The research was an actual problem requiring independent research by the law clerks. Participating judges were asked to keep the problems short and narrowly drawn. The model problem was to require about three to five hours of research and involve a two-to four-page written memorandum. To meet the strict test of statistical criteria, we requested that each judge or pair of staff attorneys contribute four to eight problems per month for a six-to eight-month period.[1]

After completion, the memorandum was given to either the law clerk's judge or, in the case of a staff attorney, to a panel judge receiving the staff attorney's work. The judge rated the memorandum on the basis of information content, according to the memorandum rating form on the next page. He then sent the rating to the Center.

The memorandum's only identification was supposed to be only the problem number and a code for the research method. (This attempt at masking failed in most cases, possibly because the judge could tell his law clerks' writing style, or because the CALR memorandum probably cited more very recent cases and thus was identifiable, or both.)

[1]None of the judges managed to provide the work, however; many of them felt the request was too burdensome.

Once the problem was assigned, the law clerks were to record their time on the form shown in Appendix III. Each part of the time form was explained orally and in writing. Although some problems were expected in separating the parts of the research process, the experiment was designed to obtain enough comparative memoranda to eliminate these problems or cancel out systematic biases.

The time sheets and rating forms were supposed to be confidential, to conceal the rating judges' identity from the law clerks and the law clerks' research time, in general, from the judges. The time sheets were to be sent in separately, to avoid each clerk's knowing what the others had done. Although many time sheets arrived together, it appears they were not filled in simultaneously. Copies of all the forms used in this part of the project are shown in Appendix III.

At the outset, several factors were seen as potentially confounding the experiment. First and most important, there were basic differences among the law clerks' research skills. This difference in basic skills might affect abilities to use the research tools available or knowledge about the subject area being researched. Again, a large enough sample would control this variable.

Another potentially confounding variable was the general level of user skill with the CALR system, which was also controlled in the original design. Other such variables included differences in research time and quality due to case categories, (a CALR system might be better for environmental issues than for diversity cases), differences due to idiosyncratic memoranda rating by judges, and differences due to such variables as time of year and law clerk attitudes toward CALR. All these factors were controlled either actually or statistically in the original design.

The experiment was to take place from September, 1975, through May, 1976. A total of 250 to 300 comparative memoranda would have been generated if the research had gone according to plan. As the memoranda began to

CALR EVALUATION PROJECT

Form #2

Memorandum Rating

Problem code ☐☐ ☐☐ ☐☐☐

Please rate these two memoranda on the basis of quality of answer to the research problem. Quality rating relates to substance of the memo, not to style or to manner of expression. Grade is to be based primarily on information content. Rate on the basis of 10. See chart below for meaning of scale.

Rating

Memorandum A _____

B _____

Rating Scale

10	9	8	7	6	5	4	3	2	1
+	A	-							
		+	B	-					
				+	C	-			
						+	D	-	
									F

arrive at the Center, it became apparent that not all were usable, because in a few cases only the time form or only the judge's rating was received. Inquiries did not produce the missing information, which could not be regenerated. As of April 30, 1976, only nine comparative memoranda had been received from the Sixth Circuit and twenty-two from the Tenth Circuit.

The full-text system vs. the headnote system: solved problems

To further test the relative utility of the two basic systems, two sets of problems were run by the on-site legal research specialists in the Fifth and Ninth Circuits, in early October and in early November, 1976, respectively.[1] The purpose of these problems, shown in Tables 5 and 6, was to ascertain which system produced the best answers and which produced them most expeditiously.

The legal researchers' backgrounds differed somewhat (the Ninth Circuit specialist was in her second year of law school and the Fifth Circuit specialist had completed law school), but the project director felt this difference would not affect the results. The specialists seemed quite comparable, based on their six months of work on the project, and the judges and law clerks receiving

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[1]From the outset of the project, Center staff discussed at length the possibility of having problems run on both systems. A suggestion to have law students do this type of testing was rejected, on grounds that their work would not simulate closely enough that of a law clerk or staff attorney.

Because the D.C. site (the only site with both terminals) did not participate in this part of the evaluation, the comparative memoranda experiment did not produce data on the two systems. Therefore, the legal research specialists were used to compare the systems. The specialists in some ways closely simulated, and in other ways actually represented, persons conducting legal research for federal courts.

TABLE 5

FULL-TEXT vs. HEADNOTE: PROBLEM SET 1

1. Does a defendant have an absolute right to waive a preliminary hearing over the objection of the prosecutor?

2. What constitutes an intervening cause in determining cause of death in a murder case?

3. Can a qualified expert testify to tennis shoe or shoe print comparisons and similarities?

4. Can a court order a State's witness to be mentally or physically examined to determine the witness' competency to testify at trial?

5. Can a court order local police departments to furnish defense counsel with the criminal backgrounds of State's witnesses?

6. Can a police officer testify to extrajudicial identifications?

7. Can a prosecutor impeach his own witness?

8. What constitutes immunity to a witness?

9. Must a probation officer give a defendant-probationer his Miranda rights before talking with the defendant-probationer about another charge or offense?

10. Must a juvenile be re-admonished of his Miranda rights prior to continued questioning after denying complicity in the crime under investigation and then being left alone in the interrogation room for a period of three hours?

11. Is a search warrant valid when based upon information obtained from a telephone call, if the caller is unknown to the sheriff who signed the affidavit on the warrant?

12. Can one be convicted of "possession of a gun by a felon" if the gun is inoperable?

13. If a tort results in aggravation of a pre-existing injury, what rule of damages is to be applied?

14. What factors should the jury be instructed to consider in assessing damages if a tortiously injured plaintiff produces testimony concerning the availability of corrective surgery to lessen, not eliminate, the injury but has not committed himself to undergo such surgery?

15. Was an informer who introduced an undercover police agent to defendant and who went with the agent to defendant's house allegedly to buy drugs, but who was not actually present in the room during the transaction, an active participant in the transaction? If so, was the informer a material witness whose testimony is essential to a fair trial for defendant and whose name must be revealed to defendant?

16. Is the affirmative defense of duress available in a criminal trial?

17. Does a federal conviction in the U.S. District Court for conspiracy to distribute, conspiracy to possess with intent to distribute, and possession with intent to distribute hashish, operate as double jeopardy relative to the prosecution of defendant by the State for distribution of hashish?

18. Was it reversible error for the trial judge to fail to charge the jury on a kidnapping charge on the issue of whether the asportation of the victim was merely accidental to an underlying crime?

19. A. Is entrapment established, as a matter of law, when a police informer furnishes narcotics to an individual who is later convicted of selling the same contraband back to a police undercover agent?

B. Is the State accountable for the acts of an informer when the police had no prior knowledge of, and did not give prior consent to, the conduct of the informer? Is an informer an agent of the policy only for such acts performed within the scope of the authority granted him?

20. Is a defendant entitled to a jury trial on a mental competency hearing?

21. When testing for common scheme or design, for purposes of joinder of offenses in a rape case, has an assailant ever said, "You must please me"?

TABLE 6

FULL-TEXT vs. HEADNOTE: PROBLEM SET 2

1. Does a defendant improperly sentenced under conditions of 18 U.S.C. Sec. 4208(a) have ground for challenging this in a Section 2255 action as an illegal sentence?

2. May attorney's fees, statutorily authorized, be assessed against a county board of education consistent with the 11th Amendment?

3. Can an administrative agency be estopped by statements of counsel?

4. What is the federal law applicable to a judge's refusal to repeat a reasonable doubt instruction after he gave it once?

5. In what circumstances, if any, does a federal court have the power to award costs against the National Labor Relations Board?

6. Are the venue provisions of 12 U.S.C. Sec. 94 which place venue in a suit brought against a national bank only in the district in which it is located permissive or mandatory?

7. What is the compenseability for the loss of silt content in water when government's declaration of taking is of land only?

8. Does 28 U.S.C. Sec. 455(a) include bias against an attorney as well as a party?

9. May a prisoner gain access to the contents of his presentence report under the Freedom of Information Act?

10. May a claimant in an interpleader action assert a counterclaim?

11. Is there probable cause for an arrest on a narcotics charge where the officer observes an unmarked vial containing pills?

12. What is the right of a bankrupt to bring a truth-in-lending action?

13. Must a trial judge inform a defendant who pleads guilty that his federal sentence will not begin immediately?

14. Is a civil service discharge for public sexual acts valid?

15. Is there a right to a jury trial in an action for back pay under 42 U.S.C. Sec. 1981?

16. Is the wife of a person employed to bring a ship back from sailing races a seaman under the Jones Act in order for her to recover for an injury incurred on the return voyage?

17. What is the definition of "point source" as used in 33 U.S.C. Sec. 1314?

18. What is the rule on admissibility of declarations of a co-defendant in an "aid and abet" charge?

19. Does a student have a property right in a college transcript?

20. Does 45 CFR 233.100(a)(1), as amended, violate provisions of 42 U.S.C. Sec. 607(a) which authorizes the Department of H.E.W. to prescribe standards for determination of unemployment in AFDC-UF Program?

21. Does Title IX of Organized Crime Control Act proscribe per se operation of large scale illegal continuous interstate gambling enterprise as defined in 18 U.S.C. Sec. 1955?

22. Does the imposition of sentence under 18 U.S.C. Sec. 4208(a)(2) vest sentencing court with continuing jurisdiction to consider prisoner's 28 U.S.C. Sec. 2255 claim that Parole Board has denied him serious and meaningful parole consideration contrary to statute?

23. Does the invalidity of a patent require the patent holder to repay all sums derived from existence of the patent? Does procurement of patent through fraud in Patent Office require patent holder to repay all sums derived from existence of patents?

24. Does exclusion of pregnancy and related conditions from fringe benefit plan coverage constitute proscribed discrimination under Title VII of the 1964 Civil Rights Act as amended?

25. Can a defendant be convicted of extortion under the Hobbs Act in absence of evidence of threat or threatening act by defendant and in absence of a payment by alleged victim?

their work were equally satisfied.[1] Both researchers became highly skilled with the terminals. Their skill and experience came from assisting on-site users, and running problems called in by off-site judges and their staffs. Owing to their high level of skill, each specialist was sent to another site to conduct follow-up training on the terminal each had been working with.[2]

The first set of problems was sent to the specialists in late October, 1976. The researchers were instructed to run the problem on the terminal they had been working with, record both problem formulation and terminal operation time, and prepare the results for dissemination. The first group of problems consisted mainly of criminal law issues. Data developed in this evaluation but not reported here, indicate that criminal law problems are the largest single set (sometimes as much as 45 percent) of substantive problems run on a terminal. Almost all these criminal law problems have appeared in a federal court case. If they have not surfaced directly as issues, they have emerged in cases involving collateral attacks on state convictions.[3]

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[1]Off-site judges in the 9th Circuit showed considerably more interest in CALR than did their counterparts in the 5th Circuit, and they were using their circuit researcher at a higher level. This factor, too, was deemed not likely to affect the results.

[2]The specialist from New Orleans was sent to Detroit to conduct advanced headnote system training for law clerks who had been using the system for several months. The training was well received; the librarian at the district courthouse terminal site praised this follow-up training in a librarian's newsletter (shown in Appendix IV), and indicated such training might be helpful to all headnote system users. The San Francisco specialist on the full-text system was sent to New Orleans, shortly after the full-text system was installed there together with the headnote system. The specialist provided advanced training for those recently trained on the full-text system. Her work was well received.

[3]The first set of problems was prepared as part of the Search Group's LEAA-funded study of automated legal

The second set of problems in this smaller experiment was developed from actual problems run at other sites, and issues in cases pending before the United States Supreme Court as described in U. S. Law Week. These problems consisted of mainly federal substantive law, often involving some aspect of statutory or rule interpretation.

For this second set of problems, each researcher used both CALR systems. One ran the odd-numbered problems on the full-text system and the even-numbered on the headnote system. The other did the opposite. Thus, each researcher had six month's experience with the system she used for half the problems, and less than one month's experience with the system she used for the other half of the problems. This difference, nevertheless, did not seem to bias the results. Once someone is skilled in using one CALR system, it appears to be relatively easy to apply those skills to the other system. For instance, the researcher in New Orleans, who had used the headnote system for six months, began using the full-text system as soon as it was installed. Her results satisfied people calling in problems from courthouses with no terminal directly available.

After the problems were run, the researchers exchanged and compared answers. On the basis of this comparison,[1] one answer was rated as being better than the other.[1] For some problems, no answers were found on either system, or basically the same cases were found, and the answers were rated even.[2]

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retrieval systems at the state level. The Federal Judicial Center project director is a member of the National Advisory Committee overseeing the LEAA project. The problems eventually used by the search group differ from those discussed here.

[1]The project director felt both researchers were objective in their approach to the two systems. The answer comparison seemed an efficient way to determine which system produced better results.

[2]For the purposes of these problems, the retrospective time periods covered by the data bases were comparable. No comparisons turned on old cases found in one data base and not in the other. Obviously, recent cases were a factor.

It should be noted that the ratings of the results were based mainly on case information from the terminal rather than on the product of subsequent detailed case analysis. If there was a question about which system produced better results, the project director resolved it by checking the law books.[1]

One might also argue that a rating should have included whether the cases found led to other, perhaps more relevant, cases. This point is well taken, yet it skirts the issue. Of course, in legal research, using redundant sources usually leads the researcher to most of the relevant material. Nevertheless, we are concerned here not with that issue, but with which system quickly and efficiently produces the best result without the researcher consulting any other source.

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[1]In a few instances, the project director, after consulting with the researchers, changed their ratings. These changes resulted from his in-depth reading of the cases cited. The changes, however, did not alter the basic results.

III. POTENTIAL TIMESAVING ASPECTS OF CALR SYSTEMS

How Much Research Time Can Be Affected by CALR?

This section analyzes the potential timesaving aspects of CALR. Before looking at how much time a CALR system can save, two important questions must be answered. First, how much time, if any, could be saved with a CALR system? A related question is how much time do law clerks normally spend doing research?

Table 7 shows user's estimates of their research time. The data show that for each of the three major survey dates--August, 1975; June, 1976; and October, 1976--the research time estimates were nearly identical (twenty hours per week, or about half the average work week).[1]

Further analysis of the June, 1976 survey revealed that appellate law clerks in each location estimated they spend more time doing research than do district law clerks. This finding would be expected, as would that staff attorneys' estimates that they spend the least amount of time doing research. Much of the staff attorney's time is spent writing legal memoranda, drafting opinions, and performing administrative tasks. Memorandum writing in the two Circuits under consideration, the Sixth and the Tenth, is generally limited to cases on the summary calendar, which are not likely to take much research. Also, the staff attorneys reported that much of their work consists of simply finding a controlling Circuit opinion on the issue at hand, usually, the controlling opinion is in a file at their fingertips. Thus, they do less original research than do law clerks.

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[1]The assumption of a 40-hour week was based partly on observation and partly on the fact that the usage data supplied by the full-text system vendor indicates negligible use of the system after 5 p.m.

TABLE 7

USER OPINION ESTIMATES OF TIME SPENT DOING LIBRARY RESEARCH

Users	Survey Date	Hours Per Week of Research Before CALR	System Used
All	Aug., 1975	20.7	Full-text
All	Aug., 1975	20.7	Headnote
All	June, 1976	20.0	Full-text
All	Oct., 1976	19.9	Headnote
D.C. Appellate Court	June, 1976	21.6	Full-text*
D.C. District Court	June, 1976	20.0	Full-text
6th & 10th Circuit Appellate Court	June, 1976	25.0	Full-text
6th & 10th Circuit District Court	June, 1976	15.5	Full-text
6th & 10th Circuit Staff Attorneys	June, 1976	13.1	Full-text

*Data for the headnote system are not subgrouped because only 1 or 2 different groups were headnote users in each survey

TABLE 8

USER OPINION ESTIMATES OF HOURS PER WEEK
USE OF CALR COULD SAVE

Users	Survey Date	Hours Per Week Saved By Use of CALR	System Used
All	Aug., 1975	5.0	Full-text
All	Aug., 1975	1.4	Headnote
All	June, 1976	4.9	Full-text
All	Oct., 1976	2.4	Headnote
D.C. Appellate Court	June, 1976	4.4	Full-text*
D.C. District Court	June, 1976	3.6	Full-text
6th & 10th Circuit Appellate Court	June, 1976	4.1	Full-text
6th & 10th Circuit District Court	June, 1976	3.8	Full-text
6th & 10th Circuit Staff Attorneys	June, 1976	4.1	Full-text

*Data for the headnote system is not subgrouped because headnote users in each survey usually fit into 1 group. Also, the data showed little difference across subgroups.

Table 8 shows the users' estimates of time they could save with regular use of the CALR systems. Depending on the respondents, from 1.4 to five hours per week could be saved. It should be noted that the estimates of time saved ranged from 10 to 33 percent of the time estimated to be spent on research each week. This figure might seem small at first glance. A CALR system, however, only retrieves cases to browse through and analyze. The researcher must still read and fully digest the case, as well as organize and write a memorandum using the cases to answer a specific point. From this perspective, reducing research time by 20 percent or even 10 percent may be a significant saving.

The comparative memoranda project data also indicate CALR might affect about 25 percent of a law clerk's total research time. The data show retrieval time was approximately 20 percent of overall research time for the comparative memoranda in the Sixth Circuit, and approximately 25 percent of overall research time in the Tenth Circuit. These figures apply generally to memoranda based on manual research and to those prepared using CALR.

A final question affecting possible CALR time saving is, what part of the research jobs required in federal courts can benefit from use of a CALR system? Table 9 shows user estimates of the percentage of projects run on the various CALR systems. Aside from the differences between the two systems on this issue, this table shows that a CALR system was used for less than half the research problems.

TABLE 9

USER OPINION ESTIMATES OF PERCENTAGE OF PROJECTS
USING CALR

Users	Survey Date	Percent of Projects Using CALR	System Used
All	Aug., 1975	47.4	Full-text
All	Aug., 1975	24.3	Headnote
All	June, 1976	41.5	Full-text
All	Oct., 1976	24.0	Headnote

These data, broken down by subgroups, show District of Columbia district court users estimated they employed a CALR system in the smallest percentage of projects. This low figure results mainly from the fact that these users also used the full-text system for the fewest hours among all full-text system users at the various evaluation sites. Staff attorneys show the highest percentage of projects using CALR, probably because they placed a greater emphasis on using CALR.

Examination of the timesaving aspects of CALR clearly reveals that the process will not effect much savings in users' time. In other words, we probably will never find law clerks saving six to ten hours a week in research time. Of course, the experiment dealt with averages. Many users told the project director, the legal research specialists, and others associated with the project, that in specific instances they saved days or (in a couple of instances) weeks of research time. For the typical research problem in federal courts, however, in the opinion of many users CALR might save an average of two hours.[1]

Some Quantitative Measures of Time Saving with CALR

There are many ways of examining CALR timesaving methods. Table 10 shows one way. These data represent responses to the question, in what percentage of the projects in which you used the full-text or headnote system did you feel that system made an important difference in terms of research time? This question generated a wide range of answers. Some users felt a CALR system made a difference 100 percent of the time they used it, while others indicated it never made any important difference in research time. The table shows that full-text system users felt it made a time difference in approximately 40 percent of the situations in which it was used, while headnote system users found it produced important time

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[1]Unless a user is committed to gaining proficiency with a CALR system by exploiting its capabilities at every opportunity, the system may be of little value to that user.

TABLE 10

USER OPINION ESTIMATES OF PROJECTS WHERE CALR MADE A TIME DIFFERENCE

Users	Survey Date	Percent of Research Projects In Which CALR Made A Time Difference	System Used
All	Aug., 1975	42.4	Full-text
All	Aug., 1975	24.3	Headnote
All	June, 1976	41.5	Full-text
All	Oct., 1976	24.0	Headnote
D. C. Appellate Court	June, 1976	41.5	Full-text*
D. C. District Court	June, 1976	18.0	Full-text
6th & 10th Circuit Appellate Court	June, 1976	31.4	Full-text
6th & 10th Circuit District Court	June, 1976	42.0	Full-text
6th & 10th Circuit Staff Attorneys	June, 1976	61.8	Full-text

*Data for the headnote system is not subgrouped because only 1 or 2 groups were headnote users in each survey.

savings in about 25 percent of the problems run. These figures were consistent for two sets of surveys.[1]

Table 11, shows still another way to analyze time-saving. After each use, the users were asked to indicate how much time, if any, was saved by using the CALR system. At the full-text system sites, an average of 86.7 minutes were saved for each use, whereas at the headnote system sites, the savings was thirty-seven minutes per use. These data seem consistent with previous data on percentage of projects in which CALR made a time difference, as well as with opinion data on the amount of time CALR could save. These data tell us a user undertaking three or four research projects a week will save four to six hours a week using the full-text system, and one and a half to two and a half hours a week using the headnote system.

Judges were also asked about the timesaving aspects of CALR system. Judges in the District of Columbia, Sixth and Tenth Circuits were asked, approximately how much of their law clerks' time was devoted to researching issues on which the full-text system (or the headnote system when it was available)[2] would save significant amounts of time. All but two of thirteen judges responding felt their law clerks spent less than 25 percent of their time on such issues. Two judges put the figure at one-fourth to half of their law clerks' time.

The judges were also asked the reverse of this question: how much time was spent on issues for which the full-text system was not useful? Six of the thirteen survey respondents thought the full-text system was not particularly useful for areas on which their law clerks spent less than one-fourth of their time. Three judges did not respond to this question. Two judges thought

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[1]There is another way of using these data. If one multiplies the percentage of cases in which CALR was used, by the percentage of cases in which it made an important difference in research time, the sum is the percentage of total research situations in which CALR makes an important time difference. By multiplying these figures, one finds the full-text system makes an important difference in research time in 18 percent of the total research projects; the headnote system makes an important difference in 3.7 percent of them.

[2]No D. C. judges answered the survey regarding the

TABLE 11

ESTIMATES OF
AVERAGE TIME SAVED PER SYSTEM USE BY CALR USERS

Users	System	Average Time Saved (in minutes)
D. C. Circuit	Full-text	96.5
6th Circuit	Full-text	57.6
10th Circuit	Full-text	79.8
9th Circuit	Full-text	111.8
5th Circuit	Full-text	87.8
5th Circuit	Headnote	37.1
Detroit	Headnote	36.9
9th Circuit	Headnote	*
D. C. Circuit	Headnote	*

*Not enough responses to provide meaningful data.

three-fourths of their law clerks' time was spent on these issues. Finally, two judges viewed their law clerks' time on these issues as one-fourth to half. Law clerks for the two judges who thought their clerks spent three-fourths of their time on issues for which the full-text system did not save time, made little use of the systems during the September, 1975 to June, 1976 period. These data correspond to the direct user data on time saving.

Until this point, we have assembled the data on time saving from user opinions. While this is the only way many of these data can be developed, one systematic collection method was used in the comparative memoranda project. As mentioned earlier, each law clerk was to run a problem either on a CALR system or manually and keep accurate time records. Tables 12 and 13 show the results of this project. First, in terms of which memo was produced faster, the CALR memo was completed faster in 56 percent of the problems in the Sixth Circuit and 57 percent in the Tenth Circuit. The meaning of this figure, however, is somewhat unclear. How should a CALR system compare with a manual system? Should it always be faster, never be faster, or be faster on some problems and slower on others? A base expectation is needed to determine whether these percentages indicate anything about CALR's speed. Probably, the most reasonable way to interpret these data is to assume that if the two methods are equally efficient, each will be faster half the time: then examine the differences above 50 percent. If this baseline is used, the full-text system appears to be slightly faster than manual research for some problems. Again, the previous data revealed some suggestion of CALR timesaving limitations.

The exact savings can be seen in Table 13. The difference in both total research time and retrieval time seems to reveal a surprising result. The average difference in retrieval time between CALR and manual is less than an hour in the Tenth Circuit. This is so even when some data sets are removed, because the problems run had

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headnote system. Apparently their law clerks did not use it enough to convey to the judges any idea of its utility.

TABLE 12

COMPARATIVE MEMORANDA: WHICH MEMO IS FASTER?

Circuit	Data	No. of Memos Produced Faster by Full-text Plus Manual	No. of Memos Produced Faster by Manual	Ties
6th	Lowest Total Time	5	4	
10th	Lowest Total Time	12	9	1
6th	Lowest Retrieval Time	4	3	1
10th	Lowest Retrieval Time	12	7	3

TABLE 13

COMPARATIVE MEMORANDA: WHAT WERE THE TIME DIFFERENCES?

Circuit	No. of Data Sets	Type of Data	Mean No. of Hours for Full-text Memo	Mean No. of Hours for Manual Memo
6th	9	total time to prepare memo	6.3	6.1
10th	22	total time to prepare memo	15.2	17.2
6th	8	retrieval time only	1.4	1.2
10th	22	retrieval time only	3.8	4.1

characteristics that might bias the comparison. In overall research time, even the largest difference between manual and the full-text system (that for the uncorrected Tenth Circuit data sets) is only two hours out of a total seventeen hours to fully prepare a memo. The difference for retrieval time only ranges from 0.8 hours to 0.2 hours.

Furthermore, for the Sixth Circuit, manual is faster, on the average, than CALR plus manual. Of course, this might be due to sampling variation since the Sixth Circuit users submitted only eight dual memos. Still, the important fact in Table 13's data is that the differences are so small. This report noted earlier that the full-text vendor's literature claims the system researches five to thirteen times faster than the manual method. This does not seem true for the federal courts.[1]

Time Saving: The Full-text System vs. The Headnote System

Some of the data developed previously bear on this question. The opinion survey revealed users' estimates that the headnote system made an important difference in research time in about 25 percent of the problems for which it was used, whereas the full-text system did so for more than 40 percent. The daily usage reports showed users estimated they saved nearly one and a half hours with each use of the full-text system and thirty-seven minutes with each use of the headnote system. These differences were generated by users who had operated both systems and by users who had operated only one.[2] The consistency of these results, as shown in Table 13, suggests the disparity is due not to differences between the user groups, but rather to differences between the systems.

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[1]Again, these data were derived from a very small sample. Thus, the results should be given little weight in determining whether CALR saves time, and if so, how much time.

[2]For instance, the 5th Circuit users estimated they saved an average of 87.8 minutes for each use of the full-text system, and 37.1 minutes for each use of the headnote system. This group of users had used the headnote system beginning in May, 1976, and the full-text system beginning in October, 1976. The users in Detroit, who

There is one other aspect of time saving that can be examined. It has been claimed that searching a headnote system is faster than searching a full-text system, and therefore some time is saved simply by operating the system. Data in Table 14 address this issue. These data were collected from the time records the legal research specialists kept when they ran identical problems on the respective systems. The full-text system user (researcher A) took less time than did the headnote system user (researcher B) for the first set of problems. Although this appears to suggest the full-text system is faster to use than the headnote system, the time results from the second set of problems show otherwise.

With this second set, each researcher ran half the problems on one system and half on the other. Researcher A was faster on both systems than B (as she was on the whole first problem set). This indicates that user skill seems more important than system characteristics regarding which system can be operated faster.

Further analysis of these data show that both researchers worked faster using the headnote system than using the full-text system. Researcher A was 2.9 minutes or 12.3 percent faster per problem, and researcher B was 6.8 minutes or 17.3% faster per problem. These data to some extent support the proposition that the headnote system is faster to operate than the full-text system.[1] The difference, however, is so much affected by user skill that

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estimated the headnote system saved them 36.9 minutes per use, had not used full-text. Nor had the users in the 10th Circuit, who estimated the full-text system saved them 79.8 minutes, used the headnote system.

[1]In many ways, this result is to be expected. A headnote system data base requires much less computer storage space than does a full-text system data base. The smaller the data base, usually, the faster the computer can search it. Also, it is faster to read a headnote than to read an excerpt from a call. Furthermore, for each case retrieved in a full-text system, there may be several excerpts containing the searched-for words. (Sometimes there are several headnotes retrieved for a single case, too.) In general, then, the headnote system saves some

TABLE 14

TIME TAKEN BY LEGAL RESEARCH SPECIALISTS
TO DO COMPARATIVE RESEARCH PROBLEMS

Set 1. 21 Problems: 3 jurisdictions per problem (Federal, California, Missouri)

	System	Average Time (in minutes)
Researcher A	Full-text	49.6
Researcher B	Headnote	60.2

Set 2. 25 Problems: Federal jurisdictions only

Odd-Numbered Problems	(N=13) System	Average Time (in minutes)
Researcher B	Full-text	38.1
Researcher A	Headnote	20.6

Even-Numbered Problems	(N=12) System	Average Time (in minutes)
Researcher A	Full-text	23.5
Researcher B	Headnote	31.3

it is not a conclusive factor in choosing between the two systems. This can be seen by combining the data in this section and the data in pages 53 through 61. Assuming that a headnote system is 15 percent faster to operate than a full-text system, and assuming an average of fifty hours per month use on a given terminal, the headnote system would save approximately 7.5 hours per month. Approximately 100 problems could be run if the headnote terminal is used fifty hours per month. The data in pages 53 through 61 show that running 100 problems on a full-text system would save 148 hours of research time. Only sixty hours would be saved if 100 problems were run on the headnote system. Thus, headnote system users would save a total of 67.5 hours, 80.5 hours less than the full-text system users would save!

General Comments on Timesaving Aspects of CALR

Both judges and other users were asked for general comments on the CALR systems. The comments below, which were selected as a representative sample of all comments, give an impression of observations related to time saving.

"A useful tool, question is cost justification."

"I found it generally to be a very effective efficient and easy system of legal research especially useful for certain types of work. I have no idea of the cost charged, however, and therefore cannot state that it is more economical than traditional 'book' research. While I save some time using [the full-text system], the savings may well have been less than consumed by the [full-text system] cost."

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time during the case retrieval phase of research. This time may be lost, however, when the researcher consults the full texts. The judgement of a full-text system's relevance and utility is probably more discernible from information provided on the computer terminal than is the case with a headnote system. Several law clerks have mentioned this phenomenon when comparing the two systems.

"Our office finds its [the full-text system] use a great time saver and aid to complement research projects -- has come to rely on it substantially."

"As I understand it, the cost of [the full-text system] does not justify itself. It is extremely useful -- but, in terms of cost, it doesn't do the job of another clerk, or even half a clerk. If the cost were equivalent to 10-20 percent of another clerk, it might be economically justifiable. Since I believe it adds about 15 percent to my productiveness, I believe that should be its approximate cost."

"Unnecessary and expensive. In most instances manual research was faster and superior in quality." (This user ran many problems on the headnote system over a four-month period.)

These comments in many ways mirror the more quantitative results discussed in this chapter.

Discussion and Conclusion

The data in this part, although they conflict somewhat, generally suggest that both CALR systems save important amounts of time in some situations, and that the full-text system saves more time than the headnote system. The data developed from surveys and usage reports strongly support this proposition, and the data from the comparative memoranda project cast some minor doubts on it. Since few comparative memoranda were received, that data need not be taken as undermining the proposition. It is also true, however, that the CALR systems do not save, on the average, as much time as their advocates suggest. Whether this is true because of the nature of research in the federal courts or because previous studies have been made mainly by the terminal vendors themselves, is not clear. Furthermore, it should be added that many users feel they save much more time than these data show. Perhaps some advocates recall the time they saved a week of library work, not the ten or fifteen other instances in which no time or very little time was saved. Or, CALR may be used only when it seems potentially to produce great time savings.

Given that the CALR systems save some time, the question of cost justification arises. It seems clear that, from the data developed up to this point, it would be difficult to justify implementing CALR on a cost basis.

Consider the following unlikely situation. If every user in the District of Columbia courthouse ran two problems a week and saved an average of approximately ninety minutes per problem, three law clerk months would be saved each month with a CALR system. Assuming a law clerk costs $1,500 per month, $4,500 per month would be saved. In order to produce this time saving on either CALR system, however, two terminals would probably be needed for the more than forty law clerks in the District of Columbia courthouse. This would cost at least $6,000 for the headnote system, and $5,000 for the full-text system. Thus, no money would be saved.

Of course, there may be other justifications for using CALR systems. These will be covered in other sections.

IV. THE POTENTIAL OF CALR FOR IMPROVING RESEARCH QUALITY

Introduction

In this section, we will look at the effects of CALR on research quality. It has proven difficult to pin down the concept of research quality. Although no single type of data can be taken as conclusive on this issue, several types of data have been developed and will be discussed below.

Improvement in research quality has been measured in two ways. First, were cases found that would not ordinarily be found with traditional library research? Second, did the cases found lead to a better opinion or a better final product? The key is, how to determine what would or would not ordinarily be found. Given the synergistic, serendipitous nature of library research, any legal researcher who can confidently predict what would or would not be found using traditional methods is probably treading on thin ice.[1] This is true except for one category of cases: cases so recent that a researcher can be fairly sure they do not appear in any of the reporter systems or in the looseleaf services. Except for this category, no one can predict with certainty that a case would or would not be found. Thus, much of the data in this section are based on users' impressions of whether the CALR system produced something that would not have been found otherwise.

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[1]Furthermore, legal research is usually not exhaustive, in the sense that a researcher has unlimited time to search library materials. Neither lawyers', judges', nor law clerks' workloads usually allow for such exhaustive searching. Thus, when discussing what would or would not be found, we are talking in terms of a finite time limit.

Even with the more systematic data developed in the comparative memorandum part of the evaluation, there is some subjective[1] judgment as to whether the final product was improved. Judges rated the final memoranda of two law clerks; one used a CALR system, and one used traditional manual research methods. This rating was supposed to evaluate information content, as indicated on the form shown on page 23. Even determining whether the information content of two memoranda differ significantly, however, involves considerable judgment.

In fact, the only data in this section which are basically judgment-free are based on the answers to problems run on each CALR system by the legal research specialists. After the problems were run, the answers were compared mathematically as to which system produced more cases on point. Four results were possible. First, neither system produced any cases on point. If this happened, the systems were rated even. Second, both systems produced the same cases or, in the judgment of the project director and the specialists, the systems produced considerable case overlapping. Again, they were rated equal. Third, one system produced relevant cases and the other did not. Obviously, the system that found cases was rated superior. Fourth, both systems produced very different lists of cases. In this instance, the cases were read to determine which were more on point or more relevant. Each time this occurred, it was clear, after reading the cases, which system produced the better result.

Even this method of rating does not fully address the issue of improvement in research quality, since the rating is premised on one system producing more cases relevant to the issue. This premise does not necessarily mean the ultimate research product will be improved.

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[1]By subjective judgment, we mean that the user of the research is deciding whether the final product is improved; no other agreement is necessary. One could imagine a situation in which a judge thinks quality is improved by a CALR system and the CALR project director does not. In this situation, the judge's subjective judgment is the determining factor.

Other than subjective judgment, there is no feasible way to determine the effect of a CALR system on the final research product in a field setting.[1]

In summary, this section presents several different approaches to ascertaining whether CALR improves research quality. While these approaches led to generation of many different types of data, no one type can be taken as conclusive on this issue, because of the underlying concept's complexity.

Does CALR Improve Research Quality?

Comparative memoranda results

The comparative memoranda part of the evaluation was supposed to have answered the question of CALR's role in improving research quality. Only eight useable sets of memoranda, however, were submitted by the Sixth Circuit, and only nineteen by the Tenth Circuit.[2] Table 15 shows how the systems fared. In the Sixth Circuit, both the CALR (full-text) system and manual were each rated superior in 50 percent of the problems. In the Tenth Circuit, however, manual received a higher rating for 58 percent of the problems and the CALR system for only 32 percent. The other 10 percent were ties. A curious question is how manual could be rated superior so often, when in fact, the researcher using the CALR system was using manual as a supplement. Thus, if the full-text system added nothing, we would expect it to be superior for at least 50 percent

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[1]The traditional information retrieval measures of relevancy (proportion of all found documents which were relevant) of citations retrieved and recalled (proportion of all relevant documents which were found) are difficult to determine in a court setting with actual problems and users. These measures assume some knowledge about the total number of relevant documents, and some agreement about the relevancy of each document retrieved. Furthermore, in non-laboratory settings, both measures finally rely on subjective judgments.

[2]More sets of memoranda could be used to analyze time saving than to analyze quality improvement.

TABLE 15

WHICH MEMO IS BETTER?

Circuit	Data	No. of Superior Memos Produced by Full-text	No. of Superior Memos Produced by Manual	Ties
6th	Best Memo Rating	4	4	
10th	Best Memo Rating	6	11	2

of the problems. The data here show that the full-text system seems to reduce research quality! This anomalous result could be caused by the effect of law clerk skill with the research systems, or from the small sample size, inaccuracy of the rating instrument, or any number of other confounding factors, such as slight variations in different researchers' timekeeping methods, which were not controlled due to the same small sample.

The anomaly is even more clear when the actual ratings in Table 16 are analyzed. In the Sixth Circuit, although the full-text system was rated superior for only 50 percent of the problems, the numerical difference in ratings is 0.8. In the Tenth Circuit, where manual was superior for 58 percent to 32 percent, the numerical difference in ratings is only 0.6, in favor of manual. This suggests that the "winner" in the Sixth Circuit, the full-text system, was rated farther ahead when it "won," than the "winner" in the Tenth Circuit, manual. In other words, in the Sixth Circuit, although the full-text system was rated superior for only 50 percent of the problems, each time it was rated superior, it was rated substantially so. In the Tenth Circuit, although manual "won" 59 percent of the problems, it did so by a smaller margin than did the full-text system in the Sixth Circuit. This result suggests the data's unreliability and partial inconsistency. This does not mean that the data should necessarily be discounted. Rather, the data should be viewed in the context of other data on the research quality issue.

TABLE 16

COMPARATIVE MEMORANDA QUALITY RATINGS

Circuit	No. of Data Sets	Type of Data	Mean Rating* of Full-text Memo	Mean Rating of Manual Memo
6th	8	Judge's Rating of Memo	7.9	7.1
10th	21	Judge's Rating of Memo	7.6	8.2

*Actual ratings are reversed from original form, thus, the superior rating is the higher number. Ratings ranged from 1 to 10.

User opinions on improvement in quality

The first aspect of this issue is the users' general impressions regarding CALR's effect on research quality. Table 17 shows responses to the question: In what percentage of the projects in which you used one CALR system or the other did you feel it made an important difference in terms of...quality of the research product? Generally, the percentages answering this question were lower than those answering a similar question about saving research time. The results for each system across both survey periods were very similar. Also, except for the appellate law clerks in the Sixth and Tenth Circuits, the responses to this question from various subgroups are much the same. The very low percentage estimates by the Tenth Circuit appellate law clerks brought the percentage down for the Sixth and Tenth Circuit appellate law clerks. The Tenth Circuit law clerks used the full-text system much less during their tenure (from approximately September, 1975 through June, 1976) than their predecessors, despite the fact that their predecessors were quite pleased with the system.

These responses to the full-text and headnote systems parallel the timesaving data on both systems. Although both systems were improvements over manual, the full-text system was more of an improvement than the headnote system.

Among judges responding to the April, 1976, CALR questionnaire, six of eight respondents to the research quality question thought there was some improvement in quality.[1] One of the six, however, gave a very limited view of CALR's impact on quality. He said quality was improved "only for the relatively few research tasks adaptable to [CALR]". That judge's law clerks had almost the lowest level of use among law clerks in their courthouse. One appellate judge answered "don't know" to this question. Two district judges answered "no" to the quality question,

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[1]Recall that responding D. C. judges only answered the questionnaire regarding the full-text system, even though both systems were available to them and their staffs. This was probably due to the lack of headnote system use in the D. C. Circuit.

TABLE 17

USER OPINION ESTIMATES OF PERCENTAGE OF PROJECTS IN WHICH CALR MADE A QUALITY DIFFERENCE

Users	Survey Date	Percentage of Projects in Which CALR Made a Quality Difference	System Used
All	Aug., 1975	37.5	Full-text
All	Aug., 1975	13.8	Headnote
All	June, 1976	30.0	Full-text
All	Oct., 1976	18.7	Headnote
D.C. Appellate Court	June, 1976	36.0	Full-text*
D.C. District Court	June, 1976	36.0	Full-text
6th & 10th Circuit Appellate Court	June, 1976	18.7	Full-text
6th & 10th Circuit District Court	June, 1976	31.0	Full-text
6th & 10th Circuit Staff Attorneys	June, 1976	37.7	Full-text

*Data for the headnote system is not subgrouped because headnote users in each survey usually fit into 1 group. Also, the data showed little difference across subgroups.

and two answered "don't know." The two answering "no" included one judge whose law clerks used the system as much as the upper half of all users across the three test sites.

Among those judges who felt CALR improved research quality, there was little agreement on what portion of their research tasks the improvement would affect. Three answered that less than one-fourth of their research tasks would be affected, one felt more than three-fourths would be, and one said that one-fourth to half of his research would be affected.

These judges' responses are basically consistent with law clerks' and other users' responses. A broad average of their responses indicates quality was improved in approximately 30 percent of the research projects. These judges' experience was almost all with the full-text system; their 30 percent of projects improved is similar to the 30 percent of research projects in which law clerks and other users said CALR improved research quality.

The data to this point show that users feel CALR systems do improve the quality of their research. This improvement, however, does not apply to every case. This result is not particularly startling. Most research done in the federal courts begins with briefs and other papers from the parties involved. Many points of law do not require much independent research. Those points that do, may only require checking a few leading cases, researching legislative history, or some other task requiring minimal independent library research. Such issues would not require CALR system research. Keep in mind, however, that at this stage in the development of CALR systems and in the experience of CALR users, it is not known whether CALR can be used effectively on every problem. Currently, many users apparently feel CALR systems can only make an important contribution to both saving research time and improving research quality in a limited number of situations. This feeling does not mean, however, that such systems do not have a useful place in the federal courts.

Finally, one might surmise that the opinions expressed about the full-text and headnote systems are

self-serving, in that while the systems may not help much, the users would like to have them. The data on usage patterns in Part VI seem to contradict this position. Many users, in fact, use the terminals for large amounts of time. This would suggest they found some value in using them.

Usage report results

Each time a system was used, the user was supposed to submit a usage report. The results from these reports are shown in Table 18. This table shows whether the users felt the CALR system assisted them in a way manual research did not. The data in this table clearly show that in almost 50 percent of the uses, the terminals produced results that could not be achieved with manual research. The last two possible results, "found cases definitely not found without CALR" and "found recent cases definitely not found without CALR," indicate what a CALR system can do. Both CALR systems produced results like this in at least one-third of the problems run. Furthermore, both systems produced a result called "found nothing and am glad." This indicates some feeling of closure on the research even though nothing was found. Clearly, with a manual system, a researcher always suspects that somewhere, among the many volumes, there is a relevant case that was not found. The CALR system often gives greater certainty that a complete search was made.

The data in Table 18 are only users' estimates made at the time the computer was searched. One might expect, however, that once a user reached this point in the research, the user would know enough about the problem to reasonably estimate whether the computer provided either new information or information the user could not normally discover during the research process.[1]

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[1]The category "would not have found without CALR" is partially time-dependent. It is likely that, given enough time in a law library, every case in the reporters' treatises and looseleaf services, would be found. Thus, when this category was checked on the usage form, the user probably thought the case would not have been found, using normal research methods within a specified time frame.

TABLE 18

USAGE RESULTS: WHAT CASES WERE NOT FOUND?

Circuit or Location	1 Found Nothing Unfortunately	2 Found Nothing Am Glad	3 Found Nothing New	4 Found Cases Probably Found Without CALR	5 Found Cases Definitely Not Found Without CALR	6 Found Recent Cases Definitely Not Found Without CALR	Sum of Columns 5 and 6
	Percent of Uses						
D.C. - Full-text	11.4	4.1	3.8	27.8	37.9	15.0	52.9
6th - Full-text	11.3	9.4	7.7	34.8	21.9	16.0	37.0
10th - Full-text	9.8	2.3	4.6	39.6	33.0	10.6	43.6
9th - Full-text	8.0	4.1	4.4	37.6	28.3	17.4	45.7
5th - Full-text	5.7	3.2	0.7	44.7	41.4	4.0	45.4
5th - Headnote	13.9	6.6	5.0	41.4	32.1	0.8	32.9
Detroit - Headnote	19.2	5.9	9.6	30.8	19.2	15.3	34.5
9th - Headnote*	-	-	-	-	-	-	-
D.C. - Headnote*	-	-	-	-	-	-	-

*Not enough responses to give meaningful data.

One might also expect from these results that the reason for using the system might influence the estimates. For instance, if one were using the computer as a substitute rather than as a supplement, a higher percentage of cases found might be labeled "definitely not found without CALR." That is because less preliminary library research would have been done; thus, some relevant cases which might have been found during preliminary library research would be placed in this category. The data in Table 19 address this point. These data show the purpose of using the computer. While purpose of use varies somewhat across circuits and across systems, none of the possible purposes of use significantly correlates with whether cases were found. In other words, the purpose of using the CALR system does not reveal anything about the type of results shown in Table 18. Or, differences in the various results categories are probably due to something other than the reason for using the system.

The Full-text System vs. The Headnote System

Usage report results

The data shown in Table 18 suggest some differences in the results each CALR system produces. Specifically, the full-text system produced more cases that would not be found without CALR, as well as a higher percentage of "found nothing and am glad" responses. The latter means the user had a feeling of research closure on the problem. The headnote system produced, on the average, many more situations in which nothing new was found. The headnote system also produced a higher average of cases in which nothing was found.[1]

The same conclusions are supported using only the Fifth Circuit results. This is important, because in the Fifth Circuit, the same researchers used both terminals; therefore, some observers may attach more validity to the differences there, for instance, than to those between Detroit and the District of Columbia.

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[1]There was no significant correlation between the category "found nothing, unfortunately" and searching on the computer as a substitute for manual.

TABLE 19

PURPOSE OF USING CALR

Users	Searching Mainly for Recent Cases	Searching for an Opinion	Searching to See If Missed Anything	Searching on Computer as a Substitute
D.C. Circuit - Full-text	25.1%	6.5%	25.6%	42.6%
6th Circuit - Full-text	29.6%	2.1%	17.5%	58.7%
10th Circuit - Full-text	23.1%	6.1%	18.4%	52.3%
9th Circuit - Full-text	24.2%	1.7%	19.4%	54.5%
5th Circuit - Full-text	4.6%	1.1%	32.5%	61.5%
5th Circuit - Headnote	10.6%	0%	21.2%	68.1%
Detroit - Headnote	22.5%	2.2%	32.3%	42.8%
9th Circuit - Headnote*	-	-	-	-
D.C. Circuit - Headnote*	-	-	-	-

*Not enough responses to give meaningful data.

As is true of results discussed in other parts of this report, both systems appear to provide improvement in quality. The full-text system, however, does so to a greater extent than the headnote system.

Some people think CALR systems may have certain negative effects on research quality. To examine this possibility, the users were to indicate whether too many irrelevant cases were produced and whether too few relevant cases were produced. Table 20 shows these data. Although both systems produced some results in these two categories, the headnote system produced more. Producing too many irrelevant cases probably increases research time more than it lowers research quality. Of course, increasing research time can indirectly affect quality by spending limited time resources on fruitless searches. Usually, users know that too few relevant cases have been produced because they have read briefs or motion papers before doing the research, even if computer use is substituted for manual research.

Comparative problem analysis

Recall that these data were developed by having the legal research specialists run problems on the CALR systems and then compare the cases found. A complete set of answers appears in Appendix IV. To illustrate how the ratings work, the analysis of a few sets of answers are shown in Table 21.[1]

In Set One Question One, about a defendant's right to waive a preliminary hearing over objections, neither system found any case directly on point, and the result was rated even. For Question Two, the full-text system produced cases using the term "intervening cause," which was the crux of the answer. The headnote system produced no cases even remotely relevant in two of the three jurisdictions being tested, and in the third, only one of two cases produced used the term. Thus, both researchers rated the full-text system superior on this question.

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[1]The questions appear on p. 25.

TABLE 20

NEGATIVE EFFECTS OF CALR SYSTEMS ON RESEARCH QUALITY

Circuit or Location	System	Too Many Irrelevant Cases Produced: Percent of Uses	Not Enough Relevant Cases Produced: Percent of Uses
D.C.	Full-text	6.7	3.6
6th	Full-text	7.5	4.4
10th	Full-text	6.6	6.2
9th	Full-text	2.5	3.0
5th	Full-text	6.8	6.8
5th	Headnote	21.7	11.1
Detroit	Headnote	8.8	9.5
9th	Headnote*	-	-
D.C.	Headnote*	-	-

*Not enough responses to give meaningful data.

On Question Three, in all three jurisdictions the full-text system found many cases holding that an expert was qualified to testify about tennis shoe or shoe print comparisons and similarities. The headnote system produced only two federal cases on this point. The full-text system was rated superior here.

Question Nine dealt with probation officers giving a Miranda warning before talking to a defendant on probation or before talking to a defendant about another charge or offense. Both systems produced the same cases. Thus, the systems were rated even on this problem.

By conservative count on Set One, then, as shown in Table 21, the full-text system gave the superior answer for 33 percent of the questions, and the headnote system did so for 5 percent. For 61 percent of the problems, both systems produced the same answers or no results.

After the comparisons were made, one researcher wrote,

> After discussing the performance of the [headnote system] and the [full-text] system with the other legal research specialist, I felt that [the full-text system] was better because it produced more cases on point and was, therefore, more thorough than [the headnote system]. However, while the [full-text system] was better, I did feel that the headnote system produced solutions to a large percentage of problems which were comparable to the [full-text system] ...[My] impression has changed considerably after reading through all of the answers again; I feel that the quality of answers by the [full-text system] was superior at least half the time.

This statement means the research specialist felt that for half the questions the full-text system produced better results than the headnote system, and for most of the other half, the systems produced similar results.[1]

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[1] Both research specialists' opinions of the terminals and the results produced can be given the weight of more expert testimony. It is likely that both have used the terminals more than any other users except the vendors' own employees.

TABLE 21

RESULTS OF COMPARATIVE RESEARCH
BY LEGAL RESEARCH SPECIALISTS
ON FULL-TEXT AND HEADNOTE SYSTEMS

Set 1. 21 Problems: 3 jurisdictions per problem (Federal, California, Missouri)

		Researcher A - Full-text	Researcher B - Headnote
Full-text had better answers	33%	(N=7)	
Headnote had better answers	5%	(N=1)	
Same answers or no cases found	62%	(N=13)	

Set 2. 25 Problems: Federal jurisdictions only

Overall

		Researcher A - Full-text	Researcher B - Headnote
Full-text had better answers	24%	(N=6)	
Headnote had better answers	4%	(N=1)	
Same answers or no results	72%	(N=18)	

Odd-Numbered Problems 1 to 25 (N=13)

		Researcher B - Full-text	Researcher A - Headnote
Full-text had better answers	15%	(N=2)	
Headnote had better answers	8%	(N=1)	
Same answers or no results	77%	(N=10)	

Even-Numbered Problems 2 to 24 (N=12)

		Researcher A - Full-text	Researcher B - Headnote
Full-text had better answers	33%	(N=4)	
Headnote had better answers	0%	(N=0)	
Same answers or no results	67%	(N=8)	

This is further confirmation of the full-text system's superiority to the headnote system.

The second set of questions was drawn from problems run on the CALR systems in places other than the Fifth and Ninth Circuits and from cases docketed before the U. S. Supreme Court, as shown in recent issues of U. S. Law Week. The issues in this set were already well distilled; this might explain why research was completed faster for Set Two than for Set One. Upon checking the results in this set, which included problems in a wide range of areas, it again appeared that the full-text system produced better results than the headnote system.

A couple of examples will describe the ratings on this set. For Set Two Number Two, about statements of counsel estopping agency action, the headnote system produced cases concerning agency estoppel, with no indication of what the rule was or whether the rule applied to statements of counsel except by a fortiori reasoning. The full-text system produced a case very close to the issue, which on surface reading gave the rule as to when estoppel would apply in an agency proceeding. It was also clear from this rule that statements of counsel probably cannot create an estoppel against the agency. Upon reading the cases cited, however, it is clear that neither set of cases is close enough to the issue. Since neither system's result was close to the point, they were rated even.

On Question Ten, about interpleader actions, the headnote system produced many cases citing the traditional rule that plaintiffs in an interpleader action were not opposing parties to a person asserting a claim in interpleader action, within Rule 13 of the Federal Rules of Civil Procedure. The full-text system produced many of the same cases. It also produced the most important case found, a very recent circuit case in which the Tenth Circuit revised its previous position on counterclaims in interpleader actions. Overall, the full-text system found better cases than the headnote system found. Thus, the full-text system was rated superior on this question.

The net result of these comparisons of the two systems is that the full-text system produced better

results than the headnote system, in both sets, for about one-fourth to one-third of the problems. The headnote system produced better results for fewer than 10 percent of the problems, and for 60 to 70 percent of the problems, both systems produced either no relevant cases or basically the same cases.

Summary and Conclusion

Except for the data from the comparative memorandum project, all other data presented in this section support the proposition that CALR systems can improve research quality, by producing cases that might not have been found easily or at all with traditional manual research. The data also show that the systems fail to produce cases known to the users only in a very small percentage of uses. As was true with the time saving data, the data in this section show the full-text system has greater potential than the headnote system.

Most of the data in this section are abstract, in the sense that users indicate whether they think research quality is improved or whether cases were found that would not otherwise be found. Many anecdotes have been relayed to the project director. For instance, a chief judge wrote that without the full-text system, his law clerks would have missed a very recent case, from another panel of his court, which was directly relevant to the case he was writing an opinion about. One law clerk wrote that for a particular problem under a statute, only two citations containing the phrases he wanted appeared in the annotated federal code. He found more than forty relevant cases with the full-text system, using the phrases in conjunction with a search of the statutory section. Finally, a law clerk wrote that he found, with the full-text system, a case that could have saved his judge half a day of oral argument. The oral argument was held because no cases determinative of the issue were found. He would not have found the right case without the full-text system. Furthermore, the case was not mentioned during oral argument.

V. USAGE LEVELS OF CALR SYSTEMS IN THE FEDERAL COURTS[1]

The Full-text System

This part of the report explores usage levels of the various systems in the federal courts. This information will help assess the potential utility of the systems, provided one assumes judges and their staffs will use a CALR system only if it assists them in their research. These data on usage levels will also assist in determining the number of available hours federal courts require on CALR terminals and the number of terminals needed.

Overall usage levels

Each time someone uses a CALR terminal, the vendor records some information about the use, including who used it and for what amount of time.[2] The data on full-text system use during November and December, 1976 are shown in Table 22. The data show 456.7 hours were used in the federal courts. Two facts should be remembered while interpreting this figure: the use figures include some user training time at various sites; and, the months covered include two major vacation periods, Thanksgiving and Christmas, when the terminals were not used as often as during nonvacation periods.

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[1] A complete month-by-month usage level analysis appears in Appendix II. These data include summaries arranged by judges, circuit, and type of uses.

[2] As noted in Part II, the headnote system does not require a specific user identification. Therefore, it was sometimes unclear, from the vendors' usage information, who the exact users were.

The data are not subdivided per judge at this point because there was considerable variation among potential users in each circuit. In the Sixth Circuit, some usage time includes use by law clerks accompanying nonresident judges who sat for a week or two in Cincinnati. In the Fifth and Ninth Circuits, usage is divided between resident and nonresident users, as well as between resident users who sometimes had the legal research specialist run a problem and sometimes ran it themselves.

The data lead to several conclusions. First, size of a circuit does not seem to be a determining factor in usage level. The Sixth Circuit has fewer appellate judges and fewer on-site district judges than does the District of Columbia Circuit, yet it has higher usage levels. The Ninth Circuit has more staff attorneys, but fewer appellate and district judges, than the Fifth Circuit. The Ninth Circuit, however, has higher usage rates than the Fifth, and those higher rates are not due solely to the larger number of staff attorneys. Finally, the Sixth Tenth and District of Columbia Circuits combined have more potential resident and nonresident users than does the Ninth Circuit, yet the usage rate in the three circuits is lower than that in the Ninth Circuit.

Some of this variability is clearly due in part to the presence of the legal research specialist in some circuits. The data definitely show the specialists' effect on usage levels. There are also other factors at work. Perhaps law clerks in different parts of the country accept new research methods at different rates. Or, perhaps law clerks decide whether a CALR system is useful or not when they are trained on it, then use it or do not use it accordingly. For instance, some users might say CALR is useful only in the new areas of law, such as energy and environment; others find it useful only in cases where the briefs seem inadequate. Such positions would lead users to widely differing amounts of terminal use. Another explanation of variability could be a potential user's negative feelings about computers or machines.

During November and December, 1976, full-text system users in the federal courts used more than

TABLE 22

CALR SYSTEMS USAGE LEVELS FOR NOVEMBER - DECEMBER, 1976[a]

Circuit or Location	No. of Uses	Hours of Use	Minutes Per Use
		Full-text System	
D.C.	141	54.70	23.1
5th	165	127.90	40.6
6th	158	74.26	29.5
9th	350	167.15	28.6
10th	75	32.69	26.1
		Headnote System	
5th	12	6.01	30.0
9th	b		
Detroit	63	35.75	34.04

[a]Problems done specifically for this project have been removed from the data.

[b]System was not installed until late Nov., 1976. Therefore, no results are reported.

90 percent of the total available time[1] on the full-text system, at an average of fifty hours per terminal per month, or 500 hours. In fact, during December, full-text system usage totaled 259 hours, a few hours more than the 250 hours available for the month. But no extra charges were incurred, since some of those hours were three free hours during the trainees' first month on the terminal, and since there were some leftover hours from previous months.[2]

Finally, note the average time per use for these two months is 30.8 minutes.[3] Data developed for the first nineteen months that terminals have been available to federal court users suggest this is the average time per problem under most conditions. We will therefore use it as the basis for estimations, if such a figure is needed.

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[1]Available time refers to the total number of hours subscribed to. The subscription for the full-text system is 50 hours per terminal. This time is pooled across all terminals subscribed to. For 5 terminals, the total available time is 250 hours. This time may be divided among the terminals in any way. Thus, two circuits use more than 50 hours per month, and three use less. Since the total does not exceed 250 hours, however, there is no extra charge for those sites using more than 50 hours per month.

[2]Unused hours can be carried over from month to month with the full-text system subscription.

[3]It is unclear why the 5th Circuit average is about 30 percent higher than that of the other circuits. Off-site judges gave the research specialist some unusually long research problems which involve researching broad areas of law. But this does not account for such a large time difference. Also, the users in the 5th Circuit seem to take somewhat longer than the 31-minute average. Perhaps these researchers spend more time actually reading on the terminal. Also, the actual number of problems run may be understated, since sometimes more than one problem is done each time the system is turned on. This would increase the average time per problem. Finally, the data in Table 10 show the research specialist in the 5th Circuit takes more time to run problems than does the 9th Circuit specialist.

TABLE 23

AVERAGE MONTHLY FULL-TEXT SYSTEM USAGE DATA FOR THREE CIRCUITS: JANUARY 1976 TO MAY 1976

	D.C.	6th	10th
Number of Uses	87.0	58.6	57.0
Total Hours of Use	29.4	28.8	27.9
Minutes Per Use	20.3	29.6	28.7
Approximate Number of Potential Users[a]	44.0	28[b]	33[b]
Hours Per Potential User	0.67	1.02	0.89

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[a]Judges are not included in these figures. Figures are approximate because some users were not working at the Federal courts during this entire 5-month period.

[b]Potential users in 6th and 10th Circuits include nonresident judges' law clerks who were trained on full-text.

Another view of overall usage data is given in Table 23. This table shows the average usage level per month for the first five months of 1976. The data show relatively similar usage levels for the three circuits in which the evaluation project was begun. Also, comparing the first five months' total monthly usage level for these three circuits to the total for November and December, 1976, reveals that slightly fewer hours were used in this later period than in the earlier one. The vacation periods probably explain some of this difference. It is also clear, however, that usage levels in each circuit have changed somewhat (this will be discussed below).

Table 23 also shows that in the District of Columbia Circuit, the average time per problem is lower than in the other two circuits. This was also true for the November and December period. This difference was at first thought due to different types of uses in the District of Columbia; that is, District of Columbia users probably generally exploit the full-text system's exotic uses more than other users do. The data in Table 24, however, do not seem to support this contention. Relative to other users, District of Columbia users do not use such features as searching for an opinion by a judge's name, searching for a slip opinion, or citation tracking (which is like searching for a citation within a specific verbal context), at a rate that explains this difference in average time per problem. Neither does the project director's experience suggest that District of Columbia users are more skilled than those in other circuits. Nevertheless, the fact that District of Columbia users do run more problems per hour than other users seems to suggest District of Columbia users exploit the full-text system terminal for different purposes than do other users.

Usage levels by judge

The variability across circuits can also be seen when usage levels are subdivided by judge. Actually, a judge's level of CALR use refers to use by his law clerks. Very few judges have ever used the various CALR systems, and only one or two have done so for more than a brief training session.

TABLE 24

SOME CHARACTERISTICS OF THE SEARCH COMMANDS

Circuit or Location	Percent Searching[a] A General Area of Law	Percent Citation Tracking[b]	Percent Searching For Opinions	Percent Searching For Code, Statute, or Regulations
D. C. - Full-text	71.7	11.2	17.1	13.8
6th - Full-text	73.6	16.1	10.3	26.1
10th - Full-text	88.9	3.8	6.3	18.5
9th - Full-text	66.6	18.1	15.3	19.4
5th - Full-text	88.6	2.3	9.1	30.7
5th - Headnote	96.0	0.5	3.5	16.2
Detroit - Headnote	88.0	1.0	3.0	7.4
9th - Headnote[c]	-	-	-	-
D. C. - Headnote[c]	-	-	-	-

[a]The first 3 columns were mutually exclusive categories. The sum of the first 3 columns adds up to 100 percent. The 4th column was coded separately from the first 3.

[b]Citation tracking involves searching for cases containing a specific citation as well as additional words or phrases specified by the researchers; for example, finding all cases citing 310.U.S. 405 and the words "affirmative action."

[c]Not enough responses to give meaningful data.

Tables 25 and 26 show the usage levels for the law clerks of each resident judge at the three original evaluation sites.

It is unlikely that the variability shown is due to different needs. With this in mind, it is interesting to note that appellate judge A's clerks used the full-text system at twenty times the level of appellate judge I's clerks. Similarly, it is noteworthy that district judge A's clerks used the system 100 times as much as district judge K's clerks. The tables also show that district court usage is, on the average, considerably lower than appellate court usage.

Perhaps the variability can be explained in the words of one judge who responded to the judge survey in April, 1976. He wrote, "The most important factor in extending the end benefits of these systems is leadership by judges in encouraging use by their law clerks."

In other words, this judge would explain the variation by saying some judges encourage their law clerks to use the systems, and some take no active role in their law clerks' legal research methods.[1]

Staff attorney usage

At the outset of this project we thought staff attorneys would use CALR more than any other potential users. The data in Table 27 show that for the first five months of 1976, staff attorneys' use averaged 1.5 hours per month. Individual staff attorney usage data, shown in Appendix II, reveals wide monthly variation in usage. Some staff attorneys have used as many as eight hours per month, but none has ever sustained this level for two or more months.

These data relate only to staff attorneys in the Sixth and Tenth Circuits. It is difficult to develop staff attorney data for the Fifth and Ninth Circuits

[1]Another explanation of the variability: according to some law clerks, the briefs filed in many cases are so complete that independent research is not necessary.

TABLE 25

AVERAGE USAGE BY APPELLATE JUDGES' LAW CLERKS FOR FIVE MONTHS
(JANUARY 1, 1976 TO MAY 31, 1976)

For On-site Appellate Judges

	Hours Per Month	Average No. of Uses Per Month	Minutes Per Use	Average No. of User Reports Filed Per Month	Percentage of Reports Sent In*
D.C. Law Clerks For:					
Judge A	4.26	16.20	15.4	4.80	29.6
Judge B	3.29	11.40	17.0	1.20	10.5
Judge C	3.26	10.80	18.1	5.00	46.3
Judge D	1.22	3.60	19.8	2.80	77.7
Judge E	1.20	3.80	21.2	1.20	31.6
Judge F	1.11	3.80	14.4	1.80	47.3
Judge G	0.45	1.40	15.9	0.00	0.0
Judge H	0.42	1.00	11.9	0.00	00.0
Judge I	0.26	1.00	11.7	0.40	40.0
6th Circuit Law Clerks For:					
Judge A	7.33	13.8	26.9	11.8	85.5
Judge B	5.25	11.00	30.0	0.40	85.5
10th Circuit Law Clerks For:					
Judge A	0.69	2.0	18.6	0.80	40.0
Judge B	0.60	2.0	21.1	0.80	40.0

*This percentage might be viewed as a measure of the law clerks' support or cooperation with the evaluation project. These reports took approximately 2 minutes to complete and mail (in a stamped, self-addressed envelope).

TABLE 26

AVERAGE USAGE BY DISTRICT JUDGES' LAW CLERKS FOR FIVE MONTHS
(JANUARY 1, 1976 TO MAY 31, 1976)
For On-site District Judges

	Hours Per Month	Average No. of Uses Per Month	Minutes Per Use	Average No. of User Reports Filed Per Month	Percentage of Reports Sent In[b]
D.C.[a] Law Clerks For:					
Judge A	2.15	4.20	30.7	0.20	4.8
Judge B	1.30	5.40	14.4	0.00	0.0
Judge C	1.00	2.20	27.3	0.00	0.0
Judge D	0.72	1.40	30.8	0.60	42.8
Judge E	0.63	0.80	47.2	0.00	0.0
Judge F	0.60	1.20	30.0	0.00	0.0
Judge G	0.45	1.00	27.0	0.00	0.0
Judge H	0.43	2.20	11.7	0.00	0.0
Judge I	0.24	0.40	36.0	0.00	0.0
Judge J	0.17	0.20	51.0	0.00	0.0
Judge K	0.02	0.40	4.5	0.00	0.0
6th Circuit Law Clerks For:					
Judge A	3.15	5.20	36.3	1.40	26.9
Judge B	0.00	0.00	00.0	0.00	00.0
10th Circuit Law Clerks For:					
Judge A	2.90	7.00	24.8	3.20	45.7
Judge B	1.84	7.20	15.3	0.80	13.9
Judge C	1.51	3.80	23.8	1.00	26.3
Judge D	1.04	4.00	15.6	0.50	12.5

[a]No use: Judges L, M, N, O.

[b]This percentage might be viewed as a measure of the law clerks' support or cooperation with the evaluation project. These reports took approximately 2 minutes to fill in and mail (in a stamped, self-addressed envelope).

TABLE 27

STAFF ATTORNEY USAGE OF FULL-TEXT SYSTEM*

		No. of Uses Per Staff Attorney	No. of Hours Used Per Staff Attorney	Minutes Per Use
Staff Attorneys 6th & 10th Circuits Average Usage Jan. 7, 1976 - May 31, 1976	(N=10)	3.5	1.5	25.24
6th Circuit				
Oct. - Nov., 1975	(N=4)	7.2	2.8	23.6
Oct. - Nov., 1976	(N=4)	5.3	2.6	28.6
10th Circuit				
Oct. - Nov., 1975	(N=5)	5.1	3.1	36.5
Oct. - Nov., 1976	(N=6)	2.7	1.5	32.7

*Fifth and 9th Circuit staff attorneys are not included. They often had legal research specialists run problems for them. This made separating individual uses particularly difficult. Based on an analysis of the available but inexact data, 9th Circuit staff attorney usage is comparable to 6th Circuit usage as shown in the table. Fifth Circuit usage is slightly below 6th Circuit usage.

because sometimes, staff attorneys use the terminals to answer off-site judges' requests that should have been filled by the research specialist. Thus, it is never certain which part of a staff attorney's terminal use was related to regular work. The project director believes, however, based on his analysis of the Fifth and Ninth Circuit staff attorney data, that these staff attorneys' average level of use is not significantly different from those given in Table 27.

Comparative usage data over time

Comparative usage data over time are given for staff attorneys in Table 27 and for circuits and some judges in Table 28. Several propositions emerge from these data. First, three distinct patterns are present among the three circuits. The data in Table 28 show that in the District of Columbia Circuit, usage levels in August to December, 1976 were generally the same as those in 1975. During the same 1976 period, however, usage levels in the Sixth Circuit rose, and those in the Tenth Circuit fell. One answer for this phenomenon was discovered: people in the Tenth Circuit said there was less emphasis on CALR usage in that circuit in fiscal 1977 than there was in fiscal 1976. The reverse was true in the Sixth Circuit.

This phenomenon leads to the question of maximum potential usage level, which is a prerequisite for determining the federal courts' needs if a CALR system were adopted. The best way to answer this question is to assume that, at any point in time, usage levels reflect the overall needs. As the data show, there is no consistency in circuits' usage over time; a circuit's usage level may rise, fall, or remain static. It is unlikely that we could ever declare the maximum potential usage levels have been achieved. Thus, usage data should always be taken as tentative and suggestive.

The variation across circuits also appears across judges. In Table 28, three judges are used as examples of different patterns. Appellate judge A wrote, in response to the judges' questionnaire, that the full-text system had little or no value for his law clerks. His 1976 clerks, however, seemed to have different ideas about the full-text system. Judge B's experience with his law clerks was just the opposite, and judge C's 1976 law clerks used the full-text system at about the same rate as his 1975 clerks.

TABLE 28

INTER- AND INTRA-CIRCUIT COMPARISONS OF FULL-TEXT USAGE OVER TIME FOR SELECTED MONTHS IN 1975 AND 1976

D.C. Circuit	No. of Uses	Hours of Use	Minutes Per Use
Aug. - Dec., 1975	509	245.7	28.9
Aug. - Dec., 1976	488	253.0	31.1
Appellate Judge A: Aug. - Dec., 1975*	6	6.6	66.0
Appellate Judge A: Aug. - Dec., 1976	61	21.6	21.2
Appellate Judge B - Aug. - Dec., 1975	85	24.6	17.3
Appellate Judge B - Aug. - Dec., 1976	34	13.8	24.3
Appellate Judge C - Aug. - Dec., 1975	18	10.2	34.0
Appellate Judge C - Aug. - Dec., 1976	23	11.88	30.1
6th Circuit			
Oct. - Dec., 1975	214	117.9	30.0
Oct. - Dec., 1976	231	131.6	34.18
10th Circuit			
Oct. - Dec., 1975	223	123.4	33.2
Oct. - Dec., 1976	145	71.7	29.7

*Usage is actually by judges' law clerks. Only 3 of the 9 D.C. Appellate judges are represented in this table, since they illustrate the major usage patterns.

The comparative data for staff attorneys in Table 27 show two of the patterns. Sixth Circuit staff attorney usage was constant for the two base months shown, but there was a considerable drop in the Tenth Circuit staff attorney rate, which paralleled the drop for overall Tenth Circuit usage.

Again, this comparative time data reminds us that usage figures are like a snapshot of a constantly-changing process. The comparative data did not show any constant increase in usage levels across all three circuits. We thought that because the full-text system had been available for so long, use of it would increase over time, but this expectation was not generally fulfilled.

Headnote System Usage[1]

Tables 29 and 30 show the headnote system usage levels for New Orleans, Detroit, and the District of Columbia Circuit while a terminal was operating there.[2] Both tables show that there was a declining level of headnote system usage in both Detroit and the District of Columbia after the initial use period. This pattern was broken only during the months when new law clerks were trained. This declining pattern is not truly reflected in New Orleans usage until December, 1976, for two likely reasons. First, the staff attorneys who were the major users of the system were required to try it until November, 1976.[3] Then, for the month of November, they were to use

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[1]Headnote system usage in San Francisco did not begin until late Nov., 1976. Usage in Dec., 1976, was 8.25 hours. Staff attorneys who had used the full-text system were supposed to now use only the headnote system, but they resisted this mandate. Many felt they should use the tool that gave them the best support--not the headnote system.

[2]The D. C. headnote system terminal was removed in April, 1976, due to lack of use.

[3]Staff attorneys were to use one system or the other for a month at a time because we were attempting to determine the effects of CALR on productivity. We therefore wanted some control on usage.

TABLE 29

USAGE LEVEL OF HEADNOTE SYSTEM IN DISTRICT OF COLUMBIA CIRCUIT

Date	Hours	Estimated No. of Problems Run[a]	Average Minutes Per Problem
June, 1975	52.37[b]	59	53.0
July, 1975	12.80	29	26.4
Aug., 1975	61.32[b]	75	49.0
Sept., 1975	20.45	25	49.0
Oct., 1975	23.78	42	34.0
Nov., 1975	17.33	33	31.5
Dec., 1975	4.73	14	20.3
Jan., 1976	4.87	15	19.48
Feb., 1976	2.73	7	23.4
March, 1976	2.60	7	22.2

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[a]Headnote invoice construction made it difficult to determine exactly how many problems were run. Therefore, an estimation procedure was used.

[b]Hours of use includes considerable amounts of training time, during which the trainer sat at the terminal with prospective users.

TABLE 30
USAGE LEVEL OF HEADNOTE SYSTEM IN
DETROIT AND FIFTH CIRCUIT

	Detroit		
Month	Hours of Use	Estimated No. of Problems Run*	Average Minutes Per Problem
June, 1976	30.61	42	43.7
July, 1976	12.46	23	32.5
Aug., 1976	20.93	52	29.2
Sept., 1976	35.79	48	44.7
Oct., 1976	25.09	43	35.0
Nov., 1976	22.49	39	34.6
Dec., 1976	13.26	24	33.0

	New Orleans		
Month	Hours of Use	Estimated No. of Problems Run*	Average Minutes Per Problem
June, 1976	25.80	28	55.2
July, 1976	19.29	36	32.2
Aug., 1976	6.61	14	28.3
Sept., 1976	31.87	55	34.8
Oct., 1976	23.90	58	24.7
Nov., 1976	2.68	4	40.2
Dec., 1976	3.33	8	25.0

*Headnote invoice construction made it difficult to determine exactly how many problems were run. Therefore, an estimation procedure was used.

the full-text system. Beginning in December, staff attorneys had a choice of systems. Second, the legal research specialist had no choice but to use the headnote system to answer called-in problems. Unlike resident users in Detroit and the District of Columbia, she could not resume manual research until November.

Generally, it takes an average of about thirty minutes to run a problem on the headnote system. This is similar to the time needed to run a problem on the full-text system. Although the headnote system may be faster because it has a smaller data base to search, its libraries are so arranged that each level of federal courts must be searched separately. For instance, federal appellate and district court cases cannot be searched simultaneously. This increases the time needed to run a problem. The full-text system can search all the federal libraries at once.

A major conclusion that can be drawn from these data is that users do not seem satisfied with the headnote system. This leads to their using the system less and less.

Usage Patterns: The Headnote System vs. The Full-text System

Except in one circuit, the full-text system has been used at an increasing or constant rate where it was installed, and the headnote system has been used at a declining rate where it was installed, according to the preceding data. The data in Tables 31 and 32 show more systematic comparisons of the two systems at sites where both were operating at some point.

TABLE 31

COMPARISON OF HEADNOTE SYSTEM AND FULL-TEXT SYSTEM

USAGE IN DISTRICT OF COLUMBIA CIRCUIT

D.C. Circuit, Dec. 1975-March 1976	No. of Projects	Hours of Use
Full-text	87.0	28.0
Headnote	10.0	3.6
Ratio Full-text to Headnote	8.1	7.9

The District of Columbia data in Table 31 is based on the last four months the headnote system was operating there.[1] These are the only really comparable months because the period from May, 1975 through November, 1975, was one in which there was always training in progress on one terminal or the other. Therefore, comparisons of projects run and hours used during those months would be inaccurate. The District of Columbia data show that the full-text system was used about eight times as much as the headnote system.

The New Orleans data shown in Table 32 present a relatively similar picture, although we are comparing different users. Instead of comparing usage by law clerks, we are comparing usage by a legal research specialist and staff attorneys. As noted in the previous section, potential users in New Orleans (except for the legal research specialist) were instructed to use the full-text system for November, 1976. In December, however, they could choose either system.

The data show that the full-text system, once it was operating, almost totally replaced the headnote system when users had a choice between the terminals. The legal research specialist began to do nearly all her work on the full-text system. The data in Table 29 on headnote system usage, combined with the data in this table, show not only that total use of the full-text system was greater than that of the headnote system, but also that more research projects were run per month on the full-text system than had been run on the headnote system. This was partially due to the fact that many off-site users began calling in problems when the full-text system became available. Also, on-site users began using the full-text system more than they had been willing to use the headnote system. This can be seen in the data for December, 1976. The full-text system was used for fifteen times the hours the headnote system was used, and almost ten times more projects were run on the full-text system than on the headnote system.

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[1] D. C. users always had a free choice between the systems. Initially, the librarian in the library where the D. C. terminal was installed encouraged use of the headnote system more than use of the full-text system.

TABLE 32

COMPARISON OF HEADNOTE AND FULL-TEXT USAGE IN FIFTH CIRCUIT[a]

Total Use[b]		No. of Projects	Hours of Use
Headnote	Oct., 1976	58.0	23.9
Full-text	Nov., 1976	88.0	62.6
Headnote	Nov., 1976	3.0	2.5
Full-text	Dec., 1976	77.0	49.8
Headnote	Dec., 1976	7.0	2.6
Legal Research Specialist			
Headnote	Oct., 1976	38.0	15.6
Headnote	Nov., 1976	3.0	2.5
Headnote	Dec., 1976	4.0	1.2
Full-text	Nov., 1976	74.0	54.5
Full-text	Dec., 1976	49.0	39.7
Legal Research Specialist			
Ratio Full-text to Headnote (Nov., 1976)		24.7	21.8
Ratio Full-text to Headnote (Dec., 1976)		12.25	33.1
Ratio Full-text (Nov., 1976) To Headnote (Oct., 1976)		1.95	3.0
Total[b]			
Ratio Full-text (Nov., 1976) To Headnote (Oct., 1976)		1.5	2.6
Ratio Full-text (Dec., 1976) To Headnote (Dec., 1976)		10.0	19.1

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[a] Terminal time that was used specifically for this evaluation project was removed from these calculations. The amounts removed were:

System	Month	Time (in Hours)
Headnote	Oct., 1976	21.1
Headnote	Nov., 1976	10.0
Headnote	Dec., 1976	6.0
Full-text	Nov., 1976	1.1
Full-text	Dec., 1976	12.8

[b] During November, 1976, only the research specialist could choose which terminal to use. As part of an experiment, the other potential users were instructed to use full-text. In December, all users had a choice of systems.

In addition, comparing the full-text system data for December, 1976, to the headnote system data for October, 1976, clearly shows more work per month was done on the full-text system than on the headnote system when the latter was the only system available.

The fact that the legal research specialist now uses the full-text system much more than the headnote system might be viewed as an important measure of its superior value. From one point of view, her job depends on providing the best possible service to off-site users. It seems she would be likely to use the tool that best helps her do her job well. The data clearly show that after using both systems, she is able to achieve the best results with the full-text system. While there are not as many data for the Ninth Circuit on this issue as for the Fifth, the same conclusion holds for the specialist there.

Other comparisons can be made with these data. No matter how they are analyzed, however, the result is always clear: the full-text system is greatly preferred to the headnote system.[1]

Usage Levels of Off-site Users

Off-site user services officially began in May, 1976, with the installation of terminals in the Fifth and Ninth Circuits. A few Ninth Circuit judges took advantage of the system immediately, but most off-site judges in the Fifth and Ninth Circuits did not begin to do so until early fall. As the data in the previous section and in Table 32 indicate, usage in the Fifth Circuit began to

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[1]Many Detroit users who were not even trained on the full-text system while in the federal courts and did not have a full-text system terminal available to them, indicated they preferred it to the headnote system. In fact, the survey did not even mention the full-text system. When asked for general comments on the headnote system, however, many said they preferred the full-text system. Perhaps they either read about the full-text system or had experience with it in law school.

increase greatly when the full-text system was installed. The usage rates by off-site judges and their staffs in the Fifth Circuit increased from October through January, except for a slight drop in December due to the vacation period. While this increase may be partially due to users gaining familiarity with the system, the magnitude of the increase suggests it is also due to greater demand for the service because the full-text system became available.[1]

The number of problems called in by judges in the two circuits is shown in Tables 33, 34, and 35. The data on appellate judge usage in the Fifth Circuit show more usage in two months on the full-text system than in six months on the headnote system. The average usage by off-site appellate judges on the full-text system was slightly more than two problems per month. It was much lower on the headnote system. During the periods shown in Table 33, forty-two problems were run on the headnote system and fifty problems were run on the full-text system for Fifth Circuit district judges.[2] The pattern of usage among district judges is too erratic, however, to make any estimates of average use. The very recently available data for January, 1977, with the data in Table 33, indicate that some district judges might average two or more problems per month.

The data in Table 35 show a higher usage level for off-site judges in the Ninth Circuit than for those in the Fifth Circuit. Over the six-month period covered in this table, nonresident appellate judges or their staffs averaged more than three call-in problems per month. This higher average may be partially due to the availability of the full-text system, or to differences in law clerks' and

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[1]Many off-site users made general comments to this effect when they were queried only about the quality of this service and whether an on-site terminal would provide any additional value. Furthermore, the only off-site users not fully satisfied were some whose problems had been run on the headnote system. See generally pp. 51-53.

[2]Although the legal research specialist chose the system she wanted to use, off-site judges' responses suggest they intended her to use the full-text system.

TABLE 33

APPELLATE JUDGES USING FIFTH CIRCUIT CALL-IN LEGAL RESEARCH FACILITY

	No. of Uses	
	July 1, 1976 - Dec. 31, 1976* (Headnote)	Oct. 21, 1976 - Dec. 31, 1976 (Full-text)
Judge A	6	11
Judge B	7	13
Judge C	1	0
Judge D	0	1
Judge E	3	0
Judge F	1	1
Judge G	3	7
Judge H	2	5
Judge I	0	1
Judge J	3	1
Judge K	2	5
Judge L	0	4
Judge M	0	4
Senior Judge N	3	0
Senior Judge O	1	0
Senior Judge P	1	1
	33	53

*Some problems were run on both systems. When this was done, the problem was counted twice.

TABLE 34

DISTRICT JUDGES' AND MAGISTRATES' USES OF FIFTH CIRCUIT CALL-IN LEGAL RESEARCH FACILITY

	July 1, 1976 - Dec. 31, 1976 (Headnote)	Oct. 25, 1976 - Dec. 31, 1976 (Full-text)
LOUISIANA		
E.D.		
Judge A	0	1
Judge B	2	2
Judge C	2	0
Judge D	1	2
Judge E	0	1
Judge F	1	0
Magistrate A	1	1
Magistrate B	0	1
W.D.		
Judge A	0	1
Judge B	0	1
Senior Judge C	1	0
Senior Judge D	0	1
Senior Judge E	0	2
GEORGIA		
N.D.		
Judge A	1	1
M.D.		
Judge A	0	1
Judge B	0	3
S.D.		
Judge A	0	1
ALABAMA		
N.D.		
Judge A	2	2
Judge B	1	0
Judge C	4	1
S.D.		
Judge A	1	3
Judge B	1	1

	July 1, 1976 - Dec. 31, 1976 (Headnote)	Oct. 20, 1976 - Dec. 31, 1976 (Full-text)
TEXAS		
E.D.		
Judge A	5	2
Judge B	2	0
W.D.		
Judge A	0	3
N.D.		
Judge A	2	1
Judge B	3	1
S.D.		
Judge A	0	1
Judge B	3	1
FLORIDA		
N.D.		
Judge A	0	2
M.D.		
Judge A	0	2
Judge B	0	1
Judge C	0	1
Judge D	1	0
S.D.		
Judge A	2	0
Judge B	1	2
Judge C	1	2
Judge D	0	3
Judge E	0	1
Senior Judge F	4	1
MISSISSIPPI		
N.D.		
Judge A	1	1
S.D.		
Judge A	0	1
Judge B	1	0

TABLE 35

USES OF NINTH CIRCUIT CALL-IN LEGAL RESEARCH FACILITY[a]

Appellate Judges[b] [c]	No. of Uses	Appellate Judges	No. of Uses	District Judges[d]	No. of Uses
Judge A[e]	4	Judge O, P[c]	0	Judge A	3
Judge B[e]	33	Senior Judge K	32	Judge B	2
Judge C	7	Senior Judge L	1	Judge C	9
Judge D	19	Senior Judge M	6	Judge D	19
Judge E	7	Senior Judge N	8	Judge E	4
Judge F	16	Senior Judge O	3	Judge F	1
Judge G	26	Magistrates		Judge G	1
Judge H	2	Magistrate A	6	Judge H	1
Judge I[e]	6			Judge I	8
Judge J					

[a]All these uses were on full-text, by the 9th Circuit research specialist. Many appellate judges also had problems run for them by staff attorneys and personal law clerks. These are not included, however, since the data did not clearly indicate which other uses may have been called in.

[b]The appellate judges usage period covered is June 1, 1976 to Nov. 30, 1976.

[c]Appellate judge P had 87 problems run by his personal law clerks during this period. Appellate judge Q, who also does not appear on this list, began using the call-in service in Dec., 1976.

[d]The usage period covered is Aug. 15, 1976 to Nov. 30, 1976. Widespread usage among nonresident district judges in the 9th Circuit, however, did not begin until late Oct., 1976.

[e]These judges also had personal law clerks run problems for them.

even judges' attitudes towards using a call-in facility. District court use of the call-in facility was beginning to accelerate when the data in Table 35 were assembled. Thus, district court usage looks low, except by Judge D, who has been averaging more than two problems per week, by far the highest average among district judges in both circuits. Usage by Ninth Circuit district court judges and their staffs has been increasing since November, 1976.

Off-site services were available to one other circuit. The Tenth Circuit informed off-site judges they could call on staff attorneys to run problems on the full-text system. Only one nonresident judge made any noticeable use of this service, however, and he requested searches for an average of less than a problem per month during 1976. This might suggest that a specific, highly skilled person, generally known to potential off-site users, is required for this service to succeed. It seems unlikely that the CALR system available in the Tenth Circuit was associated with the low level of service use. The system was used so infrequently that there was no basis for negative judgment by off-site users.

In the future, considerable attention should be given to ensuring that potential users are aware of the service. The memos and letters sent to potential nonresident users, in Appendix IV, show that several notices were necessary to encourage usage of the service.

Use of State Materials

One final question about usage patterns is, how frequently are state data bases needed by federal court users? Since diversity cases make up approximately 25 percent of the caseload at the district court level and 10 percent at the appellate level, there is an arguable need for state data bases in a CALR system used in federal courts.

An indication of the need for state law can be gathered from information provided by the headnote system usage data, which indicate what data bases were searched during each use. Table 36 shows such data by site. District court users searched state data bases in 16.3 percent of the uses, while New Orleans appellate court users consulted those data bases in 7.9 percent of the cases. These data are consistent with diversity case caseload statistics. Less research in state law would be expected

than is reflected in the percentage of diversity cases, since there is a great deal of federal diversity case law.

Additional data on the need for state data bases is given in Table 37, which shows answers to a survey question about sources which are regularly consulted but not available on the CALR system being used. As might be expected, the full-text system users consult state reporters much more than headnote system users do. Still, the percentage of users who do consult the state reports is not very high.[1]

In summary, then, it does not appear that the availability of state data bases is a major factor for federal court users. Even so, both major commercial systems provide some or all states in their data bases. The headnote system data bases include the entire national reporter system, and the full-text system's contains data from most of the largest states presently available, including Massachusetts, New York, Pennsylvania, Florida, Ohio, Illinois, Texas, Missouri, and California. This difference in the availability of state data bases is not important enough to be a determining factor in system selection.

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[1]Other differences between the CALR users can be partly explained by the differences between the systems. For instance, the headnote system users might use loose-leaf services more than the full-text system users do, because the headnote system is not as current as the full-text system and such services compensate for the difference. The full-text system's district court case file did not contain cases as far into the past as the headnote system's when the surveys were taken. This might explain the differences on consulting earlier case files. Finally, perhaps the full-text system users consult digest and annotation services less than the headnote system users do, because the full-text system is used as a complete substitute for these tools.

TABLE 36

TYPE AND NUMBER OF DATA BASES
SEARCHED BY FIFTH CIRCUIT AND DETROIT USERS

Data Base	June D	June 5th	July D	July 5th	Aug. D	Aug. 5th	Sept. D	Sept. 5th	Oct. D	Oct. 5th	Nov. D	Nov. 5th	Total D	Total 5th
SCT	21	5	9	11	21	13	35	28	31	1	29	5	146	63
CSCT*	18	8	9	12	2	1	0	0	0	40	0	0	29	21
FED	32	58	14	67	49	27	72	81	35	121	55	8	257	362
CFED	30	90	20	100	44	34	79	91	52	136	12	2	233	453
FS	22	5	17	13	33	9	49	50	21	91	31	4	173	171
CFS	22	6	14	14	35	10	49	54	24	100	3	2	147	186
CRP	2	0	1	0	3	0	5	1	9	23	2	0	22	22
CCRP	2	0	0	0	2	0	0	0	0	0	0	0	4	0
NE	4	1	3	0	12	0	8	2	5	0	4	0	36	3
CNE	3	0	3	0	8	0	7	2	0	0	0	0	21	2
NYS	2	0	1	0	5	0	5	0	6	0	2	0	21	1
CNYS	2	0	1	0	3	0	0	0	0	0	0	0	6	0
ATL	2	0	3	0	8	0	2	2	7	1	5	0	27	30
CATL	2	0	3	0	5	0	3	3	0	0	0	0	13	2
SE	2	0	1	0	9	0	6	1	3	0	4	0	23	1
CSE	1	0	0	0	5	0	0	0	0	0	0	0	6	0
SO	2	3	3	3	7	2	3	1	3	3	7	1	25	16
CSO	2	2	0	2	5	2	4	5	0	0	0	0	11	11
SW	2	0	1	3	12	0	2	2	3	21	4	0	24	26
CSW	2	0	0	4	6	0	5	1	3	0	0	0	16	5
NW	22	1	5	0	18	0	14	1	23	0	18	0	100	2
CNW	13	0	6	15	0	0	0	0	0	0	0	0	34	0
PAC	2	0	1	0	8	0	1	1	7	22	3	0	22	23
CPAC	2	0	2	0	5	0	5	1	3	0	0	0	17	1
Totals													1418	1376
Percent Federal Data Bases													83.7	92.1

*Headnote system data bases are divided into two parts: the base itself and current entries for that base.

TABLE 37

RESEARCH SOURCES THAT LAW CLERKS AND STAFF ATTORNEYS SAY THEY USE REGULARLY THAT ARE NOT AVAILABLE ON CALR[a]

Sources	Headnote Oct., 1976	Full-text Aug., 1975	Full-text June, 1976
State Reports	4%[b]	17%	20%
Looseleaf Services	14%	9%	7%
Law Reviews	14%	11%	11%
Annotated Services	33%	12%	10%
Legal Periodicals	0%	4%	9%
Handbooks and Encyclopedias	20%	22%	13%
Earlier Case Files	0%	5%	11%
Administrative Law Cases	0%	16%	7%
Legislative Histories	4%	4%	9%

[a]74 percent of the respondents answered this question.

[b]Percentage of respondents mentioning this type of research.

VI. PROVIDING CALR SERVICE THROUGH A RESEARCH SPECIALIST

Nonresident Judge and Law Clerk Users' Views of CALR

As noted in Part II, a major reason for installing a full-text system terminal in the Ninth Circuit and a headnote system terminal in the Fifth Circuit was to determine how best to service nonresident judges and their staffs.

Legal research specialists were hired to provide this service, which began in May, 1976. In the fall of 1976, it was decided to give each site the commercial terminal it did not have. A full-text terminal was installed in the Fifth Circuit in mid-October, 1976, but headnote terminal installation in the Ninth Circuit was delayed until mid-November, 1976, due to telephone line installation problems.

In late November, 1976, the judges who had used the nonresident service received a short letter asking about the quality of the service and whether an on-site terminal would provide any additional value over the service already provided. Their responses are shown in Table 38. The service was well received in both circuits, as indicated by the responses to the first question. Although a majority in both circuits thought an on-site terminal would not be of additional value, a significant minority, 25 percent in the Fifth Circuit and 40 percent in the Ninth Circuit, thought otherwise. These responses did not seem to be affected by whether a judge was an appellate or a district judge or by the number of judges resident at a particular court, except that some judges in single-judge courts indicated their usage did not justify a terminal. Some judges in multi-judge courts thought usage in their courts did not justify a terminal, or felt there would be no additional advantages to having a terminal in their courthouses.

Most of the responses indicating that a terminal would not be of additional value seemed based on the

respondents' feelings that the cost would not be justified. For example:

> I do not believe that I use the facility enough to justify installation of a terminal in the courthouse we use. The current organization, i.e., I call and submit my request and receive a computer printout in the mail--meets my needs at this time.
>
> Some value, but, the present system is really adequate for our needs..
>
> The service this office received was very good, however, only a small saving in time would be accomplished by locating a terminal in the courthouse since the New Orleans facility can be reached by FTS or next-day mail service.

Other judges and their law clerks felt an on-site terminal would have considerable additional value:

> The advantages of a separate terminal at this location would be two. First, it would cut down the delay in receiving the printout. Second, assuming that district court clerks were trained to use the service directly, they might be more willing to experiment in using it for projects which are too complex to transmit through an operator. There are many research projects which are simply too intricate to perform without the active participation of the person seeking the information. At this time, I would be reluctant to use the computer for these purposes, both because of the inconveniences of the location, and because there is not a scheduled training program. Whether these advantages would justify the additional cost of a separate terminal, I am not, of course, in a position to say.
>
> We would definitely prefer having a terminal here in the district court. [The full-text system's] value depends on access--questions must be refined based on the computer's responses. It is awkward having to work through

TABLE 38

RESULTS OF QUESTIONNAIRE SENT TO NONRESIDENT JUDGES

Questions	New Orleans (N=25)[a]				San Francisco (N=10)[b]			
Quality of Service	Excellent	Good	Fair[c]	Poor	Excellent	Good	Fair	Poor
	67%	21%	12%		60%	40%		
	Yes	No	Not Sure		Yes	No	Not Sure	
On-Site Terminal Would Provide Additional Value	25%	58%	17%		40%	60%	0%	

[a]In New Orleans, some users had problems run on both systems.

[b]In San Francisco, at the time of the survey, problems had only been run on the full-text system.

[c]These 3 responses seemed to be a function of the result rather than of the user. The 3 respondents implicitly were complaining that the headnote system produced nothing new.

> the operator. We would use [the full-text system] much more if we had easy access to a terminal.
>
> ...A terminal in the --- courthouse would be even better and eventually we shall have it--to be shared with the district judges, bankruptcy judges, magistrates and United States Attorney.

Some respondents added notes of great interest to this project.[1] The following example is representative:

> Perhaps the largest problem with the program as presently implemented is the absence of a "guidebook" that would enable us to better understand the full capabilities and possibilities of the system as a research tool, and moreover concisely frame our inquiries so as to achieve maximum efficiency and accuracy in response to our legal questions.

These letters and the data in Table 38 clearly show that off-site judges need CALR services. The non-resident users' data discussed on pages 85 to 94 show much demand for the service. The economics of the situation, however, as discussed in Part X, do not seem to justify terminals currently at more than seventeen locations across the federal system. Furthermore, despite assurances that there would be more usage if the terminal were on site, the usage data to date, as shown in Part V, do not support such a conclusion.

Finally, there are several major advantages in having trained legal researchers operate the terminals, where possible. First, as one judge's law clerk put it:

> The location of the terminal in the San Francisco Courthouse has been beneficial because we can do other work while the [full-text system] operator does the computer search. The only problem is that the phone line is

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[1] One judge kindly and enthusiastically wrote a long letter describing how to implement a system for the federal courts; his points were well taken.

> sometimes tied up for days which precludes our use of [the full-text system] for short-term "rush" projects.

This user added:

> I have used [the full-text system] for two types of research. First, it is helpful when searching for the Ninth Circuit authority supporting some basic uncontested proposition of law. It is much faster than the use of the Digest and/or [a commercial] Circuit Table. The second type of research is in areas where the Digest and Key Number and treatises have holes. It is particularly helpful where a key number has expanded rapidly in the number of cases and a further breakdown of topic is in order.

One judge noted:

> The service is quick and is helpful. Obviously, we will find it more and more helpful as we learn the potentialities of it and acquire the habit of using it. I think the main impediments at this time are two: 1) the clerks simply have not developed the habit of use; 2) the necessity of calling in by telephone--my clerks have tended to use it more when they were physically present in New Orleans for court sittings.

Second, given that most law clerks fill their posts for only one year, it is doubtful they would ever reach the same level of skill with a CALR system as a researcher who uses it every day. This is becoming increasingly clear. Many law clerks in courthouses where the legal researchers are located have the legal researchers do their problems, because the legal research specialists can do them faster and get better results.

The major off-site users do not seem as interested in having an on-site terminal as are other users. While those "other users" may use the system less because they have problems using the call-in facility, many

high-volume users find calling in problems perfectly adequate for their needs, and in some cases, they seem to prefer the service as a call-in facility.

Although a comparison of the headnote system with the full-text system was not mentioned, many responses from the Fifth Circuit did compare the systems. Law clerks' and judges' comments suggest these users see little value in the headnote system. Some representative comments follow:

> The [full-text] system recently installed is an improvement over the [headnote] computer and in my opinion supersedes the [headnote] system completely.

> It [the full-text system] has been very helpful to my law clerks from time to time. On one occasion we found a line of cases which we were unable to discover with careful research in the [headnote system].

> My own view is that [the headnote system] cannot fill the bill...a system based upon headnotes is going to be inadequate.

> ...[We] have mixed emotions about its value. In no instance was the computer able to furnish previously unfound case law, though I am told that this was due to the fact that it used the same [headnote] system available to us in Annotated Federal Cases.

In summary, on one hand, the service as presently rendered does have drawbacks, some of which can be remedied. On the other hand, the current arrangement has enough positive attributes to suggest that it not be abandoned in favor of installing a terminal at every location. The important question, which is discussed in Part X below, is, what shall be the criteria for terminal placement and for having legal researchers at a particular site?

On-site Users' Demand for Research Specialist Service

Despite the fact that they were trained to use the terminal, many on-site users in the Fifth and Ninth

Circuits request assistance from the legal research specialists to formulate the search commands for their problems, and even to operate the terminal. This phenomenon may partially explain the higher overall usage level of the Fifth and Ninth Circuit terminals.

On-site users were queried about this in the various user surveys, to find out more about their preferences regarding terminal use. Table 39 shows responses to a question about the best way to use the terminal.

TABLE 39

BEST WAY TO USE CALR TERMINAL

	System and Survey Date		
	Headnote Oct., 1976	Full-text Aug., 1975	Full-text June, 1975
Prefer to Use It Myself	27%	30%	31%
Prefer to Have Trained Legal Researcher	23%	10%	13%
Prefer to Have Trained Terminal Operator	3%	2%	4%
Usually Use It Myself, But Prefer to Have Operator Available	47%	58%	51%

The interesting point in these data is that only approximately 30 percent prefer to use the terminal themselves. Twenty-five percent of the headnote system users and approximately 15 percent of the full-text system users would like to have someone run it for them. Approximately 50 percent of the users would like to have assistance available.

These desires are not unreasonable, given the context of CALR use in the federal courts. Few users are likely to become highly proficient with the system during their short tenure as law clerks. Table 40 presents user

opinion estimates of proficiency with the system.[1] Two types of proficiency are represented. The first is user proficiency in operating the terminal itself. The second is amount of system potential the user exploited. These data indicate full-text system users feel slightly more proficient with the full-text system than headnote system users do with the headnote system. There seems to be some increase in proficiency with time, for both sets of users. The 1975 full-text system surveys were taken about three months after users were trained, and the 1976 surveys were taken at least six months after users were trained. Neither set of users rated themselves very high on the self-anchoring scales. A score of three out of five does not seem to indicate a high level of skill. Headnote system users rated themselves as less proficient than did full-text system users. This also might explain why there seems to be more preference among headnote system users for assistance from a research specialist or trained operator, as shown in Table 39, than among full-text system users.

The possible effect on CALR usage of a trained operator was explored by asking about factors that might encourage more terminal use. This question could be given a "yes" or "no" answer. The question listed several different factors, including having a trained operator present and having a legal research specialist present. The answers to this question are shown in Table 41. Between one-third and half the respondents across the three surveys thought

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[1] The data in this table were created by having the users rate themselves, using a self-anchoring scale, on their proficiency with the system and on their use of system capability. A self-anchoring scale is one on which the respondent places himself or herself relative to the ends. The respondent is told to consider a scale on which 1 represents the lowest level of proficiency he or she can conceive of, and 5 represents the highest level. The respondent gives a number between 1 and 5 as her or his proficiency. This scale was developed by Hadley Cantrill. See Hadley Cantrill, The Patterns of Human Concerns (New Brunswick, New Jersey: Rutgers University Press, 1965). This scale controls for variations due to individual differences.

TABLE 40

USER OPINION ESTIMATES OF PROFICIENCY WITH CALR SYSTEM

Users	Survey Date	Self-Rated Proficiency With CALR[a,b]	Self-Rated Use of System Capability	System Used
All	Aug., 1975	3.0	3.3	Full-text
All	Aug., 1975	2.5	2.2	Headnote
All	June, 1976	3.4[c]	3.4[c]	Full-text
All	Oct., 1976	2.9	2.8	Headnote

[a]Ascending scale from 1 (lowest rating) to 5 (highest rating).

[b]Only respondents actually using the system were counted in these responses.

[c]These results do not include D.C. Circuit, since the questions were not asked of these users.

the presence of a trained legal researcher would encourage them to use the terminals more. Furthermore, the percentage increases to 49.6 percent in the second full-text system survey from 34 percent in the second. This might suggest that as people use the terminal more, they increasingly favor some type of on-site assistance.

TABLE 41

FACTORS THAT ENCOURAGE MORE USE OF CALR: ASSISTANCE WITH TERMINAL

	System and Survey Date		
	Headnote Oct., 1976	Full-text Aug., 1975	Full-text June, 1976
Presence of Legal Research Specialist	26.7	25.6	31.4
Presence of Trained Operator	13.3	8.0	18.6

It probably is not economically feasible at this time to hire a specially-trained person at every site to provide terminal assistance. A person who will usually be available at the courthouse, however, should be designated as the CALR terminal specialist and located near the terminal. All users should know the name of the designee so they can contact that person for assistance. The designated specialist might need special training. Someone on the library staff would probably be the best person for this position.

VII. OTHER COMPARISONS BETWEEN THE FULL-TEXT AND HEADNOTE SYSTEMS

User Training

Several survey questions dealt with the user's general impression of the CALR training. The results are shown in Table 42. In general, the training offered by the headnote vendor was rated less effective than that offered by the full-text vendor. The full-text training package has been refined over the past few years and the headnote system training package is relatively new, but these facts alone do not account for the difference. Users indicated that the training given by the full-text vendor showed more imagination and concern for the user. The full-text system training package is also more systematic than the headnote system training. The former includes three distinct segments: machine usage, search logic, and general practice. Headnote system training is conducted by a person who talks conversationally to a group of users. Full-text system training is usually given by one person on one terminal training, meaning that each user, while being trained, has direct access to a terminal.

Interestingly, there are some rating changes, both across types of users and across circuits, between the two groups of law clerks trained on the full-text system. Perhaps this variability arose from the fact that the second group had more time between training and filling out the survey than the first group did. Court staff had more time to see the effects of the training on the second survey group. Some variability might be due to the users having had different trainers, but this is unlikely with the full-text system training, since it takes a standard form across the country. It is more likely that the trained persons simply vary considerably in their response to CALR systems. The somewhat lower rating the full-text system training received in the second survey did not seem to affect usage patterns.

TABLE 42

USERS' GENERAL IMPRESSIONS OF CALR TRAINING (THOSE ANSWERING ONLY)

		Full-text System				
Circuit	Survey Date	Very Good	Good	Adequate	Poor	Total
D.C.	Aug., 1975	11%	44%	37%	8%	100% (N=23)
	May, 1976	19%	33%	48%	0%	100% (N=29)
6th	Aug., 1975	33%	67%	0%	0%	100% (N=12)
	May, 1976		53%	40%	7%	100% (N=13)
10th	Aug., 1975	17%	50%	33%	0%	100% (N=12)
	May, 1976	25%	55%	20%	0%	100% (N=20)
User Class						
Appellate Court Law Clerks	Aug., 1975	35%	52%	9%	4%	100% (N=23)
	June, 1976	25%	35%	40%	0%	100% (N=30)
Staff Attorneys	Aug., 1975	17%	50%	33%	0%	100% (N=6)
	June, 1976	18%	45%	36%	0%	100% (N=10)
District Court Law Clerks	Aug., 1975	35%	50%	10%	5%	100% (N=20)
	June, 1976	10%	48%	42%	0%	100% (N=21)

		Headnote System				
Circuit						
D.C.	Aug., 1975	0%	17%	24%	34%	(N=9)
Detroit	Oct., 1975	4%	33%	38%	25%	(N=24)
5th	Oct., 1976	0%	33%	67%	0%	(N=6)

Asked how CALR systems' training might be changed or improved to meet their needs, respondents using both systems wanted more supervised practice and more training in search logic. Search logic is the logic a researcher uses to tell the computer what type of information is sought. CALR system search logic differs considerably from that used in traditional manual systems. A higher percentage of headnote system users than of full-text system users wanted more search logic training and supervised practice. Finally, between 30 and 45 percent of the respondents using either system felt a follow-up session might be helpful. It is unclear exactly what effect such a session would have. A follow-up session was held in the Tenth Circuit in January, 1976, for those persons trained on full-text in September, 1975. The Tenth Circuit usage level did not increase in the months following January. Similarly, a follow-up session was held for headnote system users in Detroit in September, 1976. The legal research specialist from the Fifth Circuit conducted the session. While she was well received, the headnote system usage level in Detroit continued to drop.

The nagging question about CALR training is, how much effect does training have on usage levels? The experience in Detroit and in the Tenth Circuit, and comments from many users, suggest that the level of training has no effect on usage rates once a minimal level of training has been given. Both ardent users and total nonusers have received the same training. Some data in Table 45 below, however, imply that training may affect usage levels. Approximately 25 percent of the full-text users and 10 percent of the headnote users said that a higher level of skill would encourage them to use the terminal more. They did not say better training would encourage them, though; they probably meant they needed motivation to achieve higher skill levels.

In summary, the project director believes training has little effect on CALR system usage. Only some of the difference in usage levels is explained by the headnote vendor's training being rated not as effective as the full-text vendor's training. Of course, usage might be influenced one way or another by the training in some specific cases.

System Reliability

Table 43 gives two measures of system reliability. In general, the full-text system was rated superior to the headnote system on both measures. Reliability measures included such factors as getting a busy signal when calling the computer, or having an inoperative terminal or data phone.

TABLE 43

COMPARATIVE SYSTEM RELIABILITY: HEADNOTE VS. FULL-TEXT

Circuit or Location	System	Percent of Uses in Which System Not Working	Percent of Uses in Which System Took Too Long
D.C.	Full-text	2.0	0.8
6th	Full-text	2.7	2.2
10th	Full-text	0.8	4.1
9th	Full-text	0.3	0.4
5th	Full-text	4.0	0.0
5th	Headnote	3.0	4.5
Detroit	Headnote	12.4	6.6
9th	Headnote*	-	-
D.C.	Headnote*	-	-

The percentage of Fifth Circuit headnote system users rating the terminal "not working" is understated. The "not working" measure applied only when the user attempted to operate the terminal and found it would not work. If the terminal was inoperative and no attempt was made to operate it, an entry does not appear in the table.

*Not enough response to give meaningful data.

The headnote terminal in the Fifth Circuit was not working for relatively long periods of time, due to phone line problems, terminal problems, and computer problems. This was not always recorded in usage data. After the first user failed to operate the terminal, other users did not fill in the form saying they also could not use it. A set of reliability reports on the Fifth Circuit headnote terminal appears in Appendix V.

Types of Questions Best for CALR Systems[1]

All users were asked, what types of questions are best for the headnote and full-text systems? The data in Table 44 show the responses. Nearly one-third of both systems' users said narrowly-drawn issues are best. This means that broad questions, such as "Under what conditions is state action a violation of the Fourteenth Amendment?", are not particularly useful for CALR system work.

Some change in the way full-text system users exploit the terminal is reflected in these data. The recent survey shows a larger percentage of users doing their initial research with the terminal. This, in turn, probably led to lower percentages of respondents who felt the full-text system was best for new issues and recent developments. The data also show a growing number of users finding citation tracking to be a major use of the full-text system.[2] Other data confirm that most users find citation tracking very valuable. Recall that the data in Table 24 show over 10 percent of the searches in three circuits were made solely for the purpose of citation tracking. This feature is a factor in many users' preference for the full-text system over the headnote system, since only a full-text system can track citations.

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[1] In Appendix V, information developed by the legal research specialist in New Orleans shows some types of questions that are or are not good for CALR system research. These questions were developed considering mainly headnote systems.

[2] As noted above, citation tracking is like "Shepardizing." Citation tracking, however, involves searching for citations to a particular case in a context of other words. For instance, one might want all cases citing 245 F.2d 210, near the words, "Federal Rules of Civil Procedure," or all cases citing 410 U.S. 105 and containing the words, "cross-town busing."

TABLE 44

FOR WHAT TYPE OF RESEARCH IS CALR USEFUL?

	System and Survey Date		
	Headnote* Oct., 1976	Full-text Aug., 1975	Full-text June, 1976
Narrow Issues	33%	27%	31%
Factual Questions	3%	7%	3%
New Issues	0	8%	0
Initial Research	0	3%	16%
Finding Best Case to Cite	0	0	5%
Recent Decisions and New Developments	0	27%	6%
Statutory Questions	10%	11%	8%
Citation Tracking	0	3%	6%
Other Responses (eight categories, such as Unique Words, Complex Research, Common Problems)	14%	7%	13%
Exotic Uses (such as finding opinions by a particular judge)	0	0	11%
No Answer or Nothing	40%	11%	0

*Percentage of respondents mentioning this type of research.

Factors Encouraging More Use of the Terminals

The users of the various systems were asked which factors would encourage greater use of the terminals. The responses are shown in Table 45.

TABLE 45

WHAT FACTORS MIGHT ENCOURAGE YOU TO USE CALR MORE?

	System and Survey Date		
	Headnote Oct., 1976	Full-text Aug., 1975	Full-text June, 1976
Higher Level of Skill With System	10 %	24.5%	24.7%
System More Available	3.3%	10.2%	8.5%
Different Location	3.3%	10.2%	10.5%
Researching Other Issues	16.7%	8.2%	4.3%
Improve Mechanical System	23.3%	0.0%	5.7%
Larger or Different Data Base	23.3%	12.2%	8.5%
Made Maximum Use	0.0%	6.1%	5.0%
Other	0.0%	0.0%	11.4%
No Answer	20.0%	28.6%	21.4%
	100.0% (N=30)	100.0% (N=49)	100.0% (N=70)

Recall that full-text system users rated themselves as having slightly more skill with full-text than did headnote system users with the headnote system, as shown in

Table 40. The data in Table 45, however, show full-text system users felt that having a higher level of skill would encourage them to use the terminal more. On the basis of observations, the project director believes users could probably achieve this higher level of skill if they would take the time to practice using the terminal once they were trained.

Other factors that would encourage more full-text system users to use the terminal include assigning the terminal's physical location and making another terminal available. These factors are not important to headnote users. Headnote system users say that changes in the basic aspects of the system would encourage them to use the terminal more. Their answers about researching other issues and having larger or different data bases, reflect this problem. Finally, headnote system users seem considerably affected by system reliability. This further supports the results described on page 111, under "System Reliability."

General Comments by CALR Users

At the end of each survey, the users were asked for general comments on the system or systems they had used. Table 46 provides a summary of these comments.

TABLE 46

GENERAL COMMENTS ON CALR SYSTEMS*

	System and Survey Date			
	Full-text Aug., 1975	Full-text June, 1976	Headnote Aug., 1975	Headnote Oct., 1976
Very Favorable	49%	52%	7%	8%
Favorable	49%	42%	15%	20%
Neutral	2%	6%	15%	24%
Unfavorable	-	-	45%	39%
Very Unfavorable	-	-	15%	8%

*Only persons making general comments are included in this table.

The comments considerably favored full-text. A sample of these comments gives the flavor of responses and generally summarizes the full-text system surveys' favorable and unfavorable findings.[1]

> It is a tremendous legal tool.
>
> It eliminated the tedium of research....
>
> Outstanding research aid. Very useful at times....Extremely quick on certain factual problems.
>
> Having briefs on hand tends to reduce reliance on [the full-text system] in the first instance.
>
> Highly useful only on very narrow issues.
>
> I have been impressed with the system although I question whether law clerks (because of transition yearly) will ever be able to fully utilize it.
>
> I found [the full-text system] useful as a limited research supplement.
>
> When I learn to use it better, I'll undoubtedly rate it higher.
>
> It is a valuable tool, most helpful when creative research is needed--less useful for routine tasks.
>
> A valuable tool in conjunction with traditional research.
>
> A very useful research tool from both quantitative and qualitative standpoints. The federal (F.2d and F.Supp.) data

[1]Similar comments appear on pp. 48, 49.

> base must be expanded.[1] Very helpful in finding recent authority. Customer service on search questions is good.
>
> Potentially invaluable, but I did not use it as much as I should have. I never got into the habit of using [the full-text system] so I didn't acquire a facility with it that would make it useful in a complex, multi-issue case.

Listed below are all the favorable comments on the headnote system:

> Very good as an initial research tool.
>
> It overcame some of the weaknesses of the headnotes, but still depends on them and must ultimately suffer the same adverse judgment I enter against headnotes.
>
> Potentially, a very useful tool.
>
> Very satisfied with the system.
>
> Intend to use it with greater regularity in the future.
>
> A new type of research tool--merely a more efficient (possibly) use of an old tool.

The following comments are more representative of user response to the headnote system:

> In certain cases involving very broad questions requiring research through several volumes of the [headnote vendor's] digest, the computer would be helpful; but there are few such questions which are not adequately briefed. That, at least, was my experience.
>
> [The full-text system] is better.

[1]This data base has been expanded; F.2d goes back an additional 15 years to 1945, and F.Supp. goes back an additional 10 years to 1960.

> It's not a bad system but it's not as good as the [full-text system]. The search logic frequently revolves around the use of the [headnote vendor's] topic and key numbers and if we can take the time to find out those, we can research our problems almost as fast by scanning the various digests available for our use. The basic problem is under-confidence in finding the full range of relevant information. Frequently the search will be used as a supplement to our original research and our [headnote system] answers will prove inconclusive and frequently won't even fill the citations for the case we have already read and which are being relied on by the parties as conclusive to their issues.

From these favorable comments on the headnote system, it can be inferred that very few users were "turned on" by this system. Even those who made favorable comments showed little of the enthusiasm shown by full-text system advocates.

VIII. THE HYBRID SYSTEM

The hybrid system was developed by the Justice Department. It combines some of the features of both the headnote and the full-text systems, and provides a more versatile software package for operating a CALR terminal. The major comparisons between the hybrid system and the two commercial systems are described in Part I.

In late November, 1976, two hybrid terminals were installed in the Tenth and Fifth Circuits for evaluation and testing by experienced CALR users. Very little evaluative data had been generated when this report was prepared.

Presently, the major problem with the hybrid system is a small, incomplete data base. As of January 1, 1977, its Federal Reporter data base is more than two months behind the full-text system's. Furthermore, users have occasionally discovered Federal Reporter volumes which are supposed to be but are not included in the hybrid system's data base.

The project director recently received a letter from the hybrid system manager, describing the system's pricing. Cost was originally thought to be one feature that (for a government user) would weigh heavily in favor of the hybrid system. It was thought that the only cost would be the price of the custom-made terminal, approximately $4,500, plus the phone line changes to call the computer, plus a small yearly charge (approximately $3,000) for access to the data base. The manager's letter quotes a $300 per month base charge, plus $32.40 per hour "connect" time. For fifty hours' use per month, this amounts to $1,920 per month, plus terminal maintenance and phone line cost. Thus, the hybrid system could cost as much as $2,200 or $2,300 per month per terminal, plus terminal cost and maintenance, plus communication costs. The average monthly cost of twenty full-text system terminals, for fifty hours per month each, is approximately $2,100 per terminal. Headnote system terminals cost at least $3,000 per month for unlimited use. Thus, the hybrid system may have no

economic advantage over the full-text system for high-volume use. For low-volume use, however, the hybrid system will still be cheaper, after the initial investment, than either the headnote or full-text system.[1]

Also, in considering whether the hybrid system might be adopted for court use, attention should be given to any possible constitutional or civil rights problems inherent in the courts' using the prosecutors' research tool. If a CALR system is considered a law book, there is probably no constitutional difficulty involving separation of powers and due process. If CALR is something more than a law book, however, there could be problems.

Thus, although the hybrid system has some problems (data base limitations and instances of operational reliability), the courts ought to continue evaluating the system's potential usefulness. This is also an appropriate time to consider any policy problems involved in the federal court system's use of a tool developed by and for the federal prosecutor.

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[1]Recently, the hybrid system vendor stopped adding new users. The vendor's own users were unable to make enough efficient use of their systems. At this time, the courts would not be allowed to subscribe to the hybrid system, because of the overload problem.

IX. THE FULL-TEXT SYSTEM vs. THE HEADNOTE SYSTEM: RECOMMENDATIONS

The data shown in the previous sections leave little doubt about which system better serves the needs of the federal courts. The full-text system out-performs the headnote system by almost every measure. Therefore, we recommend that the full-text system evaluated in this report be adopted for the federal courts. Following are some hard data measures and opinion measures to support this recommendation. The full-text is the:

1. System saving the most research time per week.
2. System with the most potential for improving research quality.
3. System saving the most research time per use.
4. System producing the highest percentage of cases which probably would not be found without it.
5. System producing the fewest irrelevant cases.
6. System with the highest level of day-to-day functioning.
7. System with the most versatility, that is, citation tracking, stature and opinion searching, concurrence and dissent searching.
8. System with the best training package.
9. System most used when users given choice and, therefore, the system most preferred by federal judges and their staffs.
10. System producing the best results in comparisons involving trained researchers and a wide variety of problems.

11. System whose terminal is best adapted to user needs.

Finally, as shown below, the headnote system is no less expensive than the full-text system, and it was more difficult to keep operative.

From the usage data developed in Part V, it is possible to determine the comparable costs of the two systems. The headnote system has two pricing schedules. One is a flat rate of $3,000 per month for unlimited usage; the other is a rate of $1,200 per month, plus $2.50 per search.

Assuming the same number of problems is run on the headnote system as was run on the full-text system from December, 1975 to March, 1976, in the District of Columbia Circuit, and assuming that there are eight searches per problem a total of 698 searches per month[1] would be made on the headnote system. At $2.50 per search, the overall cost for searches would be $1,745 per month. This figure added to the rate of $1,200 gives a total cost of $2,945 per month, slightly less than the $3,000 per month flat rate. A single full-text terminal with comparable usage could cost approximately $3,000 per month.[2] Ten "Schedule B" full-text terminals cost $25,600 per month.[3] Ten headnote terminals would cost approximately $30,000 per month.

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[1]That is, 8 searches per problem, multiplied by 87.25 problems per month. The number of searches per problem is a conservative estimate derived from estimates of non-training headnote system usage.

[2]This cost estimate is based on 30 hours of use per month. The full-text terminal in the D.C. courthouse ran about 90 problems in 30 hours.

[3]Schedule B terminals give the user up to 50 hours per month per terminal, pooled across three terminals; one terminal might be used 80 hours per month, the other two just 35 hours per month. This pooled-hours feature is greatly beneficial for federal courts, considering the courts' usage patterns.

Training costs for the systems differ significantly. The headnote vendor charges $400 per day for training. The average cost per site, a function of the number of persons trained, has ranged from $800 to $1,600. Training costs for full-text Schedule B terminals depend on the presence of a vendor's training center or service area in the same city as the terminal site. Of the seventeen proposed CALR sites noted in Part X, there would be no training charges at eight sites. At another seven sites, there would be no charge for the first ten persons trained per year. Additional training costs for these sites would be approximately $1,000 per site. Only four of these sites, however, would require training additional personnel. The remaining two potential sites would each incur approximately $1,400 per year in training costs. Thus, the full-text system's training costs (for Schedule B terminals) would be approximately $7,000 per year. (See pages 126 to 128 for a discussion of Schedule A and Schedule B costs.) The headnote system's training cost, based on a conservative estimate of three training days per site per year, would be approximately $20,000 per year.

From this brief look at the cost figures, it is clear that the headnote system has no significant price advantage over the full-text system. Therefore, there is little economic incentive to look beyond the results of the data described in previous sections of this report.[1]

Three caveats should be noted here. First, although the full-text system best meets the needs of the federal courts, no statement is made about its potential utility for other classes of users, such as practicing lawyers or prosecutors. Any such inference would be hazardous at best. Second, the data suggested headnote system is, to some extent, an improvement over manual research. Thus, our recommendation that the full-text system be used in federal courts should not be interpreted to mean the headnote system is an ineffective legal research tool. Third, the evaluation is restricted, by time and to the systems tested. It makes no statement, positive or negative, about CALR systems. Future systems, which may differ from or

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[1]Furthermore, given users' decided preference for the full-text system, it would seem that price ought not to be a factor.

resemble the current ones, will have to be evaluated on their merits for such factors as reliability, versatility, terminal usability, training programs, and other factors.

X. IMPLEMENTING A NATIONWIDE CALR SYSTEM IN THE FEDERAL COURTS

Three questions must be answered before determining how to implement the full-text system nationwide in the federal courts. First, how many terminals are required to meet the needs of federal court users? Second, where should they be located? And third, how should the users have access--directly, or through a legal research specialist? The three questions are related.

The level of usage at a potential site may not be high enough to support a terminal there, unless there is an on-site legal research specialist using the terminal for nonresident users. The number of terminals is also partly a function of the terminal locations.

Basic Assumptions Underlying System Implementation

Before answering these questions, we must develop several parameters and assumptions about implementing a national CALR system for the federal courts. First, we assume each circuit should and will somehow provide nonresident judges access to a CALR system. The data developed in this report, specifically that in Part VI, support the position that there is a need and a demand for CALR services to nonresident judges. The data also show this demand is a function of whether a reliable way exists to obtain these services.

A second issue is whether, in implementing a nationwide system, we ought to start with the assumption that there should be at least one terminal in every circuit. This question is moot, though, since in every circuit there seems to be one location with enough usage to support a full-text terminal. It should be noted, however, that the estimates made in this part of the report are based on the assumption that every circuit will receive at least one terminal. Project experience to date indicates that a major value of a CALR system is the ability to search only for cases in a particular circuit. The great use of this capability suggests a widely known fact:

each circuit often has its own law, and potential CALR users are more familiar with the law of that circuit than with that of others. Thus, it would seem that since each circuit will have to provide service to nonresident judges, such service should come from within that circuit.

A third assumption is that, whenever possible, a site should be serviced by a legal research specialist rather than by an additional terminal. That is, until a site has some minimum level of usage, it should not have a terminal. It is difficult to determine what that minimum level should be, because of the wide variation in usage both across courts and within sets of appellate or district judges in the same court. Also, the minimum level of usage required for installation of a terminal is partly a function of the full-text system pricing schedule. Since the vendor has two pricing schedules, discussed below, two minimums could be set. This report, however, assumes full-text system Schedule B terminals will be used; the recommended configuration of the nationwide system is based on this assumption.

A fourth conclusion is that these Schedule B terminals should be used wherever possible. The vendor has two government pricing schedules. There is an additional charge of $50 per month per terminal, under both schedules, for a high-speed printer. This charge is included in all calculations. Schedule A entails a base charge of $500 per month per terminal, and $85 per hour of use. Thus, a court using a terminal ten hours per month would be charged $500 plus $850. Under Schedule B, if an entity such as a court system subscribes to three or more terminals, the cost of the first three terminals is $9,800 per month, for 150 hours of use. Additional hours cost $40 each. The allotted 150 hours can be apportioned in any way. For instance, one court may use ninety hours per month and the others may each use only thirty hours per month. Three Schedule A terminals costing $9,800 each per month would only be allowed 98 hours' use per month for that price.

Table 47 shows the relationship between cost and available time for various numbers of terminals under Schedule A and under Schedule B. It should be noted that by installing ten "B" terminals, for instance, a court

system will have 500 hours of use; for the same cost, "A" terminals will provide 236 hours. In other words, if a court uses ten Schedule A terminals, each for 23.6 hours per month, it could purchase ten Schedule B terminals for the same price and use an additional 26.4 hours per month per terminal.[1]

A fifth assumption is that potential users, such as senior judges, magistrates, bankruptcy referees, and public defenders, at this point need not be considered in determining the number of terminals required. The use by all these groups except public defenders is so low, according to project experience to date, as to not change the suggested system configuration. Public defenders' usage may have a visible impact on usage levels at some sites. At this point, however, we assume alterations in the overall plan can be made when this impact becomes visible.[2]

Potential Models for Determining CALR Needs of the Federal Courts

Given these assumptions, it is possible to estimate the total needs of the federal courts. These estimates are based on use during the first five months of 1976, for several reasons. The fall training period had been completed, so the usage levels for these months are not skewed by the training period or by the novelty of a new research tool. Second, there are no extended holiday periods. It is difficult to assess the impact of holiday periods on usage, because each judge deals with work during these times in a different way. Third, what is known for sure is that November and December are not the most representative months of the year. When the time period covered in the models

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[1]When the user subscribes to more than 10 terminals, a unique feature in the pricing schedule is triggered: the user pays the same price for 40 additional hours of use as he would pay for adding another terminal with 50 hours of use.

[2]Most federal public defender offices are located in cities likely to be terminal sites. Only in Los Angeles do there appear to be enough users in the public defender's office to justify possible installation of a terminal just for their use.

TABLE 47

FULL-TEXT VENDOR'S PRICING BY MONTH*

No. of Terminals	Monthly Cost (in dollars)	Total Hours Available at Given Cost		Hours Per Terminal at Given Cost	
		Schedule A	Schedule B	Schedule A	Schedule B
3	9,950	97	150	32.3	50
10	25,600	236	500	23.6	50
20	42,100	354	1000	17.7	50
25	50,350	430	1250	17.2	50

*These calculations include a $50 per terminal charge for a high-speed printer.

below begins (January), most of the potential users have settled into a relatively stable usage pattern. There are several ways to make these estimates. First, one can look at three models of usage.

Model 1. Each appellate and district judge and each staff attorney uses a CALR system at the average rate for all persons in that class, during the first five months of 1976.

Usage level: Resident appellate judges - 2.16 hrs.

Resident district judges - .86 hrs.

Staff attorneys - 1.55 hrs.

Total hours per month required[1] - 594

Model 2. Each appellate and district judge and each staff attorney uses a CALR system at the highest average rate for users at that level in any of the original test sites.

Usage level:

(Sixth Circuit) Resident appellate judges - 6.26 hrs.

(District of Colorado) Resident district judges - 1.82 hrs.

(Tenth Circuit) Staff attorneys - 2.11 hrs.

Total hours per month required[1] - 1,362

Model 3. Each appellate and district judge and each staff attorney uses the system at the rate of the highest user in that class.

Usage level: Resident appellate judges - 7.33 hrs.

Resident district judges - 3.15 hrs.

Staff attorneys - 3.91 hrs.

Total hours per month required[1] - 2,507

[1]See Table 49 at p. 133 for number of appellate and district judges and staff attorneys used to reach these totals.

Assuming that fifty hours of use per month per terminal would give users reasonable access without waiting, the required number of federal court terminals across the country would be: Model 1, twelve; Model 2, twenty-seven; Model 3, fifty.

Using these three models, Table 48 shows the number of terminals that would be placed in each circuit. When subdivided by circuit, the models do not produce the same number of terminals that they do when the federal courts are taken as a whole. The changes are relatively slight, though. It is interesting that, given the present usage patterns, Model 1 appears to fit best when applied to the national total of federal judges and staff attorneys. This model predicts approximately thirty hours of use in the District of Columbia Circuit, which is the approximate average for this circuit since the terminal was installed. This is also noteworthy because all three models were derived from resident judge usage.

This model also seems to fit the Sixth and Tenth Circuits' experience. To see this, we must assume that the headnote system usage in Detroit is equivalent to the same number of hours or more usage on a full-text system. Accepting this reasonable assumption, we find, based on the data developed in this report, that there are two Sixth Circuit locations which appear to support a full-text system terminal: Detroit and Cincinnati. Model 1 also suggests there should be two locations in the Sixth Circuit. The prediction of the model for the number of hours used in the Tenth Circuit is fairly close to the actual usage there.

While Model 1 generally fits the data by circuit, we need some method to allocate terminals within a circuit. We recommend the allocation rule specify that a courthouse not receive a terminal until it has an estimated twenty hours of use per month by resident users, under Model 2. The reason for using Model 2 to allocate a terminal for a specific site, although Model 1 is used to determine terminals per circuit, is the great variability in usage across sites. Using the liberal model assures usage levels will not be so low that an outsider would wonder why a terminal is at that site. Furthermore, since it is recommended that all terminals be Schedule B terminals, and since the break point between Schedule B and Schedule A terminals is approximately eighteen hours per month given

TABLE 48

NUMBER OF FULL-TEXT VENDOR'S SCHEDULE B TERMINALS PER CIRCUIT UNDER EACH MODEL*

Circuit	Model 1	Model 2	Model 3
1st	1	1	2
2nd	2	3	5
3rd	2	3	5
4th	1	2	4
5th	3	5	9
6th	2	3	4
7th	1	2	3
8th	1	2	3
9th	3	5	7
10th	1	2	3
D.C.	1	2	2
TOTAL	18	30	47

*Assuming up to 50 hours projected use per terminal, with a break point of 60 hours for the next terminal, 110 for the next, and so on.

the number of terminals recommended for the federal courts, this rule encourages placing terminals only at sites that are close to justifying a Schedule B terminal. These sites are also those which are most economically justifiable at this time. Finally, the rule also allows room for potential users who are not included in these estimates, as well as additional terminal time in the circuit to service non-resident users, without the likelihood of incurring additional terminal costs.

Using this rule, the total cost of a CALR system for the federal courts would be $445,800 per year. Training would cost an additional $7,000 (based on the discussion beginning on page 123).

Where Should the Terminals Be Installed?

Given this allocation rule, we can now determine the sites for the terminals. Table 49 shows the major court sites for each circuit. There are twenty-three such sites with five or more potential users--appellate and district judges and staff attorneys. Seven of these sites, however, given their present configuration of judges and staff attorneys, have an estimated use of less than twenty hours per month under Model 2. The seven are Brooklyn, Baltimore, Houston, Miami, Atlanta, Dallas, and Cleveland. The U. S. District Courthouses in New Orleans and San Francisco also have an estimated use of less than twenty hours per month, under this model. This leaves fourteen sites meeting the twenty-hour criterion.

Terminals can now be allocated by combining the two criteria; allocate terminals among circuits under Model 1, and allocate terminals within circuits under Model 2. If this combination rule is used, terminals will be placed at major court locations in each circuit, with some exceptions. The First, Fourth, Seventh, Eighth, Tenth, and District of Columbia Circuits are each entitled to one terminal. It is recommended that a terminal be installed at the Circuit Courthouse in each of these circuits. The Second Circuit is entitled to two terminals, under Model 1, but if Brooklyn is excluded (because it doesn't meet the twenty hour criterion), there would be only one location. Since Brooklyn's estimated usage is close to twenty hours, a terminal there is recommended,

TABLE 49

NUMBER OF APPELLATE AND DISTRICT JUDGES AND STAFF ATTORNEYS AT FEDERAL MAJOR COURT LOCATIONS BY CIRCUIT

Circuit	Appellate[a] Judges	District Judges	Staff[b] Attorneys	Major Court Locations - Number of Persons at Location (A-Appellate Judges, D-District Judges, S-Staff Attorney)
1	3	13	5	Boston-12 (1A, 6D, 5S)
2	9	47	5	New York, Foley Square-35 (3A, 27D, 5S) Brooklyn-9 (9D)
3	9	47	5	Philadelphia-26 (2A, 19D, 5S) Pittsburgh-9 (2A, 7D)
4	7	31	9	Baltimore-8 (1A, 7D) Richmond-12 (1A, 2d, 9S)
5	15	75	11	New Orleans-13 (2A, 11S)[c] New Orleans-9 (9D) Miami-6 (2A, 4D) Atlanta-7 (1A, 6D) Houston-6 (1A, 5D) Dallas-5 (1A, 4D)
6	9	39	6	Cincinnati-10 (2A, 2D, 6S) Detroit-11 (1A, 10D) Cleveland-5 (1A, 4D)
7	8	28	3	Chicago-18 (7A, 11D)
8	8	26	4	St. Louis-9 (1A, 4D, 4S)
9	13	59	19	San Francisco-23 (4A, 19S) San Francisco-8 (8D) Los Angeles-18 (2A, 16D)
10	7	20	6	Denver-12 (2A, 4D, 6S)
D.C.	9	15	0	D.C.-24 (9A, 15D)

[a]Senior judges are not included in this table (See text, p. 130). Also, figures are based on authorized judgeships.

[b]Data obtained from Personnel Office of the Administrative Office of the U.S. Courts.

[c]If cities appear more than once, there are two locations for federal judges in that city.

on a trial basis. If usage levels are low, it can be removed.[1] The Third Circuit should have two terminals: there are two eligible sites--Philadelphia and Pittsburgh.

Terminal location in the Fifth Circuit is the most difficult to determine, because no site other than the circuit headquarters in New Orleans has twenty hours of use, under Model 2. If we suggest the circuit headquarters and the next site with the estimated highest usage level receive terminals, Fifth Circuit locations would be two terminals in New Orleans and one in Miami. This does not seem reasonable, because the two New Orleans sites are across the street from each other. Also, the estimated usage levels in Miami differ very little from those in Atlanta, Houston, and Dallas.

One other possibility would be to locate the additional terminals at sites which already display a considerable demand, as measured by utilization of the Fifth Circuit's legal research specialist. Using this rule, Miami and Houston would be the locations of additional sites. Certainly, it seems reasonable that among four relatively equal sites this rule be used to make the distinctions. Therefore, the recommended Fifth Circuit locations are the Appellate Courthouse in New Orleans and the United States Courthouses in Houston and Miami.

The Ninth Circuit is entitled to three terminals. Only two sites, however, meet the terminal placement rule under Model 2: Los Angeles and the Appellate Courthouse in San Francisco. Furthermore, the third potential site, the District Courthouse in San Francisco, is just a few blocks away from the recommended terminal location. Not only is estimated usage at this site less than twenty hours per month, but this site also has not shown enough interest, to date, to support a terminal. The level of direct usage by district court law clerks (who can walk a couple of blocks to the Appellate Courthouse to use the terminal),

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[1]Given the projected usage in the 2nd Circuit, the cost would be the same whether these hours were used on one terminal or on two. See footnote 1 p. 127.

and of indirect usage through the legal research specialist, has been relatively low for all but one judge.[1] Therefore, at this time no recommendation will be made on location of the additional terminal the Ninth Circuit is entitled to, under the allocation rules used.

A summary of these recommendations is shown in Table 50. Since usage levels should be continuously monitored, and since new judgeships will probably make more sites eligible for terminals under the allocation rules used in this report, these recommendations should not be viewed as final. Furthermore, as the locations of judges change within a circuit or district, due to retirements and replacements, further modifications of this plan may be required.

Providing Service for Nonresident Users

Having selected these seventeen locations, the next question is how to provide CALR service to the judges in each circuit. We assume on-site judges would have their law clerks use the terminals themselves.[2] Table 51 shows the number of judges who would not have direct access to a terminal if the recommendations of this report were implemented. Two things are evident from this table. Only in five circuits, the First, Second, Third, Seventh, and the District of Columbia, would approximately half or more of the judges have a terminal available in their courthouses. (It also might be noted that even adding three more sites in the other six circuits would not be enough to allow half the judges in those circuits direct access to a CALR terminal.) Second, the Fifth and Ninth Circuits have the most judges who would not be resident at a terminal site. Thus, from this table, it appears that except for the District of Columbia Circuit, some way should be found to provide the CALR service to nonresident judges and their staffs.

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[1]In fact, the highest usage by a district court judge in the 9th Circuit has been that of a judge at the other location: the Northern District of California in San Jose. Usage in San Jose, however, does not justify a terminal, either.

[2]In both the 5th and 9th Circuits, however, resident users often engaged the services of the specialist.

TABLE 50

RECOMMENDED TERMINAL LOCATIONS

Circuit	No. of Full-text Terminals	Locations
1st	1	Boston
2nd	2	New York (Foley Square) Brooklyn
3rd	2	Philadelphia Pittsburgh
4th	1	Richmond
5th	3	New Orleans (Appellate) Houston Miami
6th	2	Cincinnati Detroit
7th	1	Chicago
8th	1	St. Louis
9th	3	San Francisco (Appellate) Los Angeles "Location to be determined"
10th	1	Denver
D.C.	1	Washington, D. C.

Each terminal would have to be used not only by resident users, but also by someone responsible for handling requests from off-site judges, their law clerks, and other off-site court staff.

TABLE 51

NUMBER OF JUDGES NOT HAVING DIRECT ACCESS
TO FULL-TEXT CALR TERMINALS AFTER INSTALLATIONS
RECOMMENDED IN THIS REPORT

Circuit	Appellate Judges	District Judges	Total
1st	2	7	9
2nd	6	11	17
3rd	5	21	26
4th	6	29	35
5th	10	69	79
6th	6	27	33
7th	0	15	15
8th	7	22	29
9th	7	43	50
10th	5	16	21
D.C.	0	0	0

Experience in the Sixth, Tenth, Fifth, and Ninth Circuits suggests that to provide CALR services to non-residents in a way the services would be used, requires having at each site a single individual who would be responsible for handling such requests. Using an estimation rule that each appellate judge will submit approximately three problems per month[1] and each district judge

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[1]This estimation rule is based on estimates derived from experience in the 5th and 9th Circuits with the

will submit an average of 1.5 problems per month, the circuits would be required to handle the following number of requests: First, 16.5; Second, 34.5; Third, 45.5; Fourth, 61.5; Fifth, 146.5; Sixth, 58.5; Seventh, 22.5; Eighth, 52; Ninth, 86.5;[1] Tenth, 39. The estimate does not include senior judges, magistrates, and other court staff who might want problems run on a CALR system, nor does it include the specialist's time spent supporting on-site staff. In both the Fifth and Ninth Circuits, on-site court staff used much of the specialist's time. Also, the average usage by nonresident judges and their staffs will probably increase, as it has done in the Fifth and Ninth Circuits. The growth occurs as judges and their staffs become increasingly used to having problems run on a CALR system by someone at a central site.

Given this number of problems per circuit from off-site judges, the next question is how long it will take to do a problem. The data developed in previous sections, including the time it took the research specialists to do the prepared problems, and the average time per problem run on both CALR systems (based on information provided by the vendors), suggest the average problem takes approximately thirty minutes to run. This includes some time for preparing the search command and browsing through the information returned. The research specialists have also indicated that each problem takes at least another half hour, for such things as talking with the person calling in the

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full-text system. In the 5th Circuit, an average of 3 problems were called in by appellate judges for Nov. and Dec., 1976. In the 9th Circuit, the average for the first 6 months the terminal was installed was 3 per month. The averages for district judges is difficult to ascertain, because in both circuits, it was quite variable and not all district judges took advantage of the service. The 1.5 problems per month estimate is based in part on usage by the set of judges who began to take advantage of the service. As earlier data show, however, a few district judges called in as many as 6 problems per month.

[1]This estimate for the 9th Circuit seems low in light of the available data.

problem, and preparing and delivering the problem to the person requesting it. Thus, the needed number of hours of legal research specialist time reverts to a minimum of one hour per problem.

Assuming there are 160 working hours per month, the following are estimates of personnel needed in each circuit to service nonresident users: less than one-fourth-time--First, Second, Seventh, and Tenth Circuits; one-fourth- to half-time--Third, Fourth, and Sixth Circuits; more than half-time--Fifth and Ninth Circuits. Thus, it is recommended that each circuit provide personnel for this amount of time each month, to fill the needs of nonresident users. Since these estimates are high for all but the Ninth Circuit, the person handling this service could provide support for resident users, as well.

Experience to date in the Fifth and Ninth Circuits suggests that in these two circuits, handling off-site user requests and supporting on-site users has grown to a full-time job, and will remain so even with more terminals located in these circuits.[1] For these two circuits, a legal research specialist should be hired for the full-text system terminals located in the circuit headquarters. In the other eight circuits, this service can be provided by allocating part of the time of either a staff attorney or a librarian skilled in legal research. Again, to make this service work, one person must be responsible for providing most or all of the service for nonresident users. This will give users certainty regarding who will be doing the research when they request it, and will allow users and specialists to develop personal relationships, which support getting the research job done.

Terminal Locations

Terminal location is important in implementing this nationwide system. Terminals should be located either in the courthouse library or as close to the largest number of judges as possible. Our experience to date suggests physical location of the terminal has an effect on use for some potential users.

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[1]No recommendation is being made about this person's classification.

Training of Off-site Users

Ideally, every law clerk for federal judges at all levels should be trained to use the full-text system. This should include clerks who are not located in a courthouse with a terminal. As discussed earlier, this training is necessary for nonresident users to know both what to ask for when submitting a problem, and how best to phrase it, as well as the advantages and limitations of the full-text system.

Unfortunately, under Federal Judicial Center policy, training funds cannot finance temporary employees. This means the Center cannot pay for off-site law clerk travel to a terminal location for training. (This is not necessarily a problem for appellate law clerks, since they often accompany judges when the court sits in the circuit seat; they could obtain the necessary training during these periods.)

The preparation of a manual for nonresident users should be considered as an alternative to on-site training. The full-text vendor now furnishes a manual, but this manual alone would probably not be adequate. A well-prepared manual would also help law clerks who have received training and need to refresh their skills to use a terminal located elsewhere, through another person. Another approach might be to prepare a videotape for off-site training of law clerks.

If technology continues to change, it is reasonable to expect smaller terminals at much lower prices within the next several years. It is also reasonable to expect better computer assisted educational programs that would be available through a terminal. If these two expected developments occur, it could very well be feasible to move a "training" terminal among locations for several weeks at a time. Also, in the longer range--perhaps five to ten years--the price of terminals may be low enough that a terminal could be placed in most federal courthouses. Good computer assisted education courses available through the terminal should remove the present impediment to training temporary employees.

APPENDIX I. AUGUST, 1975 USER SURVEY-- SIXTH AND TENTH CIRCUITS

This questionnaire was the basic form, with minor modifications, used for all surveys of CALR users.

COMPUTER ASSISTED LEGAL RESEARCH

Name_____ Court_____

Full-text System

1. When approximately were you trained to use the full-text system?

   _____

2. Please check the appropriate box.
   How useful were various parts of the full-text system training?

	Very Useful to Me	Useful to Me	Not Useful to Me
a. Script on Machine Usage	_____	_____	_____
b. Session on Search Logic	_____	_____	_____
c. General Practice Session	_____	_____	_____

3. a. What was your general impression of and feelings about the full-text system training?

   _____

b. How might it be changed or improved to better suit your needs?

_____

c. Do you think a follow-up training session after a month or so of working with the full-text system would be helpful?

Very helpful_____ Somewhat helpful_____

Helpful_____ Not needed_____

4. Approximately how many hours per week did you use the full-text system?

_____

5. Before being trained on the full-text system, how many hours per week on the average did you spend doing library research, e.g., using digests, reading cases, etc.?

_____

6. Did the full-text system save you any time?_____ If so, how much?_____

7. How many hours per week on the average do you think the full-text system could save you if used on a regular basis?_____

8. What percent of your research projects did you use the full-text system for, once you were trained?

_____

9. If you did not use the full-text system up to what you think is its maximum, why not?

_____

10. What factors might have encouraged you to use the full-text system more?

_____

11. How did you use the full-text system in the research process generally? (Please give sequence in doing a piece of research and indicate if you go to the full-text system first or last or in between. Also indicate if the full-text system is used as a supplement or a substitute. If you have different sequences depending on the research issue, please give at least two examples.)

_____

12. In what percent of the projects in which you used the full-text system did you feel the full-text system made an important difference in terms of either research time or quality of the research product?

Research time_____% Quality of product_____%

13. Would you have liked help in using the full-text system terminal? (Check one)

a. I prefer using it myself._____

b. I would like to have a trained legal research specialist who can aid me in operating the mechanical aspects of the terminal and in thinking through how best to use the full-text system for the research problem._____

c. I would like to have just a trained operator who could aid me in mechanically operating the terminal.

_____

d. I prefer using the terminal myself, but occasionally I might like or need the aid of a trained operator or a legal research specialist._____

14. Which of the following might encourage you to use the full-text system more? (check all that are appropriate)

a. Additional terminals_____

b. More complete libraries (e.g., extend F.2d cases back to 1950)_____

c. Other libraries (e.g., having decisions of other administrative agencies such as FPC or CAB in the data bank)_____

d. Presence of legal research specialist_____

e. Presence of trained operator_____

f. Improving the reliability of the terminals_____

g. Making the information easier to read on cathode ray screen_____

15. What types of research questions did you find the full-text system most useful for? (please give examples) Why?_____

15b. What types of research questions did you find the full-text system least useful for? (please give examples) Why?_____

16. How proficient did you become with the full-text system? Assume you have a scale of 1 to 5. 1 represents the least possible proficiency you could have with the full-text system and 5 represents the highest possible proficiency. Where on that scale would you put yourself?

_____

16a. How much of the full-text system's capability could you use? Assume you have a scale of 1 to 5. 1 represents the least use of the system capability and 5 represents the maximum use of system capability. Where on this scale would you put your general use of the full-text system?_____

16b. Please explain, if you wish, your answers to 16 and 16a.

_____

17. What research sources did you consult regularly that were not available on the full-text system?_____

_____

18. Did you ever use the full-text system to "Shepardize" or track citations to cases?_____If so, was the full-text system useful for this operation? Very Useful___ Somewhat useful_____Not useful at all_____

19. When using the full-text system which of the formats did you generally use in retrieving cases? Please give the percent of use. Cite?_____% KWIC?_____% Full_____%

Please comment generally on the full-text system._____

APPENDIX II. FULL-TEXT USAGE LEVELS--SUMMARY BY FOUR CIRCUITS

This appendix represents a very small sample of the types of data generated for this project.

SUMMARY OF USAGE BY CIRCUIT
****

	MAY 75	JUNE 75	JULY 75	AUG.75	SEPT.75	OCT.75	NOV.75	DEC.75	JAN.76	FEB.76	MAR.76	APR.76
NO. OF USES												
D.C.	42.00	244.00	135.00	103.00	68.00	116.00	127.00	96.00	85.00	92.00	97.00	78.00
NO. OF REPORTS												
D.C.	0.00	13.00	36.00	16.00	20.00	9.00	14.00	34.00	26.00	25.00	17.00	18.00
TOTAL HOURS OF USE												
D.C.	30.10	152.77	74.47	45.24	34.48	61.51	72.22	32.30	29.37	32.06	27.84	27.85
MINUTES PER USE												
D.C.	43.00	37.57	33.10	26.35	30.42	31.82	34.12	20.19	20.73	20.91	17.22	21.43
AVERAGE RESEARCH/ SEARCH												
D.C.	30.05	12.10	15.53	22.06	18.98	18.03	15.00	15.87	12.41	19.05	14.38	15.80
TOTAL RESEARCH/ SEARCH												
D.C.	9.45	7.75	9.49	8.72	8.62	10.70	8.79	10.88	8.18	11.95	9.14	10.18
PERCENT OF REPORTS SENT IN												
D.C.	0.00	5.33	26.67	15.53	29.41	7.76	11.02	35.42	30.59	27.17	17.53	23.08
PERCENT OF REPORTS GOOD CALR												
D.C.	0.00	46.15	58.33	43.75	75.00	66.67	50.00	64.71	50.00	68.00	52.94	66.67
PERCENT GENERAL SEARCH												
D.C.	0.00	100.00	83.33	75.00	75.00	88.89	85.71	76.47	69.23	76.00	52.94	88.89

SUMMARY OF USAGE BY CIRCUIT
****

	MAY 76	JUNE 76	JULY 76	AUG.76	SEPT.76	OCT.76	NOV.76
NO. OF USES							
D.C.	83.00	106.00	63.00	108.00	144.00	92.00	61.00
NO. OF REPORTS							
D.C.	9.00	13.00	4.00	3.00	1.00	0.00	1.00
TOTAL HOURS OF USE							
D.C.	29.93	129.77	80.92	78.70	78.37	46.36	21.58
MINUTES PER USE							
D.C.	21.64	73.45	77.06	43.72	32.66	30.24	21.23
AVERAGE RESEARCH/ SEARCH							
D.C.	21.84	20.06	20.91	21.67	23.08	18.13	12.11
TOTAL RESEARCH/ SEARCH							
D.C.	11.83	6.82	4.29	12.71	8.72	8.91	7.82
PERCENT OF REPORTS SENT IN							
D.C.	10.84	12.26	6.35	2.78	0.69	0.00	1.64
PERCENT OF REPORTS GOOD CALR							
D.C.	44.44	61.54	25.00	0.00	0.00	0.00	0.00
PERCENT GENERAL SEARCH							
D.C.	66.57	76.92	100.00	100.00	100.00	0.00	100.00

SUMMARY OF USAGE BY CIRCUIT
****

NO. OF USES	MAY 75	JUNE 75	JULY 75	AUG.75	SEPT.75	OCT.75	NOV.75	DEC.75	JAN.76	FEB.76	MAR.76	APR.76
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	106.00	65.00	67.00	42.00	61.00	95.00	58.00	61.00	45.00	80.00	62.00	60.00
10th	126.00	73.00	63.00	60.00	121.00	93.00	61.00	69.00	87.00	49.00	45.00	67.00
NO. OF REPORTS												
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	0.00	0.00	0.00	0.00	0.00	23.00	21.00	30.00	23.00	46.00	43.00	29.00
10th	0.00	0.00	12.00	15.00	12.00	12.00	2.00	6.00	8.00	28.00	24.00	35.00
TOTAL HOURS OF USE												
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	92.86	39.95	35.30	14.61	22.59	60.85	30.13	26.93	22.09	36.66	26.98	36.03
10th	114.61	41.78	40.68	37.50	79.58	49.98	33.18	40.70	48.11	20.73	21.09	31.68
MINUTES PER USE												
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	52.56	36.88	31.61	20.87	22.22	38.43	31.17	26.49	29.45	27.50	26.11	36.03
10th	54.58	34.34	38.74	37.50	39.46	32.24	32.64	35.39	33.18	25.38	28.12	28.37
AVERAGE RESEARCH/ SEARCH												
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	23.22	13.95	17.34	18.36	22.21	17.86	18.53	20.38	14.91	13.08	17.54	18.63
10th	31.47	11.69	14.46	20.21	19.99	14.58	24.09	16.19	14.13	18.40	14.62	15.20

	MAY 75	JUNE 75	JULY 75	AUG.75	SEPT.75	OCT.75	NOV.75	DEC.75	JAN.76	FEB.76	MAR.76	APR.76
TOTAL RESEARCH/ SEARCH												
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	9.27	6.56	9.38	8.75	12.03	9.67	8.36	8.20	6.30	8.83	10.24	10.55
10th	10.76	7.39	7.44	9.20	9.99	7.17	8.33	11.35	10.18	10.28	9.99	8.13
PERCENT OF REPORTS SENT IN												
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	0.00	0.00	0.00	0.00	0.00	24.21	36.21	49.18	51.11	57.50	69.35	48.33
10th	0.00	0.00	19.05	26.00	9.92	12.90	3.28	8.70	9.20	57.14	53.33	52.24
PERCENT OF REPORTS GOOD CALR												
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	0.00	0.00	0.00	0.00	0.00	65.22	47.62	46.67	60.87	52.17	46.51	58.62
10th	0.00	0.00	66.67	60.00	75.00	75.00	50.00	33.33	62.50	60.71	41.67	37.14
PERCENT GENERAL SEARCH												
9th	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
6th	0.00	0.00	0.00	0.00	0.00	91.30	80.95	90.00	86.96	95.65	93.02	96.55
10th	0.00	0.00	100.00	100.00	91.67	100.00	100.00	83.33	62.50	92.86	91.67	97.14

SUMMARY OF USAGE BY CIRCUIT
****

	MAY 76	JUNE 76	JULY 76	AUG.76	SEPT.76	OCT.76	NOV.76
NO. OF USES							
9th	110.00	102.00	66.00	79.00	133.00	129.40	197.00
6th	46.00	35.00	46.00	49.00	33.00	110.00	38.00
10th	37.00	71.00	41.00	42.00	68.00	61.00	37.00
NO. OF REPORTS							
9th	24.00	96.00	70.00	77.00	136.00	124.00	162.00
6th	11.00	0.00	0.00	0.00	0.00	0.00	0.00
10th	17.00	16.00	3.00	4.00	12.00	20.00	11.00
TOTAL HOURS OF USE							
9th	87.11	64.44	25.25	27.74	47.37	64.86	97.47
6th	22.07	15.27	19.51	22.40	13.95	60.62	19.65
10th	17.68	39.50	27.56	18.72	46.54	37.07	14.29
MINUTES PER USE							
9th	47.51	37.91	22.96	21.07	21.37	30.07	29.69
6th	28.79	26.17	25.45	27.42	25.37	33.07	31.02
10th	28.67	33.38	40.34	26.74	41.06	36.46	23.17
AVERAGE RESEARCH/ SEARCH							
9th	19.43	15.29	15.88	14.92	15.02	2.80	8.85
6th	14.18	20.54	13.33	17.18	16.99	11.23	8.52
10th	15.80	11.23	40.88	9.84	10.75	12.13	11.07

CONTINUED

2 OF 3

	MAY 76	JUNE 76	JULY 76	AUG.76	SEPT.76	OCT.76	NOV.76
TOTAL RESEARCH/ SEARCH							
9th	11.47	5.77	7.73	7.36	5.40	5.39	5.76
6th	8.41	9.87	8.97	9.55	8.84	6.90	4.81
10th	8.70	5.63	9.13	5.71	8.89	7.15	5.68
PERCENT OF REPORTS SENT IN							
9th	21.82	94.12	106.06	97.47	102.26	95.83	82.23
6th	23.91	0.00	0.00	0.00	0.00	0.00	0.00
10th	45.95	22.54	7.32	9.52	17.65	32.79	29.73
PERCENT OF REPORTS GOOD CALR							
9th	62.50	47.92	61.43	53.25	58.82	59.68	51.23
6th	27.27	0.00	0.00	0.00	0.00	0.00	0.00
10th	41.18	62.50	33.33	50.00	33.33	35.00	36.36
PERCENT GENERAL SEARCH							
9th	83.33	80.21	68.57	63.64	58.09	72.58	54.32
6th	100.00	0.00	0.00	0.00	0.00	0.00	0.00
10th	88.24	93.75	100.00	100.00	75.00	65.00	81.82

APPENDIX III. FORMS USED IN COMPARATIVE MEMORANDA PROJECT

The forms in this appendix were used for the comparative memoranda project.

CALR Evaluation Project

Schedule 1

Assignment of Research Methods

Judge_____
or
Circuit

Staff Attorneys
or
Law Clerks

_____

_____

	Method for _____	Code	Method for _____	Code
Issue #001	Manual	B	Full-text	A
002	Manual	A	Full-text	B
003	Full-text	A	Manual	B
004	Full-text	B	Manual	A
005	Full-text	A	Manual	B
006	Full-text	A	Manual	B
007	Manual	B	Full-text	A
008	Full-text	B	Manual	A
009	Manual	A	Full-text	B
010	Manual	B	Full-text	A
011	Full-text	B	Manual	A
012	Manual	B	Full-text	A
013	Full-text	A	Manual	B

Instructions: Listed next to the problem number is the method and code for each law clerk or staff attorney.

CALR Evaluation Project

Instructions for Form #1

This form is designed to provide information about how long a designated research problem takes to complete from beginning to end. While some of the times requested are not as conceptually distinct as they appear, for most research projects, it is expected the researcher will be able to keep them separate. If two or more categories seem to merge on a piece of research, try your best to allocate time separately on the form.

Definitions:

I. (1) Research time - retrieval - use of any indexing system, e.g., headnotes, digests, U.S.C.A., Am. Journal, Shepard's, etc., to retrieve cases, statutes, etc. Includes use of full-text or headnote system.

(2) Research time - browsing - skimming, browsing, surveying cases, statutes, etc., with an intent primarily to determine relevancy.

II. (1) Studying and thinking time - reading cases, etc. - in-depth study of a case, legislative history, statute.

(2) Thinking through problem - time spent on a research problem which does not fall into any other category, e.g., talking to someone about it.

III. Writing time - time spent writing the first draft.

IV. Problem type category.

1. Documentation - is the purpose of the research mainly to document a known principle of law?

2. Search - is the purpose of the research to find a similar case or case "on all fours"? For instance, are you searching for the "needle in a haystack?"

3. Trend - are you researching an active area of law, e.g., environment on job discrimination, and looking for trends in the formation of the law?

4. Complex issues - are you researching in a complex area of law, e.g., antitrust, securities, or all of or part of a complex issue?

5. Emergency - are you researching an issue that requires a quick answer? These will generally be extraordinary writs or motions presented to the court which require immediate answers.

CALR Evaluation Project

Form #1

TIME

Problem # ☐☐ ☐☐ ☐☐☐ ☐

Briefly state the problem_____

Please record the time on this research problem by indicating your actual time in decimal hours for each part of the research process.

Overall time_____

Date begun_____ Date ended_____

I. Research time

(1) Retrieval (total time)_____hours
(2) Browsing (total time)_____hours

II. Study and thinking time

(1) Reading cases, statutes, etc._____hours
(2) Thinking through problem_____hours

III. Writing time_____hours

IV. Problem type (please circle)

1. Documentation
2. Search
3. Trend
4. Complex issue

CALR Evaluation Project

Form #2

Memorandum rating

Problem code ☐☐ ☐☐☐ ☐☐☐

Please rate these two memoranda on the basis of quality of answer to the research problem. Quality rating relates to substance of the memo, not to style or to manner of expression. Grade is to be based primarily on information content.

Rate on the basis of 10. See chart below for meaning of scale.

Rating

Memorandum A_____

B_____

Rating Scale

1	2	3	4	5	6	7	8	9	10
+	A	-							
		+	B	-					
				+	C	-			
						+	D	-	

APPENDIX IV. LEGAL RESEARCH SPECIALISTS ANSWERS TO RESEARCH PROBLEMS

Full-text System Answers and Times for Problem Set Number One by Researcher 1

Headnote System Answers and Times for Problem Set Number One by Researcher 2

Full-text System Answers and Times for Problem Set Number Two by Researcher 1

Headnote System Answers and Times for Problem Set Number Two by Researcher 2

Full-text System Answers and Times for Problem Set Number Two by Researcher 1

Headnote System Answers and Times for Problem Set Number Two by Researcher 1

Full-text System Answers and Times for Problem Set Number One by Researcher 1

SUMMARY OF TIME USED PER QUESTION

	PREPARATION	COMPUTER *
1.	10 min.	65 min.
2.	3 min.	49 min.
3.	3 min.	50 min.
4.	10 min.	57 min.
5.	10 min.	65 min.
6.	3 min.	55 min.
7.	3 min.	48 min.
8.	5 min.	30 min.
9.	15 min.	58 min.
10.	15 min.	55 min.
11.	10 min.	52 min.
12.	10 min.	60 min.
13.	5 min.	38 min.
14.	10 min.	31 min.
15.	10 min.	57 min.
16.	10 min.	48 min.
17.	5 min.	45 min.
18.	10 min.	53 min.
19.	15 min.	68 min.
20.	5 min.	44 min.
21.	5 min.	15 min.

The computer time used per question was equally divided between California and Missouri. The searches took between three and five minutes longer when run in the Federal Library.

*The computer time is not divided into searches in the three separate librarys since the full-text system does not make that time distinction in its sign-off information.

1. Does a defendant have an absolute right to waive a preliminary hearing over the objection of the prosecutor?

Was unable to find any cases dealing with waiver as an absolute right.
Some cases ruled that waivers were to be disregarded where defendant made waiver without counsel present or without knowledge of his right to counsel.

California:

People v. Flores (1968) 262 Cal. App.2d 313
In re Kenneth Ear Van Brunt (1966) 242 Cal. App.2d 96
People v. Connor (1964) 229 Cal. App.2d 716
People v. Phillips (1964) 229 Cal. App.2d. 496

Missouri:

McCrary v. State of Missouri (1975) 529 S.W.2d 467
Cooper v. State of Missouri (1975) 520 S.W.2d 666
State of Missouri v. Burnside (1975) 527 S.W.2d 249

Federal:

Chester v. California (1966) 355 F.2d 778
Wilson v. Anderson (1960) 335 F.2d 687
Odell v. Burke (1960) 281 F.2d 782
Melendez v. Brines (1971) 331 F. Supp. 898

2. What constitutes an intervening cause in determining cause of death in a murder case?

California:

An intervening cause is some additional outside force acting on deceased (apart from acts defendant put in motion) which independent of defendant's act caused the death. If an intervening cause is a normal and reasonably foreseeable result of defendant's original

act the intervening force is dependent and not a superseding cause and will not relieve liability.

People v. Antick (1975) 15 Cal.3d 79
People v. Sam (1969) 71 Cal.2d 194
People v. Harris (1975) 52 Cal. App.3d 419
People v. Saldana (1975) 47 Cal.App.3d 954
People v. Herbert (1964) 228 Cal. App.2d 514

Missouri:

A person is criminally responsible for a homocide in whatever manner by whatever means it was accomplished provided that death was proximately caused by defendant's unlawful act. The unlawful act need not be the immediate cause of death -- it is enough that it be the contributing proximate cause although other contributing causes may have intervened.

State of Missouri v. Brinkley (1946) 193 S.W.2d 49

Federal:

The liability of one who puts an antecedent force into action will depend on the determination of whether the intervening force was sufficiently independent or supervening cause of death. An intervening cause breaks the natural sequence of action - proximate cause - death.

Kibbe v. Henderson (1975) 534 F.2d 493
United States v. (1974) 495 F.2d 1066
Virgin Islands v. Saldana (1976) 412 F. Supp. 83

3. Can a qualified expert testify to tennis shoe or shoe print comparisons and similarities?

All jurisdictions researched found such expert testimony

to be admissible. In some cases failure to supply such testimony was questioned.

California:

People v. Hamilton (1969) 2 Cal. App.3d 596
People v. Zismer (1969) 275 Cal. App.2d 660
People v. Pacheco (1968) 258 Cal. App.2d 800
People v. Brock (1967) 66 Cal. 2d 692
People v. Hillery (1965) 62 Cal.2d 692

Missouri:

State of Missouri v. McGlathery (1967) 412 S.W.2d 445

Federal:

U.S. v. Burke (1974) 506 F.2d 1165
McDonnell v. U.S. (1972) 455 F.2d 91
U.S. v. De Larosa (1971) 450 F.2d 1057
Shuler v. Wainright (1972) 341 F. Supp. 1061
U.S. v. Mc Donnell (1970) 315 F. Supp.152

4. Can a court order a State's witness to be mentally or physically examined to determine the witness' competency to testify at trial?

California:

Courts have rejected the idea of compelling witnesses to undergo psychiatric examination to show competency. However, rulings in this area are discretionary with the trial judge where the judge determines that the jury will be unable to make a determination as to the competency of the witness.

People v. Russell (1968) 69 Cal.2d 187
Ballard v. Superior Court (1966) 64 Cal.2d 159
People v. Manson (1976) 61 Cal. App.3d 102
People v. Francis (1970) 5 Cal. App.3d 414

Missouri:

It is the court's province to pass on the competency of the witness. The trial judge may order witness to submit to examination where defense counsel has met his burden of proof of possible incompetency of the state's witness.

State of Missouri v. Cox (1962) 352 S.W.2d 665
State of Missouri v. Mitchell (1955) 276 S.W.2d 163

Federal:

Examinations may infringe upon witness' right to privacy and other problems may result when such examinations are ordered. There is, therefore, a presumption against ordering any such examination but this may be overcome by a showing of need.

U.S. v. Hunlein (1973) 490 F.2d 725
U.S. v. Butler (1973) 481 F.2d 531
U.S. v. Benn & Hunt (1972) 476 F.2d 1127

5. Can a court order local police departments to furnish defense counsel with the criminal backgrounds of the State's witnesses?

I was unable to find any cases directly on point. Most of the cases dealt with the prosecutor being required to turn over such information to the defense counsel. The Missouri case dealt with the issue but never really reached a decision on this particular point.

California:

In Re Ferguson (1971) 5 Cal.3d 525
People v. Mejra (1976) 57 Cal. App.3d 574

Missouri:

State of Missouri v. Berry (1970) 451 S.W.2d 144

Federal:

U.S. v. Davis (1974) 415 U.S. 308
U.S. v. McCord (1975) 509 F.2d 891
U.S. v. Burks (1972) 470 F.2d 432

6. Can a police officer testify to extrajudicial identification?

California:

Police can testify to identifications made at pre-trial identification situations not only to corroborate an identification at trial but also as independent evidence of identity. It is not necessary to first have an impeachment of identifying witness before police officer's testimony can be introduced.

People v. Gould (1960) 54 Cal.2d 621
People v. Hartfield (1969) 273 Cal. App.2d 745
People v. Cook (1967) 252 Cal. App.2d 25
People v. James (1963) 218 Cal. App.2d 166
People v. Lockhart (1962) 200 Cal. App.2d 862

Missouri:

A police officer's testimony as to extrajudicial identifications is hearsay and inadmissible in the absence of the impeachment of the testimony of the identifying witness with respect to the extrajudicial identification or prior inconsistent statements made by the witness.

State of Missouri v. Starkey (1976) 536 S.W.2d 858
State of Missouri v. Roberts (1976) 535 S.W.2d 119
State of Missouri v. Few (1975) 530 S.W.2d 411
State of Missouri v. Degraffenreid (1972) 477 S.W.2d 57

Federal:

Police officers will be allowed to testify to extrajudicial identifications to corroborate

(have a cumulative effect with) the testimony of the identifying witness' testimony.

Clemons v. U.S. (1968) 408 F.2d 1230
U.S. v. Miller (1967) 381 F.3d 529
Goodwin v. U.S. (1965) 347 F.2d 793
Smith v. U.S. (1964) 340 F.2d 797
Barber v. U.S. (1963) 324 F.2d 390
Leeper v. U.S. (1963) 329 F.2d 878
Bryant v. Vincent (1974) 373 F. Supp. 1180

7. Can a prosecutor impeach his own witness?

California:

A party may impeach his own witness where he has been damaged or surprised by the witness' testimony.

People v. Green (1971) 3 Cal.3d 981
People v. Sam (1969) 71 Cal.2d 194
People v. Seiterle (1966) 65 Cal.2d 333
People v. Underwood (1964) 61 Cal.2d 113
People v. Purvis (1963) 60 Cal.2d 323
People v. Hamilton (1963) 60 Cal.2d 105

Missouri:

A prosecutor may not impeach his own witness unless the witness has become hostile or adverse and these actions are a surprise to the prosecutor.

State of Missouri v. Gatline (1976) Missouri Ct. St. Louis Dist.
State of Missouri v. Renfro ((1966) 408 S.W.2d 57
State of Missouri v. Crone (1966) 399 S.W.2d 19
State of Missouri v. Swisher (1953) 260 S.W.2d 6
State of Missouri v. Stroud (1951) 240 S.W.2d 111

Federal:

Found a difference of opinion: where most cases require alteration of testimony resulting in surprise to the

prosecutor before allowing the prosecutor to impeach his witness' testimony, the court in U.S. v. Allen held that such a rule was unsound and illogical.

U.S. v. Garcia (1976) 530 F.2d 650
U.S. v. Allen (1975) 522 F.2d 1229
U.S. v. Torres (1974) 503 F.2d 1120
U.S. v. Bryant (1972) 461 F.2d 912

8. What constitutes immunity to a witness?

California:

Immunity to a witness will be fulfilled where a witness is assured that the testimony he is to give and the fruits of that testimony will not be used against him in any criminal prosecution by either California or the federal government.

People v. Superior Court of Los Angeles (1972) 12 Cal.3d 42
People v. Varnum (1967) 66 Cal.2d 808
People v. King (1967) 66 Cal.2d 633
People v. Manson (1976) 61 Cal. App.3d 102
People v. Superior Court of Los Angeles (1975) 53 Cal.App.3d 996
People v. Laber (1974) 43 Cal. App.3d 766
Nelson v. Municipal Court (1972) 28 Cal. App.3d 889
People v. Lawrence (1972) 25 Cal. App.3d 498

Missouri:

Absolute immunity is fulfilled where the witness will not be subject to prosecution for the offense to which the question relates.

State of Missouri v. Yager (1967) 416 S.W.2d 170
State of Missouri v. Ross (1963) 371 S.W.2d 224
State of Missouri v. Foster (1961) 349 S.W.2d 922
North v. Kirtley (1959) 327 S.W.2d 166

Federal:

Witness is granted immunity from use of compelled testimony and evidence derived therefrom in subsequent criminal proceedings. Such immunity from use and derivative use is co-extensive with the scope of the Fifth Amendment and is sufficient to compel testimony. Transactional immunity is not required.

Lefkowitz v. Turley (1973) 414 U.S. 70
Kastigar v. U.S. (1972) 406 U.S. 441
Picceillo v. New York (1970) 400 U.S. 548
U.S. v. Sarvis (1975) 523 F.2d 1177
U.S. v. First Western St. Bank (1973) 491 F.2d 780

9. Must a probation officer give a defendant-probationer his Miranda rights before talking with the defendant-probationer about another charge or offense?

The cases I was able to retrieve dealt with admissions obtained by the probation officer during scheduled meetings with said officer. Where these admissions dealt directly with violations of probation, courts have held statements to be admissible in probation revocation hearings although the defendant had not received Miranda rights before making the statements.

It could be inferred from the Courts' discussions that in situations other than those described above, the defendant probationer would have to be informed of his Miranda rights before these statements would be admissible in a new criminal action.

California:

People v. Alesi (1967) 67 Cal.2d 856
People v. Webster (1970) 14 Cal. App.3d 739
People v. Hamilton (1968) 260 Cal. App.2d 103
People v. Smith (1968) 259 Cal. App.2d 814

Missouri:

State of Missouri v. Purvis (1975) 525 S.W.2d 590
State of Missouri v. Williams (1972) 486 S.W.2d 468

Federal:

U.S. v. Ross (1974) 503 F.2d 940
U.S. v. Delago (1974) 397 F.Supp. 708

10. Must a juvenile be re-admonished of his Miranda rights prior to continued questioning after denying complicity in the crime under investigation and then being left alone in the interrogation room for a period of three hours?

I was unable to find any cases on point. The cases which are cited below deal with the stricter standards to be followed by police officers when undertaking the interrogation of a juvenile.

California:

In Re Rodrick (1972) 7 Cal.3d 801
In Re Dennis (1969) 70 Cal.2d 444
In Re Garth (1976) 55 Cal. App.3d 986
In Re R.C. (1974) 39 Cal. App.3d 887

Missouri:

State of Missouri v. Ross (1974) 516 S.W.2d 311
State of Missouri v. Wright (1974) 515 S.W.2d 421
State of Missouri v. McMillan (1974) 514 S.W.2d 528
In Re K.W.B. (1973) 500 S.W.2d 275

Federal:

U.S. v. Binet (1971) 442 F.2d 296

11. Is a search warrant valid when based upon information obtained from a telephone call, if the caller is unknown to the sheriff who signed the affidavit on the warrant?

All three jurisdictions had the same rule regarding the necessity of establishing the reliability of the informant upon whose information a search warrant is based.

Because the reliability of the informer must be established in order to meet the proximate cause requirement for issuance of a warrant, the identity of the informant must be known.

California:

People v. Herdan (1974) 42 Cal. App.3d 300
Saunders v. Municipal Court (1966) 240 Cal. App.2d 563

Missouri:

State v. Phillips (1976) 532 S.W.2d 533
State v. Boyd (1973) 492 S.W.2d 787
State v. Peterson (1975) 525 S.W.2d 599

Federal:

Adams v. Williams (1972) 407 U.S. 143
U.S. v. Moody (1973) 485 F.2d 531
U.S. v. Williams (1972) 459 F.2d 909
U.S. v. One 1965 Buick (1968) 392 F.2d 672
Huotari v. Vanderport (1974) 380 F.Supp. 645

12. Can one be convicted of "possession of a gun by a felon" if the gun in inoperative?

California:

In order to be convicted of possession of a gun by a felon, the gun must be in working order (able to be fired).

People v. Favalora (1974) 42 Cal. App.3d 988
People v. Jackson (1968) 266 Cal. App.2d 341

Missouri:

I was unable to find any Missouri cases dealing with this subject.

Federal:

The courts in the federal jurisdictions have interpreted the relevant federal statute to include inoperative as well as operative firearms.

U.S. v. Scherer (1975) 523 F.2d 371
U.S. v. Pleasant (1972) 469 F.2d 1121

13. If a tort results in aggravation of a pre-existing injury, what rule of damages is to be applied?

California:

Damages are to be included where defendant's negligence proximately caused worsening or aggravating of a pre-existing injury even if said condition or disability made plaintiff more susceptible to the possibility of ill effects than a normally healthy person would have been.

Waller v. Southern Pacific Co. (1967) 66 Cal.2d 201
Matthews v. Dubuque Packing (1967) 253 Cal. App.2d 202
Rogers v. Los Angeles (1974) 39 Cal. App.3d 857
Bozanich v. Fisheries (1969) 270 Cal. App.2d 178

Missouri:

Defendant is generally liable for aggravation of pre-existing conditions caused by his negligence.

Miller v. Gulf, Mobile & Ohio R.R. Co. (1964) 386 S.W.2d 97
Quigly v. St. Louis Public Service (1947) 201 S.W.2d 169

Federal:

If the negligence of the defendant is the proximate cause of aggravation of previous difficulties suffered by plaintiff, the jury is to set the liability to the

extent that the actions aggravated the pre-existing condition and not to the condition itself.

McClendon v. Reynolds Elec. & Eng. (1970) 432 F.2d 320
Roe v. Armour (1969) 414 F.2d 862
Cutter v. Cincinnati Union Terminal (1966) 361 F.2d 637
Sweet Milk Co. v. Stanfield (1965) 353 F.2d 881
U.S. v. Jacobs (1962) 308 F.2d 906

14. What factors should a jury be instructed to consider in assessing damages if a tortiously injured plaintiff produces testimony concerning the availability of corrective surgery to lessen, not eliminate, the injury but has not committed to undergo such surgery?

California:

The jury can award damages including moneys for corrective surgery where evidence shows such surgery is available. They will be instructed that plaintiff cannot be forced to have such surgery.

Torres v. Southern Pacific (1968) 260 Cal. App.2d 757
Ragusano v. Civil Center Hospital (1962) 199 Cal. App.2d 586

Missouri:

The jury can award damages for total disability even where it has been shown that corrective surgery is available. The jury is instructed to look to the likelihood of relief.

Brooks v. General Motors (1975) 527 S.W.2d 50
Moore v. Ready Mix Co. (1959) 329 S.W.2d 14
Parlow v. Carson (1958) 310 S.W.2d 877

Federal:

Damages for corrective surgery are available if and when the plaintiff elects to have said surgery. Where such surgery is available and refused, the

award for pain and suffering is discounted in terms of the probable relief through the surgery.

Garcia v. Bauer (1975) 506 F.2d 19
Brennan v. Midwestern (1971) 450 F.2d 994
Dunham v. Wright (1970) 423 F.2d 940
Walnorch v. McMonagle (1976) 412 F.Supp. 270
Sterling v. New England Fisc. (1976) 410 F.Supp. 164

15. Was an informer who introduced an undercover police agent to defendant and who went with the agent to defendant's house allegedly to buy drugs, but who was not actually present in the room during the transaction, an active participant in the transaction? If so, was the informer a material witness whose testimony is essential to a fair trial for defendant and whose name must be revealed to defendant?

California:

An informer in the above stated fact situation is considered an active participant in the transaction and as such must be produced at trial -- the informer is considered a material witness.

People v. Grays (1968) 265 Cal. App.2d 14
People v. Sanders (1967) 250 Cal. App.2d 123

Missouri:

I was unable to find any case directly on point. The Missouri Court has held where the informer has a direct input (more than a mere tipster) he will be considered an active participant and as such, must be produced at trial as a material witness.

Bishop v. City of Houston (1969) 442 S.W. 2d 682

Federal:

To determine if an informer has been an active participant, the court looks to the level of

participation of the informer in the activities in question. If it is determined that the informer was an active participant, he is considered a material witness and must be produced at trial.

U.S. v. Ferguson (1974) 498 F.2d 1001
McLawhorn v. North Carolina (1973) 484 F.2d 1
U.S. v. Tsoi Kwan Sang (1969) 416 F.2d 306

16.A. Is the affirmative defense of duress available in a criminal trial?

B. If so, must there be evidence that the duress was present, imminent, and impending at the time of the defendant's criminal action? Is the defense still available when the criminal act, which the defendant claims was committed under duress, occurred two days after the threat of injury?

California:

The defense of duress is available only to those who committed the act or omission charged under threats or menaces sufficient to show that they had reasonable cause and did believe that their lives would be endangered if they refused. This threat must be imminent in order to invoke the defense of duress.

People v. Perez (1973) 9 Cal.3d 651
People v. Kellman (1975) 51 Cal. App.3d 951
People v. Richards (1962) 269 Cal. App.2d 768
People v. Lovercamp (1974) 43 Cal. App.3d 823
Balling v. Finch (1962) 203 Cal. App.2d 413

Missouri:

Coercion or duress is a defense to all crimes lesser than that of taking an innocent person's life. This coercion must be present, imminent and impending to induce apprehension of death or serious bodily injury.

Custom Head Inc. v. Kraft (1968) 430 S.W.2d 593
State v. St. Clair (1953) 262 S.W.2d 25

Federal:

Duress is available as a defense only if the defendant reasonably feared immediate death or severe bodily injury which could be avoided only by committing the criminal act. The threats must be immediate and unavoidable.

U.S. v. Furr (1976) 528 F.2d 578
U.S. v. Gordon (1975) 526 F.2d 406
U.S. v. Stevison (1972) 471 F.2d 143

17. Does a federal conviction in the U.S. District Court for conspiracy to distribute, conspiracy to possess with intent to distribute, and possession with intent to distribute hashish, operate as double jeopardy relative to the prosecution of defendant by the State for distribution of hashish?

I was unable to find any California or Missouri cases on point. The federal cases cited below are not exactly on point either, but they were the closest of those retrieved from the system.

Federal:

U.S. v. Jones (1974) 527 F.2d 817
Vaccaro v. U.S. (1972) 461 F.2d 626

18. Was it reversible error for the trial judge to fail to charge the jury on a kidnapping charge on the issue of whether the asportation of the victim was merely incidental to an underlying crime?

California:

The fact that asportation of a victim was merely incidental to a crime other than kidnapping (i.e. robbery) it will be considered as kidnapping where the harm to the victim is greatly increased.

In re Earley (1975) 14 Cal.3d 122
People v. Thornton (1974) 11 Cal.3d 738
People v. Cleveland (1972) 27 Cal. App.3d 820

Missouri:

Where asportation is incidental to another crime, one can be convicted for kidnapping where that person has the requisite intent necessary for a kidnapping conviction.

State v. Dayton (1976) 535 S.W.2d 469
State v. Burnside (1975) 527 S.W.2d 22
State v. Gallup (1975) 520 S.W.2d 619
State v. Knighton (1975) 518 S.W.2d 674
State v. Cox (1974) 508 S.W.2d 716

Federal:

Defendant can be convicted of kidnapping even when the asportation is merely incidental to an underlying crime.

U.S. v. Wolford (1971) 444 F.2d 876
U.S. v. DeLaMotte (1971) 434 F.2d 289

19.A. Is entrapment established, as a matter of law, when a police informer furnished narcotics to an individual who is later convicted of selling the same contraband back to a police undercover agent?

B. Is the state accountable for the acts of an informer when the police had no prior knowledge of, and did not give prior consent to, the conduct of the informer? Is an informer an agent of the police only for such acts performed within the scope of the authority granted him?

California:

The below cited cases deal with the general definition of entrapment as a matter of law. I found no California cases dealing with the exact fact situation stipulated. The cases did state that entrapment is an affirmative defense which must be raised and proved by the defendant.

Informers are treated as agents of law enforcement officers for purposes of establishing entrapment. No other cases were found which dealt with the state's responsibility for unauthorized acts of informers.

In re Nathan Foss (1974) 10 Cal.3d 910
People v. Benjamin (1974) 40 Cal. App.3d 1035
People v. Kosoff (1973) 34 Cal. App.3d 920
People v. Pijal (1973) 33 Cal. App.3d 682
People v. Avila (1967) 253 Cal. App.2d 308
People v. Goree (1966) 240 Cal. App.2d 304
People v. Ramey (1976) 16 Cal.3d 263
People v. Gregg (1970) 5 Cal. App.3d 502

Missouri:

Entrapment as a matter of law will be granted where all elements of said defense are shown by defendant. It is not a question to be put to the jury.

No cases were found in response to the fact situation presented in subsection "B".

State v. Perez (1976) 534 S.W.2d 542
State v. Weizerl (1973) 495 S.W.2d 137

Federal:

Where an informer or government agent has furnished contraband to defendant, who is later convicted of selling the said contraband -- entrapment is established as a matter of law.

Although the below cited cases implied that informers were agents of the police, I was unable to find any cases directly on point with subsection "B".

Hampton v. U.S. (1975) Slip Opinion (Dec. 1, 1975)
U.S. v. Russell (1973) 411 U.S. 423
Masciale v. U.S. (1958) 356 U.S. 386
U.S. v. Long (1976) 533 F.2d 505
U.S. v. Ingenito (1976) 531 F.2d 1174
U.S. v. Dovalina (1976) 525 F.2d 952

20. Is a defendant entitled to a jury trial in a mental competency hearing?

California:

All the elements of due process must be afforded during a mental competency hearing--including the right to a jury trial unless waived by defendant.

People v. Hill (1967) 67 Cal.2d 105
People v. Westbrook (1964) 62 Cal.2d 197
People v. Superior Court of Los Angeles (1976) 51 Cal. App.3d 459

Missouri:

The question of mental competency at the time of trial is a question for the trial judge.

Jones v. State (1974) 505 S.W.2d 96
Collons v. State (1973) 479 S.W.2d 470
Maggard v. State (1972) 471 S.W.2d 798

Federal:

The question of mental competency at the time of criminal trial is for the trial judge to determine--not for the jury.

U.S. v. Collins (1974) 491 F.2d 1050
Murphy v. Florida (1974) 495 F.2d 553
U.S. v. Huff (1969) 409 F.2d 1225

21. When testifying for a common scheme or design, for purposes of joinder of offenses in a rape case, has an assailant ever said, "You must please me"?

I was unable to find any cases in any jurisdiction which made reference to that specific quote by an assailant.

Headnote System Answers And Times For Problem Set Number One By Researcher 2

SUMMARY OF TIME USED PER QUESTION *

1. 3 hrs. - no cases found
2. 45 min.
3. 45 min.
4. 1 hr. 45 min.
5. 45 min.
6. 1 hr. 15 min.
7. 1 hr. 45 min.
8. 1 hr. 15 min.
9. 1 hr.
10. 1 hr.
11. 1 hr. 45 min.
12. 1 hr. 15 min.
13. 1 hr. 15 min.
14. 45 min.
15. 1 hr. 15 min.
16. 1 hr. 15 min.
17. 1 hr. 10 min.
18. 45 min.
19. 1 hr. 15 min.
20. 1 hr. 15 min.
21. 10 min.

* Each time includes 15 minutes to organize before typing. Add an additional 30 minutes per full page for typing.

1. Does a defendant have an absolute right to waive a preliminary hearing over the objection of the prosecutor?

Federal: Closest case found:

In absence of statute providing otherwise, preliminary hearing is not prerequisite or indispensable step in prosecution of person accused of crime.

Couser v. Cox, 324 F.Supp. 1140 (1971).

California: Similar to above (not on point).

Missouri: Same.

2. What constitutes an intervening cause in determining cause of death in a murder case?

Federal: No cases found.

California:

In prosecution for murder, burglary, and arson of a dwelling, it was not error to fail to instruct that deaths must have been proximately caused by fire and not from other's negligence in rescuing.

People v. Nichols, 474 P.2d 673, 89 Cal.Rptr. 721, cert. denied 91 S.Ct. 1338, 402 U.S. 910, 28 L.Ed.2d 652 (1970).

Removal of artificial life-support systems from homicide victim after all electrical activity in the brain had ceased was not independent, intervening cause of death so as to relieve defendant of criminal responsibility.

People v. Saldana, 121 Cal.Rptr. 243 (1975).

Missouri: No cases found.

3. Can a qualified expert testify to tennis shoe or shoe print comparisons and similarities?

Federal:

Admission of footprints was not abuse of discretion even though there were gaps in testimony regarding custody of such where government produced experts to show footprint matched defendant's tennis shoes in a comparison made by microscopic analysis.

U.S. v. De Larosa, 450 F.2d 1057, cert. denied Baskin v. U.S., 92 S.Ct. 978, 405 U.S. 927, 30 L.Ed.2d 800, cert. denied Noel v. U.S., 92 S.Ct. 1188, 405 U.S. 957, 31 L.Ed.2d 235, Jones v. U.S., 92 S.Ct. 1189, 405 U.S. 957, 31 L.Ed.2d 236 (1971).

Claim that a border patrol agent lacked sufficient training to testify as expert witness concerning unusual characteristics of footprints attacked weight, not admissibility of his testimony.

U.S. v. Powell, 449 F.2d 335 (1971).

California: No cases found.

Missouri: No cases found.

4. Can a court order a State's witness to be mentally or physically examined to determine the witness' competency to testify at trial?

Federal:

Trial judge, in his discretion, may order physical examination of a witness.

Gurleski v. U.S., 405 F.2d 253, cert. denied Smith v. U.S., 89 S.Ct. 2127, 395 U.S. 977, 23 L.Ed.2d 765, and 89 S.Ct. 2140, 395 U.S. 981, 23 L.Ed.2d 769, rehearing denied 90 S.Ct. 37, 396 U.S. 869, 24 L.Ed.2d 124 (1968).

Whether to permit psychiatric examination of prosecution witness was within discretion of trial judge.

U.S. v. Pacelli, 521 F.2d 135 (1975).

Also:
Shuler v. Wainwright, 491 F.2d 1213 (1974).
U.S. v. Butler, 325 F. Supp. 886, affirmed 481 F.2d 531, 156 U.S.App.D.C. 356 (1971).
U.S. v. Dildy, 39 F.R.D. 340 (1966).
U.S. v. Holmes, 452 F.2d 249, cert. denied 92 S.Ct. 1291, 405 U.S. 1016, 31 L.Ed.2d 479, Matthews v. U.S., 92 S.Ct. 1302, 405 U.S. 1016, 31 L.Ed.2d 479 and 92 S.Ct. 2433, 407 U.S. 909, 32 L.Ed.2d 683, rehearing denied 93 S.Ct. 305, 409 U.S. 1002, 34 L.Ed.2d 264 (1971).
U.S. v. Heinlein, 490 F.2d 725, 160 U.S.App.D.C. 157 (1973).
Carter v. U.S., 332 F.2d 728, cert. denied 85 S.Ct. 79, 379 U.S. 841, 13 L.Ed.2d 47 (1964).
U.S. v. Barnard, 490 F.2d 907, cert. denied 94 S.Ct. 1976, 416 U.S. 959, 40 L.Ed.2d 310 (1973).
U.S. v. La Barbara, 463 F.2d 988 (1972).
U.S. v. Gebhart, 436 F.2d 1252, cert. denied 92 S.Ct. 149, 404 U.S. 846, 30 L.Ed.2d 83 (1971).
U.S. v. Skillman, 442 F.2d 534, cert. denied 92 S.Ct. 82, 404 U.S. 833, 30 L.Ed.2d 83 (1971).
U.S. v. Russo, 442 F.2d 498, cert. denied 92 S.Ct. 669, 404 U.S. 1023, 30 L.Ed.2d 673, rehearing denied 92 S.Ct. 930, 405 U.S. 949, 30 L.Ed.2d 819 (1971).

California:

Issue before court in determining whether to grant motion for psychiatric examination of complaining witness is whether it is necessary or proper that psychiatric knowledge in general be utilized in order to aid trier of fact in its assessment of credibility.

People v. Russel, 443 F.2d 794, 70 Cal.Rptr. 210, 69 C.2d 187, cert. denied Russel v. Craven, 89 S.Ct. 145, 393 U.S. 864, 21 L.Ed.2d 132 (1968).

Whether such examination should be ordered is matter subject to exercise of judicial discretion by trial court.

People v. Francis, 85 Cal.Rptr. 61, 5 C.A.3d 414, (1970).

Also:
People v. Barnett, 127 Cal.Rptr. 88 (1976).
People v. Davis, 98 Cal.Rptr. 71, 20 C.A.3d 890 (1971).

Missouri: No cases found.

5. Can a court order local police departments to furnish defense counsel with the criminal backgrounds of State's witnesses?

Federal: Closest cases found:

Failure of Government to comply with pretrial discovery order by providing defense counsel with a complete and current version of criminal record of Government's principal witness did not deny defendant due process of law, in absence of showing of bad faith or prejudice.

U.S. v. McCord, 509 F.2d 891 (1975).

Also:
Shaw v. Robbins, 338 F.Supp. 756 (1972).

California: No cases found.

Missouri: No cases found.

6. Can a police officer testify to extrajudicial identifications?

Federal: Closest case found:

Testimony as to out-of-court photographic identifications of defendant by two hostages was admissible over

defendant's hearsay objection in respect to the testimony of FBI agents that the photographs shown the hostages were in fact photographs of defendant, since the probative value of the pretrial identification was strong despite the partial hearsay nature of the identification of the photographs as being of defendant, and since defendant's objection was purely technical, rather than being based on a claim that the photographs were not of him.

U.S. v. Holland, 378 F.Supp. 144, affirmed Appeal of Ehly, 506 F.2d 1050 and 506 F.2d 1053, cert. denied Ehly v. U.S., 95 S.Ct. 1433 (1974).

Also:
U.S. v. Johnson, 412 F.2d 753, cert. denied 90 S.Ct. 959, 397 U.S. 944, 25 L.Ed.2d 124 (1969).

California:

Permitting police officer to testify as to an extrajudicial photographic identification of defendant by deputy sheriff who died following preliminary hearing and who had not testified at preliminary hearing that he made a photographic identification was violation of hearsay rule but did not, standing alone, necessitate reversal of judgment, in that transcript of preliminary proceeding left no doubt that deceased deputy identified defendant as person from whom he made two purchases of contraband and such identification was independent from objectionable hearsay photographic identification.

People v. Mayfield, 100 Cal.Rptr. 104. 23 C.A.3d 236.

Also:
People v. Walters, 60 Cal.Rptr. 374, 252 A.C.A. 352 (1967).

Missouri:

Testimony of officer that identifying witness had identified defendant by means of photograph is

inadmissible absent impeachment of the identifying witness' testimony as to the extrajudicial identification, but admission of such testimony may or may not be harmless error.

State v. Collett, 526 S.W.2d 920 (1975).

Also:
State v. Degraffenreid, 477 S.W.2d 57 (1972).
State v. Starkey, 536 S.W.2d 858 (1976).
State v. Bibbs, 461 S.W.2d 755 (1970).

7. Can a prosecutor impeach his own witness?

Federal:

Impeachment of government witness who had recanted his previous testimony a week before trial was proper, and fact that such witness had confirmed his original testimony two weeks before trial, and indicated he was in doubt a week before the trial as to what his testimony would be, did not mean the prosecution could not have been "surprised."

Ewing v. U.S., 386 F.2d 10, cert. denied 88 S.Ct. 1192, 390 U.S. 991, 19 L.Ed.2d 1299 (1967).

Also:
U.S. v. Karnes, 531 F.2d 214 (1976).
U.S. v. Rowan, 518 F.2d 685 (1975).
U.S. v. Lemon, 497 F.2d 854 (1974).
U.S. v. Gerry, 515 F.2d 130 (1975).
Bushaw v. U.S., 353 F.2d 477, cert. denied 86 S.Ct. 1371, 384 U.S. 921, 16 L.Ed.2d 441 (1965).
U.S. v. Coppola, 479 F.2d 1153 (1973).
U.S. v. Stephens, 492 F.2d 1367, cert. denied 95 S.Ct. 93, and Silverman v. U.S., 95 S.Ct. 136 (1974).
U.S. v. Cunningham, 446 F.2d 194, cert. denied 92 S.Ct. 302, 404 U.S. 950, 30 L.Ed.2d 266 (1971).
U.S. v. Baldivid, 465 F.2d 1277, cert. denied 93 S.Ct. 519, 409 U.S. 1047, 34 L.Ed.2d 499 (1972).
U.S. v. Allen, 468 F.2d 612, cert. denied 93 S.Ct. 1389, 410 U.S. 935, 35 L.Ed.2d 599 (1972).

California:

There was no error in allowing district attorney in murder prosecution to impeach prosecution witness by evidence of contradictory statements on ground that district attorney was surprised because of witness' testimony which was contrary to statements witness had made to police.

People v. Miller, 53 Cal.Rptr. 720, 245 C.A.2d 112, cert. granted 88 S.Ct. 460, 389 U.S. 968, 19 L.Ed.2d 459, cert. dismissed 88 S.Ct. 2258, 392 U.S. 616, 20 L.Ed.2d 1332 (1966).

Under statutes, prosecutor's impeachment of his own witnesses was proper.

People v. Neese, 77 Cal.Rptr. 314 (1969).

Also:
People v. Adams, 66 Cal.Rptr. 161, 259 C.A.2d 109 (1968).
People v. Robinson, 86 Cal.Rptr. 56, 6 C.A.3d 448, cert. denied Robinson v. California, 91 S.Ct. 149, 400 U.S. 907, 27 L.Ed.2d 145 (1970).
People v. Donovan, 77 Cal.Rptr. 293 (1969).
People v. Woodberry, 71 Cal.Rptr. 165, 265 C.A.2d 351, appeal after remand 89 Cal.Rptr. 330, 10 C.A.3d 695 (1968).

Missouri:

Prosecution may not impeach his own witness unless witness has become hostile or adverse.

State v. Renfro, 408 S.W.2d 57 (1966).

8. What constitutes immunity to a witness?
(This question is too broad.)

Federal: Closest cases found:

A defendant does not have a constitutional right to have immunity conferred upon a defense witness who exercises

his privilege against self-incrimination, particularly where prosecution does not secure any of its evidence by means of an immunity grant.

U.S. v. Ramsey, 503 F.2d 524, cert. denied 95 S.Ct. 1136 (1974).

Prospective witness or defendant may be shielded from criminal prosecutions which might follow from self-incriminating testimony by means of grant of pardon by appropriate executive officer, or by grant of immunity under powers statutorily conferred by legislature.

Uniformed Sanitation Men Ass'n v. Commissioner of Sanitation of City of New York, 304 F.Supp. 65 (1969).

Also:
U.S. v. McDaniel, 449 F.2d 832, cert. denied 92 S.Ct. 1264, 405 U.S. 992, 31 L.Ed.2d 460, on remand 352 F.Supp. 585, affirmed 482 F.2d 305 (1971).
U.S. v. Allstate Mortg. Corp., 507 F.2d 492 (1974).

California: Closest cases found:

Witness Immunity Act regulates grant of immunity from criminal prosecutions not only as to witnesses not themselves within target area of pending investigation or prosecution but also within such target area.

People v. Brunner, 108 Cal.Rptr. 501, 32 C.A.3d 908 (1973).

Also:
People v. Stewart, 81 Cal.Rptr. 562 (1969).

Missouri:

Right of a witness to claim privilege against self-incrimination is personal to him, and even though the court may fail to grant the witness his constitutional immunity, defendant has no ground for complaint unless his own rights were violated.

State v. Phillips, 511 S.W.2d 841 (1974).

9. Must a probation officer give a defendant-probationer his Miranda rights before talking with the defendant-probationer about another charge or offense?

Federal: No cases found relating specifically to another charge or offense.

Where defendant's probation was subject to condition that he would promptly and truthfully answer all questions directed to him by his probation officer, privilege against self-incrimination was not available to defendant in answering questions put to him by his probation officer and, thus, there was not necessity for officer to give defendant Miranda warnings, and admissions made by defendant to officer were legally obtained and admissible against defendant in proceeding to revoke probation.

U.S. v. Delgado, 397 F.Supp. 708 (1974).

Also:
U.S. v. Johnson, 455 F.2d 932, cert. denied 93 S.Ct. 136, 409 U.S. 856, 34 L.Ed.2d 101 (1972).

California:

Statements, which related to murder of which defendant was accused, made by defendant to probation officer spontaneously and in course of social conversations were not product of interrogation and were not inadmissible for failure to give Miranda warning.

People v. Carter, 110 Cal.Rptr. 324, 34 C.A.3d 748 (1973).

Also:
People v. Webster, 93 Cal.Rptr. 260, 14 C.A.3d 739 (1971).

Missouri:

Officers of state board of probation and parole in investigation of facts involving possible commission by an indigent parolee of fresh or new felony must give parolee all four of the constitutional warnings as to his rights where he has been arrested and taken into actual police custody.

State v. Williams, 486 S.W.2d 468 (1972).

10. Must a juvenile be re-admonished of his Miranda rights prior to continued questioning after denying complicity in the crime under investigation and then being left alone in the interrogation room for a period of three hours?

Federal:

Fifteen-year-old boy after two and a half-hour period of questioning by police should have been advised of his right to counsel and to remain silent before he retold his story with significant detail differing from prior version.

Michaud v. Robbins, 424 F.2d 971 (1970).

Also:
U.S. v. Ramsey, 367 F.Supp. 1307 (1973).

California: Closest cases.

Miranda warnings given minor by probation officer did not constitute a significant break in chain of events between admissions made to probation officer and prior admissions made to police and rendered involuntary by improper police conduct, especially since warnings had been immediately preceded by minor's inquiry whether his statements would be used against him and probation officer's assurances that they would not.

In re Garth D., 127 Cal.Rptr. 881 (1976).

Also:
People v. Ellingsen, 65 Cal.Rptr. 744, 258 A.C.A. 635 (1968).

Missouri:

In homicide prosecution, admission of statement made by juvenile to deputy juvenile officer concerning whereabouts of gun allegedly used in murder was

prejudicial error, where such statement was made ten days after Miranda warnings were given, statement was made to juvenile officer alone in atmosphere of juvenile court, juvenile officer regarded such statement to be "confidential," and juvenile was in custody of the juvenile system.

State v. Ross, 516 S.W.2d 311 (1974).

11. Is a search warrant valid when based upon information obtained from a telephone call, if the caller is unknown to the sheriff who signed the affidavit on the warrant?

Federal:

Observations of attesting officers based on surveillance of accused, who was suspected of engaging in lottery business, and confidential information given through anonymous telephone call was sufficient probable cause for issuance of search warrants for search of person and automobile of accused.

U.S. v Schwartz, 234 F.Supp. 804 (1964).

Report by telephone to highway patrol from assistant service station manager that credit card purchase had been made at station and that subsequent telephone call elicited information that credit card was stolen carried with it sufficient indicia of reliability where the assistant manager identified himself and the internal content of the call intrinsically proved the truth of the report and satisfied the "reliability of the informant" test to establish probable cause for issuance of search warrant.

U.S. v. Wilson, 479 F.2d 936 (1973).

Also:
U.S. v. Pascente, 387 F.2d 923, cert. denied 88 S.Ct. 1248, 390 U.S. 1005, 20 L.Ed.2d 105 (1967).
U.S. v. Melvin, 419 F.2d 136 (1969).
Brett v. U.S., 412 F.2d 401 (1969).
U.S. v. Calovich, 392 F.Supp. 52 (1975).
U.S. v. Unger, 469 F.2d 1283, cert. denied 93 S.Ct. 1546, 411 U.S. 920, 36 L.Ed.2d 313 (1972).

California:

Affidavit set forth sufficient facts to demonstrate probable cause for issuance of search warrant, though affidavit showed that information concerning possession of marijuana was obtained through telephone calls from anonymous informer, where information was verified.

People v. Prieto, 12 Cal.Rptr. 577, 191 C.A.2d 62 (1961).

Fourth Amendment probable cause may result from information received from so-called "citizen-informer" not shown to be involved in criminal activities, even though his credibility has not previously been tested.

In re G., 90 Cal.Rptr. 361, 11 C.A.3d 1193 (1970).

Also:
People v. Scoma, 455 F.2d 419, 78 Cal.Rptr. 491, 71 C.2d 332 (1969).

Missouri: Closest cases:

State v. Wiley, 522 S.W.2d 281 (1975).
State v. Phillips, 532 S.W.2d 533 (1976).

12. Can one be convicted of "possession of a gun by a felon" if the gun is inoperable?

Federal:

Evidence sufficiently showed that object actually could have been fired and was a firearm within statute making unlawful the possession of a firearm by a convicted felon.

U.S. v. Liles, 432 F.2d 18 (1970).

Firearms generally,
U.S. v. Melancon, 462 F.2d 82, cert. denied 93 S.Ct. 516, 409 U.S. 1038, 34 L.Ed.2d 487 (1972).
U.S. v. Samson, 533 F.2d 721 (1976).
U.S. v. Pleasant, 469 F.2d 1121, appeal after remand 489 F.2d 1028, cert. denied 94 S.Ct. 2398, 416 U.S. 989, 40 L.Ed.2d 768 (1972).

California:

Purpose of statute prohibiting possession of concealable weapons by person previously convicted of felony is to make it unlawful for ex-convicts to carry a gun that will shoot and not merely objects that look like usable guns.

People v. Jackson, 72 Cal.Rptr. 162, 266 C.A.2d 341 (1968).

Missouri: No cases found.

13. If a tort results in aggravation of a pre-existing injury, what rule of damages is to be applied?

Federal:

Tortfeasor is liable to extent that his wrong aggravates pre-existing disability, but he is liable only to extent of aggravation and is not liable for pre-existing condition as such.

Sweet Mild Co. v. Stanfield, 353 F.2d 811 (1965).

Tortfeasor takes his victim as he finds him and is liable for full extent of damage he has inflicted, even if it is greater than he could have foreseen because plaintiff was particularly susceptible to injury.

Tabor v. Miller, 389 F.2d 645, cert. denied Stearns v. Tabor, 88 S.Ct. 1810, 391 U.S. 915, 20 L.Ed.2d 654 (1968).

Also:
Sizemore v. U.S. Lines Co., 323 F.2d 774 (1963).
McDonald v. United Airlines, Inc., 365 F.2d 593 (1966).
Henderson v. U.S., 328 F.2d 502 (1964).
Russell v. City of Wildwood, 428 F.2d 1176 (1970).
Evans v. S. J. Groves & Sons, Co., 315 F.2d 335 (1963).
Buchalski v. Universal Marine Corp., 393 F.Supp. 246 (1975).
Holliday v. Chicago, B. & Q. R. Co., 255 F.Supp. 879 (1966).

California:

Tortfeasor may be held responsible where effect of his negligence is to aggravate pre-existing condition or disease.

Hastie v. Handeland, 79 Cal.Rptr. 268 (1969).

Also:
Matthies v. Dubuque Packing Co., 61 Cal.Rptr. 282, 253 C.A.2d 202 (1967).

Missouri:

Plaintiff may recover for aggravation of existing disease, if aggravation is caused by negligence of defendant, and he may recover such damages as proximately result from activation of dormant or latent disease.

Immekus v. Quigg, 406 S.W.2d 298 (1966).

Also:
Homeyer v. Wyandotte Chemical Corp., 421 S.W. 306 (1967).
Robinson v. Krey Packing Co., 467 S.W.2d 91 (1971).

14. What factors should the jury be instructed to consider in assessing damages if a tortiously injured plaintiff produces testimony concerning the availability of corrective surgery to lessen, not eliminate, the injury but has not committed himself to undergo such surgery?

Federal:

Fact that doctor for personal injury plaintiff refused to "foretell the future" did not operate to bar an instruction that jury could consider in its computation of damages medical care, hospitalization, and treatment "reasonably certain to be needed in the future" and was merely evidence for jury to consider,

where doctor did testify that plaintiff's injury made her more susceptible to degenerative diseases, and where standard of "reasonable certainty" enunciated in instruction fully comported with Kansas law.

Blim v. Newbury Industries, Inc., 443 F.2d 1126 (1971).

Also:
Dindo v. Grand Union Co., 331 F.2d 138 (1964).
Smith v. Bowater S. S. Co., 339 F.Supp. 399 (1972).
Bohannon v. Tandy Transp. Co., 402 F.Supp. 783 (1975).

California: No cases found.

Missouri:

Evidence that plaintiff in order to alleviate his condition would be required to undergo future disc surgery and fusion or stabilization surgery was not sufficiently lacking so as to justify granting of new trial for trial court's refusal to give instructions withdrawing issue as to future surgery from case.

Crawford v. Chicago-Kansas City Freight Line, Inc., 443 S.W.2d 161 (1969).

15. Was an informer who introduced an undercover police agent to defendant and who went with the agent to defendant's house allegedly to buy drugs, but who was not actually present in the room during the transaction, an active participant in the transaction? If so, was the informer a material witness whose testimony is essential to a fair trial for defendant and whose name must be revealed to defendant?

Federal:

Where informant had bought none of the heroin and had not participated in negotiations and was only one of several witnesses to purchases made by agent, there was no abuse of discretion is sustaining government's claim of privilege as to identity of the confidential informant.

U.S. v. McGruder, 514 F.2d 1288 (1975).

Inquiry as to whether disclosure of identity of informant-participant is necessary to a fair determination of the issue of an accused's guilt or innocence centers on the likelihood that the informant possesses facts which are relevant and helpful to the accused in preparing his defense on the merits.

U.S. v. Freund, 525 F.2d 873 (1976).

Also:
U.S. v. Malizia, 503 F.2d 578, cert. denied 95 S.Ct. 834 (1974).
U.S. v. Bailey, 503 F.2d 969 (1974).
Bourbois v. U.S., 530 F.2d 3 (1976).
U.S. v. Sklaroff, 323 F.Supp. 296 (1971).
U.S. v. Marshall, 526 F.2d 1349 (1975).
U.S. v. Gocke, 507 F.2d 820 (1974).
U.S. v. McLaughlin, 525 F.2d 517 (1975).
U.S. v. Fischer, 531 F.2d 783 (1976).
U.S. v. Hernandez-Vela, 533 F.2d 211 (1976).
U.S. v. Almendarez, 534 F.2d 648 (1976).

California:

Where evidence indicates that informer was an actual participant in the crime alleged, or that he was a nonparticipating eyewitness to that offense, informer would be a material witness on the issue of guilt, and nondisclosure of informer's identity would deprive defendant of a fair trial.

Williams v. Superior Court for San Joaquin County, 112 Cal.Rptr. 485, 38 C.A.3d 412 (1974).

No disclosure of identity of informant is required where he has simply pointed the finger of suspicion at a person who violated the law, but if he was a participant in the act, his identity must be revealed.

People v. Scott, 66 Cal.Rptr. 257, 259 C.A.2d 268 (1968).

Also:
People v. Goliday, 505 P.2d 537, 106 Cal.Rptr. 113, 8 C.3d 771 (1973).
Theodor v. Superior Court of Orange County, 501 P.2d 234, 104 Cal.Rptr. 226, 8 C.3d 77 (1972).
People v. Garcia, 434 P.2d 366, 64 Cal.Rptr. 110, 67 C.2d 830 (1967).
People v. Lara, 61 Cal.Rptr. 303, 253 C.A.2d 600 (1967).
People v. Tolliver, 125 Cal.Rptr. 905 (1975).
Honore v. Superior Court of Alameda County, 449 P.2d 169, 74 Cal.Rptr. 233 (1969).
Price v. Superior Court of San Diego County, 463 P.2d 721, 83 Cal.Rptr. 369, 1 C.3d 836 (1970).

Missouri:

Participation by an informer in the unlawful transaction is not alone sufficient to require disclosure of the informer's identity.

State v. Taylor, 508 S.W.2d 506 (1974).

Also:
State v. Yates, 442 S.W.2d 21 (1969).

16. Is the affirmative defense of duress available in a criminal trial?

If so, must there be evidence that the duress was present, imminent, and impending at the time of the defendant's criminal action? Is the defense still available when the criminal act, which the defendant claims was committed under duress, occurred two days after the threat of injury?

Federal:

Duress is a defense only if defendant reasonably feared immediate death or serious bodily injury which could

be avoided only by committing the criminal act charged.

U.S. v. Nickels, 502 F.2d 1173 (1974).

Also:
U.S. v. Gordon, 526 F.2d 406 (1975).
U.S. v. Furr, 528 F.2d 578 (1976).
U.S. v. Birch, 470 F.2d 808, cert. denied 93 S.Ct. 1897, 411 U.S. 931, 36 L.Ed.2d 390 (1972).

California:

Defense of duress requires proof of threat of imminent violence; fear of future bodily harm does not suffice.

People v. Killman, 124 Cal.Rptr. 673 (1975).

Also:
People v. Lo Cicero, 459 P.2d 241, 80 Cal.Rptr. 913 (1969).
People v. Evans, 82 Cal.Rptr. 877 (1969).

Missouri: All cases found on duress refer to guilty pleas, confessions, or contracts.

17. Does a federal conviction in the U.S. District Court for conspiracy to distribute, conspiracy to possess with intent to distribute, and possession with intent to distribute hashish, operate as double jeopardy relative to the prosecution of defendant by the State for distribution of hashish?

Federal: Closest case found:

Fact that defendants had been prosecuted in state court for theft by deception, fraud, conspiracy, and forgery and had been acquitted of those charges did not bar, on ground of double jeopardy, subsequent federal prosecution for mail fraud and conspiracy even if factual underpinning of federal indictment was identical to that which gave rise to state prosecution.

U.S. v. Albowitz, 380 F.Supp. 553 (1974).

California: No cases found.

Missouri: No cases found.

18. Was it reversible error for the trial judge to fail to charge the jury on a kidnapping charge on the issue of whether the asportation of the victim was merely incidental to an underlying crime?

Federal: Closest case:

The introduction of evidence of jailbreak in prosecution for kidnapping was not error where jury was instructed that defendant was being tried for kidnapping and not for escape or any other offense which might have been committed prior to the time of the kidnapping.

U.S. v. Stubblefield, 408 F.2d 309 (1969).

California:

Where movement was not merely incidental to commission of offenses, trial court did not err in refusing to instruct that if movement was merely incidental to commission of another crime it could not constitute sufficient asportation to support conviction of kidnapping.

People v. Lynch, 92 Cal.Rptr. 411, 14 C.A.3d 602 (1971).

Defendant could not be convicted of kidnapping for purpose of robbery or simple kidnapping, as lesser offense included within charge of kidnapping for purpose of robbery, absent showing that defendant's asportation of motorists was not merely incidental to commission of robbery or that it substantially increased risk of harm over and above that necessarily present in crime of robbery itself.

People v. Lobaugh, 95 Cal.Rptr. 547, 18 C.A.3d 75 (1971).

Also:
People v. Thornton, 523 P.2d 267, 114 Cal.Rptr. 467 (1974).
People v. Laursen, 501 P.2d 1145, 104 Cal.Rptr. 425, 8 C.3d 192 (1972).
People v. Ellis, 92 Cal.Rptr. 907, 15 C.A.3d 66 (1971).
People v. Henderson, 101 Cal.Rptr. 129, 25 C.A.3d 371 (1972).
People v. Cleveland, 104 Cal.Rptr. 161, 27 C.A.3d 820 (1972).
People v. Laster, 96 Cal.Rptr. 108, 18 C.A.3d 381 (1971).

Missouri: No cases found.

19.A. Is entrapment established, as a matter of law, when a police informer furnishes narcotics to an individual who is later convicted of selling the same contraband back to a police undercover agent?

Federal:

The defense of entrapment was not available to defendant who sold to government agents heroin supplied by government informer where defendant was predisposed to commit the crime. (Per Mr. Justice Rehnquist with the Chief Justice and one Justice concurring and two Justices concurring in the judgment.)

Hampton v. U.S., 96 S.Ct. 1646 (1976).

Fact that cocaine sold by defendant to government agent was part of two kilos of cocaine furnished defendant's brother by a government informer did not constitute entrapment at law where no government participation was involved in the sale made by defendant.

U.S. v. Rodriguez, 474 F.2d 587 (1973).

Also:
U.S. v. West, 511 F.2d 1083 (1975).
U.S. v. Dovalina, 525 F.2d 952 (1976).
U.S. v. Minichiello, 510 F.2d 576 (1975).
U.S. v. Soto, 504 F.2d 557 (1974).

California: Closest case found:

"Entrapment" occurs if the criminal intent is conceived in the mind of the state agent and the accused is lured into commission of the crime by persuasion or deceitful representation, but entrapment does not occur if the accused harbors a pre-existing criminal intent and commits the crime because of solicitation by a decoy.

Patty v. Board of Medical Examiners, 508 P.2d 1121, 107 Cal.Rptr. 473, 9 C.3d 356 (1973).

Also:
People v. Lara, 61 Cal.Rptr. 303, 253 C.A.2d 600 (1967).

Missouri: Closest case found:

Evidence generated jury question as to whether defendant, whom police informer had given money to purchase narcotics for police officer, was unlawfully entrapped into making unlawful sale of narcotic drug, marijuana.

State v. Stock, 463 S.W.2d 889 (1971).

Also:
State v. Weinzerl, 495 S.W.2d 137 (1973).

B. Is the State accountable for the acts of an informer when the police had no prior knowledge of, and did not give prior consent to, the conduct of the informer? Is an informer an agent of the police only for such acts performed within the scope of the authority granted him?

Federal: Closest case found:

Informant agent of state law enforcement agency and his chief could not be immune from liability for damages under federal civil rights if they knew or reasonably

should have known that action they took within sphere of official responsibility would violate constitutional rights of defendant in criminal case.

Bursey v. Weatherford, 528 F.2d 483 (1975).

California: No cases found.

Missouri: No cases found.

20. Is a defendant entitled to a jury trial on a mental competency hearing?

Federal:

Failure to submit sanity question to competency jury did not deprive prisoner of due process. And, even if state had affirmative duty to submit sanity question to competency jury, right was one created by state statute and was not cognizable on federal habeas corpus.

Parker v. Estelle, 498 F.2d 625, rehearing denied 503 F.2d 567 (1974).

Trial court did not abuse his discretion in resolving himself the issue of defendant's competency to stand trial rather than submit issue to jury.

U.S. v. Holmes, 452 F.2d 249, cert. denied 92 S.Ct. 1291, 405 U.S. 1016, 31 L.Ed.2d 479, Matthews v. U.S., 92 S.Ct. 1302, 405 U.S. 1016, 31 L.Ed.2d 479 and 92 S.Ct. 2433, 407 U.S. 909, 32 L.Ed.2d 683 (1971).

Also:
U.S. v. Huff, 409 F.2d 1225, cert. denied 90 S.Ct. 123, 396 U.S. 857, 24 L.Ed.2d 108 (1969).
U.S. ex rel. Heirens v. Pate, 405 F.2d 449, cert. denied 90 S.Ct. 113, 396 U.S. 853, 24 L.Ed.2d 102, rehearing denied 90 S.Ct. 267, 396 U.S. 938, 24 L.Ed.2d 239 (1968).
U.S. v. Cottle, 472 F.2d 1037 (1972).
Pate v. Robinson, 86 S.Ct. 836, 383 U.S. 375, 15 L.Ed.2d 815 (1966).
Sharp v. Beto, 282 F.Supp. 558 (1968).
Seibold v. Daniels, 337 F.Supp. 210 (1972).

California:

A defendant is entitled to a jury determination of his competency to stand trial.

People v. Superior Court for Los Angeles County, 124 Cal.Rptr. 158 (1975).

Also:
People v. Hays, 126 Cal.Rptr. 770 (1976).
People v. Kurbegovic, 130 Cal.Rptr. 576 (1976).
People v. Cisneros, 110 Cal.Rptr. 269, 34 C.A.3d 399 (1973).

Missouri:

Issue of insanity at time of the act is distinct from issue of competency to stand trial, not only as to proof required but also as to procedure; question of insanity is for the jury, while question of competency is for the court.

Boyer v. State, 527 S.W.2d 432 (1975).

Also:
Franklin v. State, 455 S.W.2d 479 (1970).
Matter of Brown, 527 S.W.2d 395 (1975).

21. When testing for common scheme or design, for purposes of joinder of offenses in a rape case, has an assailant ever said, "You must please me"?

Federal: No cases found.

California: No cases found.

Missouri: No cases found.

Full-text System Answers And Times For Problem Set Number Two By Researcher 1

SUMMARY OF TIME USED PER QUESTION

Problem No.	Researching	Organizing & Writing	Total
2.	55 min.	20 min.	1 hr. 15 min.
4.	1 hr.	15 min.	1 hr. 15 min.
6.	12 min.	20 min.	32 min.
8.	45 min.	25 min.	1 hr. 10 min.
10.	15 min.	20 min.	35 min.
12.	1 hr.	15 min.	1 hr. 15 min.
14.	1 hr. 5 min.	25 min.	1 hr. 30 min.
16.	20 min.	20 min.	45 min.
18.	1 hr. 5 min.	20 min.	1 hr. 25 min.
20.	20 min.	20 min.	40 min.
22.	20 min.	15 min.	35 min.
24.	20 min.	20 min.	40 min.
TOTAL:	7 hr. 37 min.	3 hr. 55 min.	11 hr. 32 min.

2. May attorney's fees, statutorily authorized, be assessed against a county board of education consistent with the 11th Amendment?

The Court permitted a suit under § 1983 to require the payment of an attorney's fee to be charged against the Board of Education of the City of Richmond in Bradley v. Richmond School Board, 416 U.S. 696 (1974).

Also:
Davis v. Board of School Commissioners of Mobile County 526 F.2d 865 (5th Cir. 1976), cert. denied 44 L.W. 3589 (1976).
Brubaker v. Board of Education, School Dist. 149 Cook County, 502 F.2d 973 (7th Cir. 1974);
Singleton v. Vance County Board of Education, 501 F.2d 429 (4th Cir. 1974);
Hegler v. Board of Education of Bearden School Dist., Bearden Arkansas, et al., 447 F.2d 1078 (8th Cir. 1971);
Hill v. Franklin County Board of Education, et al., 390 F.2d 583 (6th Cir. 1968);
Dowell v. Board of Education of Independent School Dist. No. 89 of Oklahoma County, Oklahoma, No. 9452, Slip Opinion, (W.Dist. of Oklahoma, Mar. 26, 1976);
Doherty v. Wilson and Sumter County Board of Education, 356 F.Supp. 35 (1973);
Downs v. Conway School Dist., 328 F.Supp. 338 (1971).

4. What is the federal law applicable to a judge's refusal to repeat a reasonable doubt instruction after he gave it once?

It is not an abuse of discretion by the trial court to refuse to repeat [a reasonable doubt] instruction when the jury has already been given complete instructions on the subject.

U.S. v. Rodriguez, 510 F.2d 1 (5th Cir. 1975).

Also:
U.S. v. Jones, 482 F.2d 747 (D.C. Cir. 1973).

6. Are the venue provisions of 12 U.S.C. § 94 which place venue in a suit brought against a national bank only in the district in which it is located, permissive or mandatory?

Section 94 provides that suits against a national banking association "may be had" in the federal district court for the district where such association is established. The Court has held that this grant of venue is mandatory and exclusive: "The phrase 'suits... May be had' was, in every respect, appropriate language for the purpose of specifying the precise courts in which Congress consented to have national banks subject to suit and we believe Congress intended that in those courts alone could a national bank be sued against its will."

Radzanower v. Touche Ross & Co., et al., No. 75-268, Supreme Court of the U.S., Slip opinion, June 7, 1976.

Also:
Mercantile Nat'l. Bank v. Langdeau, 371 U.S. 555, 560, (1963);
National Bank of North America v. Associates of Obstetrics and Female Surgery, Inc., et al., No. 75-1106, Supreme Court of the U.S., Slip Opinion, April 26, 1976.
Michigan Nat'l. Bank v. Robertson, 372 U.S. 591 (1963)

8. Does 28 U.S.C. § 455(a) include bias against an attorney as well as a party?

NOTE: The Courts seem divided on this issue.

[The affidavit] is insufficient because any showing of prejudice relates only to counsel and not any party. ...Because the affidavit fails to establish, or even claim bias or prejudice as to a party, it is insufficient as a matter of law and must be rejected.

U.S. v. Countryside Farms, Inc., No. Cr. 75-76, C.Div. Utah, Slip Opinion, March 29, 1976.

And:
Bias in favor of or against an attorney can certainly result in bias toward the party. ...[However] in our opinion the only issue presented is legal sufficiency of the affidavit.

U.S. v. Ritter, 540 F.2d 459, (10th Cir. 1976).

Also:
Davis v. Board of School Commissioners of Mobile County, 517 F.2d 1044 (5th Cir. 1975), cert. denied, 44 L.W. 3589 (1976);
Peckham v. Ronrico Corp., et al., 288 F.2d 841, (1st Cir. 1961);
Bumpus v. Uniroyal Tire Co., 385 F.Supp. 711 (1974);
Samuel v. University of Pittsburgh, 395 F.Supp. 1275, (1975).

10. May a claimant in an interpleader action assert a counterclaim?

Revising its previous position, the 10th Circuit decided that "nothing in Rule 13 bars the maintaining of a compulsory counterclaim in interpleader actions" in Liberty National Bank and Trust Co. of Oklahoma City, 540 F.2d 1375, (10th Cir. 1976).

Also:
Provident Mutual Life Insurance Co. of Phil. v. Erlich, 374 F.Supp. 1134 (1973).

12. What is the right of a bankrupt to bring a truth-in-lending action?

A Truth-in-Lending Act right of action passes to the trustee under the provisions of § 70A(5) of the Bankruptcy Act.

In the Matter of Warren, 387 F.Supp. 1395 (1975).

Also:
Porter v. Household Finance Corp. of Columbus, 385 F.Supp. 336 (1974);
In the matter of Whittlesey, No. 76-1429, Slip Opinion, (5th Cir., Nov. 10, 1976);
Pollock v. General Finance Corp., 535 F.2d 295, (5th Cir. 1976).

14. Is a civil service discharge for public sexual acts valid?

Problem: Found no case involving a "public" act but found applicable language and cases with discharges for less reason.

Example:

"Suitability standards in Section 731.201 of the Commission's regulations" cite as disqualifying factors: "Criminal, infamous, dishonest, immoral, or notorious disgraceful conduct"...

We conclude... that appellant's employment was not terminated because of his status as a homosexual or because of any private acts of sexual preference. The statements of the Commission's investigation division, hearing examiner, and Board of Appeals make it clear that the discharge was the result of appellant's "openly and publicly flaunting his homosexual way of life [i.e. obtaining publicity in various media].

Singer v. U.S. Civil Service Commission, 530 F.2d 247, (9th Cir. 1976).

Also:
Gayer v. Schlesinger, 490 F.2d 740, (D.C. Cir. 1973);
Norton v. Macy, 417 F.2d 1161, (D.C. Cir. 1969);
Scott v. Macy, 349 F.2d 182 (D.C. Cir. 1965);
Major v. Hampton, 413 F.Supp. 66, (1976);
Drake v. Covington County Board of Education, 371 F.Supp. 974 (1974);
Baker v. Hampton, 5 EPD P8604 (1973);
McConnell v. Anderson, 316 F.Supp. 809, (1970).

16. Is the wife of a person employed to bring a ship back from sailing races a seaman under the Jones Act in order for her to recover for an injury incurred on the return voyage?

Problem: Found no similar fact situation, but found many recent cases defining "seaman."

Example:

In recent years the traditional notions of both "crew" and "vessel" have been expanded and Jones Act coverage extended to individuals not formally assigned to maritime crews or conventional water-borne vessels. Nonetheless, there remains the jurisdictional requirement that a claimant alleging seaman status under the Jones Act has been connected, in more than a transitory way, with a vessel or vessels, and that his injuries have arisen in the course of his duties in the service of such a vessel or vessels.

Holland v. Allied Structural Steel Co., Inc., et al., No. 75-1421, Slip Opinion (5th Cir., Sept. 27, 1976).

Also:
Whittington v. Sewer Construction Co., Inc., 541 F.2d 427 (4th Cir. 1976);
Klarman v. Rose Santini, 503 F.2d 29 (2nd Cir. 1974);
Garrett v. Enso Gutzeit O/Y, 491 F.2d 228 (4th Cir. 1974);
Mahramas v. American Export Isbrantsen Lines, 475 F.2d 165, (2nd Cir. 1973);
Lambit v. The Carey Salt Co., 421 F.2d 1333 (5th Cir. 1970);
Desper v. Starved Rock Ferry Co., 342 U.S. 187 (1952).

18. What is the rule on admissibility of declarations of a codefendant in an "aid and abet" charge?

Appellant contends that this hearsay testimony about statements made by his codefendant was inadmissible under Bruton v. United States, 391 U.S. 123 (1968).

But, our view of the record leads us to conclude that [codefendant's] statements were insufficiently incriminating of [appellant] to require reversal. In light of other evidence of guilt, which was overwhelming, this testimony could have had but slight effect on the jury. In the circumstances of this case, any technical violation of the Rule of Bruton was harmless beyond a reasonable doubt.

U.S. v. Barber, 495 F.2d 327 (9th Cir. 1974).

Also:
U.S. v. Donner, 497 F.2d 184 (7th Cir. 1974);
U.S. v. Thompson, 476 F.2d 1196 (7th Cir. 1973);
U.S. v. Cohen, 387 F.2d 803 (1967), cert. denied 390 U.S. 996 (1968);
Stanley v. U.S., 245 F.2d 427 (6th Cir. 1957).

20. Does 45 CFR 233.100(a)(1), as amended, violate provisions of 42 U.S.C. § 607(a) which authorizes the Department of H.E.W. to prescribe standards for determination of unemployment in AFDC-UF Program?

The Secretary of Health, Education and Welfare was directed to promulgate a national definition of unemployment to which participating states would be required to adhere in administrating their programs. Under the regulation originally issued by HEW, 45 CFR 5 233.100(a)(1), the Secretary required each participating state to include all fathers, who were otherwise qualified, who were employed less than a given number of hours. Therefore those persons who were out of work because of a labor dispute and who had met all other eligibility criteria were entitled to AFDC-UF assistance if their state had chosen to participate. ...

Neither the language of the amendment nor its legislative history indicates a congressional intent to define unemployment as excluding those out of work due to a labor dispute. Rather, Congress directed the Secretary of HEW to determine the criteria which

would render people unemployed for purposes of the AFDC-UF Program. 42 U.S.C. § 607(a); ... The Secretary has acted accordingly, and the existing valid regulation does not preclude those out of work because of a labor dispute.

Super Tire Engineering Co., et al. v. McCorkle, 412 F.Supp. 192 (1976).

Also:
Francis v. Davidson, 379 F.Supp. 78 (1974).

22. Does the imposition of sentence under 18 U.S.C. § 4208(a)(2) vest sentencing court with continuing jurisdiction to consider prisoner's 28 U.S.C. § 2255 claim that Parole Board has denied him serious and meaningful parole consideration contrary to statute?

What looms large and open-ended to us is the implied principle that a proper claim for relief under § 2255 could be made to a sentencing judge by a prisoner confined in an institution in another district at any time when he can allege that the conditions of his confinement differ from what the judge had contemplated at the time of sentencing. Reading the grounds specified in § 2255, we can find no license for this kind of continuing jurisdiction.

U.S. v. DiRusso, 535 F.2d 673 (1st Cir. 1976).

Also:
Napoles v. U.S., 536 F.2d 722 (7th Cir. 1976).

24. Does the exclusion of pregnancy and related conditions from fringe benefit plan coverage constitute proscribed discrimination under Title VII of the 1964 Civil Rights Act as amended?

...The denial of pregnancy-related disability benefits [is] violative of Title VII of the Civil Rights Act of 1964, as amended...

The legislative purpose behind Title VII was to protect employees from any form of disparate treatment

because of race, color, religion, sex, or national origin or, as one commentator has stated it, "to make employment decisions sex-blind, as well as..."

Gilbert v. General Electric Co., 519 F.2d 661, (4th Cir. 1975) - [This was recently decided by the S.Ct.].

Also:
Wetzel v. Liberty Mutual Insurance Co., 511 F.2d 199 (3rd Cir. 1975);
Payne v. Travenol Laboratories, Inc. et al., 416 F.Supp. 248 (1976);
Equal Employment Opportunity Commission v. Children's Hospital of Pittsburgh, 415 F.Supp. 1345 (1976);
Lewis v. Cohen, 417 F.Supp. 1047 (1976);
Guse v. J.C.Penney Co., Inc., 409 F.Supp. 28 (1976);
Polston v. Metropolitan Life Insurance Co., 11 EPD P10, 826 (1975).

Headnote System Answers And Times For Problem Set Number Two By Researcher 2

SUMMARY OF TIME USED PER QUESTION

Problem No.	Time
2.	18 minutes
4.	15 minutes
6.	25 minutes
8.	20 minutes
10.	20 minutes
12.	25 minutes
14.	15 minutes
16.	25 minutes
18.	15 minutes
20.	25 minutes
22.	20 minutes
24.	25 minutes

2. May attorney's fees, statutorily authorized, be assessed against a county board of education consistent with the 11th Amendment?

The 11th Amendment did not bar award of attorney's fees against county board of education in school desegregation action.

Cunningham v. Grayson (1976) 541 F.2d 538
Allen v. State Board of Education (1972) 55 F.R.D. 350, affirmed 473 F.2d 906
Natonabah v. Board of Education of Gallup-McKinley County School District (1973) 355 F.Supp. 716

4. What is the federal law applicable to a judge's refusal to repeat a reasonable doubt instruction after he gave it once?

While it would have been better course of action for trial judge in drug prosecution to have repeated to the jury that the Government must prove each element of the crime charged beyond a reasonable doubt, failure to do so did not constitute prejudicial error where judge had previously informed the jury in his initial reading of the instructions, of the proper burden of proof.

United States v. Marshall (1976) 532 F.2d 1279
United States v. Jones (1973) 482 F.2d 747
Gebhard v. United States (1970) 422 F.2d 281
Johnson v. United States (1961) 291 F.2d 150, cert. den. 368 U.S. 880, 7 L.Ed. 80, 82 S.Ct. 130

6. Are the venue provisions of 12 U.S.C. § 94 which place venue in a suit brought against a national bank only in the district in which it is located, permissive or mandatory?

Venue provisions of the National Bank Act, 12 U.S.C. § 94, are mandatory and not permissive.

National Bank of North America v. Associates of Obstetrics & Female Surgery, Inc. (1976) 96 S.Ct. 1632

Radzanower v. Touche Ross & Co. (1976) 96 S.Ct. 1989
Mercantile National Bank at Dallas v. Langdeau (1963) 371 U.S. 555, 9 L.Ed.2d 523, on remand 365 S.W.2d 783
Northside Iron & Metal Co., Inc. v. Dobson & Johnson, Inc. (1973) 480 F.2d 798
First National Bank of Boston v. United States District Court for the District of California (1972) 468 F.2d 180

8. Does 28 U.S.C. § 455(a) include bias against an attorney as well as a party?

Under the federal judicial disqualification statute, a judge is required to disqualify himself when he finds himself possessed of bias or prejudice or, if he does not, he must confront the likelihood of proceedings under statute to require him to do so.

United States v. Ritter (1976) 540 F.2d 459
United States v. Brown (1976) 539 F.2d 467
Taylor v. American Bar Association (1975) 407 F.Supp. 451
Samuel v. University of Pittsburgh (1975) 395 F.Supp. 1275
Lazofsky v. Sommerset Bus Co., Inc. (1975) 389 F.Supp. 1041

10. May a claimant in an interpleader action assert a counterclaim?

Plaintiffs in an interpleader action were not "opposing parties" as to person asserting claim in interpleader action within Federal Rules of Civil Procedure relating to compulsory and permissive counterclaims, and, therefore, claimant would not be entitled to insert counterclaim against plaintiff in an interpleader action. (Rule 13 a,b)(Rule 22)

Grubbs v. General Electric Credit Corp. (1972) 405 U.S. 699, 31 L.Ed.2d 612, 92 S.Ct. 1344

Powers v. Metropolitan Life Insurance Company (1971) 439 F.2d 605
Erie Bank v. United States District Court for the District of Colorado (1966) 362 F.2d 539
First National Bank of Dodge City v. Johnson County National Bank and Trust Company (1964) 331 F.2d 325
City Federal Savings and Loan Association v. Crowley (1975) 393 F.Supp. 644
Maryland Gas Company v. Sauter (1973) 58 F.R.D. 466
Northern Natural Gas Company v. Grounds (1968) 292 F.Supp. 619

12. What is the right of a bankrupt to bring a truth-in-lending action?

A right of action under the Truth in Lending Act is property in the possession of the bankruptcy court which passes to the trustee.

In re Warren (1975) 387 F.Supp. 1395
Porter v. Household Finance Corp. of Columbus (1974) 385 F.Supp. 336
In re Cedar (1972) 337 F.Supp. 1103, affirmed In re James 470 F.2d 996, cert. den. Walsh v. Cedar 411 U.S. 973, 36 L.Ed.2d 697, 93 S.Ct. 2148

14. Is a civil service discharge for public sexual acts valid?

Where Civil Service Commission showed no specific connection between employee's embarrassing conduct and efficiency of service, and record showed employee to be at most an extremely infrequent offender, who neither openly flaunted nor carelessly displayed his unorthodox sexual conduct in public, unparticularized and unsubstantiated conclusion by Civil Service Commission that such possible embarrassment threatened quality of employing agency's performance was an arbitrary ground for dismissal.

Norton v. Macy (1969) 417 F.2d 1161
Taylor v. Civil Service Commission (1967) 374 F.2d 466
Mindel v. Civil Service Commission (1970) 312 F.Supp. 485

In Taylor the fact that the unorthodox acts were done in public gave rise to Court's decision that removal of the employee was not unwarranted, unreasonable, or arbitrary.

16. Is the wife of a person employed to bring a ship back from sailing races a seaman under the Jones Act in order for her to recover for an injury incurred on the return voyage?

Found no cases.

18. What is the rule on admissibility of declarations of a codefendant in an "aid and abet" charge?

Physical evidence and other testimony, including identification by other persons of some of the participants in bank robbery, was sufficient to link defendants to concert of action involved in bank robbery so that testimony of one accomplice concerning statements made by various defendants was admissible in their trial for aiding and abetting armed robbery of a federally chartered bank.

United States v. Kelly (1975) 536 F.2d 615
United States v. Mastrototaro (1972) 455 F.2d 801, cert. den. 406 U.S. 967, 32 L.Ed.2d 666, 92 S.Ct. 2411
Darden v. United States (1969) 405 F.2d 1054
United States v. Webb (1968) 398 F.2d 553
United States v. Hindmarsh (1968) 389 F.2d 137, cert. den. 393 U.S. 866, 21 L.Ed.2d 134, 89 S.Ct. 150
United States v. Messina (1968) 388 F.2d 393, cert. den. 390 U.S. 1026, 20 L.Ed.2d 283, 88 S.Ct. 1413
United States v. Johnson (1971) 334 F.Supp. 982, affirmed 462 F.2d 608

20. Does 45 CFR 233.100(a)(1), as amended, violate provisions of 42 U.S.C. § 607(a) which authorizes the Department of H.E.W. to prescribe standards for determination of unemployment in AFDC-UF Program?

Found no cases.

22. Does the imposition of sentence under 18 U.S.C. § 4208(a)(2) vest sentencing court with continuing jurisdiction to consider prisoner's 28 U.S.C. § 2255 claim that Parole Board has denied him serious and meaningful parole consideration contrary to statute?

A sentencing judge does not have authority to revise a sentence merely because he does not agree with Parole Board's decision; rather the district court is permitted to correct a sentencing error where the import of the sentence has in fact been changed by guidelines adopted by the Parole Board contemporaneous with or subsequent to the imposition of sentence.

Jacobson v. United States (1976) 542 F.2d 725
Thompson v. United States (1976) 536 F.2d 459
Kortness v. United States (1975) 514 F.2d 167
United States v. Schubert (1976) 411 F.Supp. 22
United States v. Silverman (1975) 862 F.Supp. 862
Jarrells v. United States (1975) 396 F.Supp. 761

24. Does exclusion of pregnancy and related conditions from fringe benefit plan coverage constitute proscribed discrimination under Title VII of the 1964 Civil Rights Act as amended?

The exclusion of pregnancy or other childbirth-related disabilities from sick leave coverage is in violation of Title VII of the Civil Rights Act.

Hutchison v. Lake Oswego School Dist. No. 7 (1975) 519 F.2d 961
Holthaus v. Compton & Sons, Inc. (1975) 514 F.2d 651
Thompson v. Board of Education of Romeo Community Schools (1976) 71 F.R.D. 398
Sale v. Waverly-Shell Rock Bd. of Education (1975) 390 F.Supp. 784
Communication Workers of America v. American Telephone & Telegraph Company (1974) 379 F.Supp. 679 reversed 513 F.2d 1024
Vineyard v. Hollister Elementary School Dist. (1974) 64 F.R.D. 580

Full-text System Answers And Times For Problem Set Number Two By Researcher 2

SUMMARY OF TIME USED PER QUESTION

Problem No.	Time
1.	22 minutes
3.	15 minutes
5.	13 minutes
7.	35 minutes
9.	17 minutes
11.	22 minutes
13.	38 minutes
15.	14 minutes
17.	21 minutes
19.	30 minutes
21.	24 minutes
23.	30 minutes
25.	25 minutes

1. Does a defendant improperly sentenced under conditions of 18 U.S.C. § 4208(a) have ground for challenging this in a Section 2255 action as an illegal sentence?

   If the sentence exceeds the constitutional or jurisdictional power of the court imposing it, if it exceeds the statutory maximum, or if it is otherwise subject to collateral attack, it may be challenged in an action under Section 2255.

   Marshall v. United States (1974) 414 U.S. 417
   Kent v. United States (1976) Slip Opinion - Fourth Circuit
   Thompson v. United States (1976) 536 F.2d 459
   United States v. Lancer (1975) 508 F.2d 719
   Jones v. United States (1969) 419 F.2d 593
   United States v. Lewis (1968) 392 F.2d 440
   Russo v. United States (1976) 417 F.Supp. 763

3. Can an administrative agency be estopped by statements of counsel?

   Found nothing directly on point. Closest applicable case:

   Collateral estoppell effect should be given only to those administrative determinations that have been made in a proceeding fully complying with the standards of procedural and substantive due process that attend a valid judgment by a court and, further, that such findings upon material issues that are supported by substantial evidence on the administrative record as a whole.

   Strip Clean Floor v. New York District Council No. 9 (1971) 333 F.Supp. 385, 66 CCH Lab. Cas. P12,191

5. In what circumstances, if any, does a federal court have the power to award costs against the National Labor Relations Board?

   No cases directly on point. Closest cases are cited below.

   Royal Typewriter Co. v. N.L.R.B. (1976) 533 F.2d 1030

   International Assoc. of Machinists v. United Aircraft Corp. (1975) 534 F.2d 422
   Marathon Le Tourneau Co. v. N.L.R.B. (1976) 414 F.Supp. 1074

7. What is the compensability for the loss of silt content in water when the government's declaration of taking is of land only?

   Found no applicable cases.

9. May a prisoner gain access to the contents of his presentence report under the Freedom of Information Act?

   The presentence report is for the use of the sentencing court. The trial court, in its discretion, may permit an inspection of the presentence report by the defendant.

   Cook v. Willingham (1968) 400 F.2d 885

11. Is there probable cause for an arrest on a narcotics charge where the officer observes an unmarked vial containing pills?

    The finding of a bottle of unmarked pills can hardly, in and of itself, establish probable cause for a warrant to issue.

    United States v. Giles (1976) 536 F.2d 136
    Lucero v. Donovan (1965) 354 F.2d 16
    United States v. Tranquillo (1971) 330 F.Supp. 871

13. Must a trial judge inform a defendant who pleads guilty that his federal sentence will not begin immediately?

    The defendant must be informed, prior to his pleading

guilty, that his federal sentence will not begin immediately (Federal Rules of Criminal Procedure - Rule 11).

McKinley v. United States (1973) 478 F.2d 332
United States v. Seale (1972) 461 F.2d 345
United States v. Myers (1972) 451 F.2d 402
Alaway v. United States (1972) 345 F.Supp. 978

15. Is there a right to a jury trial in an action for back pay under 42 U.S.C. 1981?

Back pay in a Title VII action is considered an equitable remedy encompassed in an action for reinstatement and restitution. Since the 7th Amendment only requires a jury trial in statutory action if the statute gives a right to a legal remedy and the remedy involved here is of an equitable nature, there is no right to a jury trial in an action for back pay under 42 U.S.C. 1981.

Equal Employment Opportunity Comm. v. Detroit Edison Co. (1975) 515 F.2d 310
Lynch v. Pan American World Airways (1973) 475 F.2d 764
Beale v. Blount (1972) 461 F.2d 1133
Smith v. Hampton Training School for Nurses (1966) 360 F.2d 577
Flores v. International Brotherhood of Electrical Workers (1976) 407 F.Supp. 218
Devore v. Edgefield County School District (1975) 68 F.R.D. 423
Harkless v. Sweent Independent School District (1975) 388 F.Supp. 738
Equal Employment Opportunity Comm. v. Brotherhood of Painters (1974) 384 F.Supp. 1264
Davis v. Local 4400 (1974) 8 E.D.P. P9465

17. What is the definition of a "point source" as used in 33 U.S.C. 1314?

A point source is any discernible, confined and discrete conveyance from which pollutants are or may be discharged.

E.P.A. v. California (1976) Supreme Court Slip Opinion

American Paper Institute v. E.P.A. (1976) D.C. Circuit Slip Opinion
Appalachian Power Company v. E.P.A. (1975) Second Circuit Slip Opinion
Bethlehem Steel Corporation v. E.P.A. (1976) 538 F.2d 513
Hooker Chemicals & Plastics Corp. v. Train (1976) 537 F.2d 620
Natural Resources Defense Council v. E.P.A. (1976) 537 F.2d 642

19. Does a student have a property right in a college transcript?

Found no applicable cases.

21. Does Title IX of the Organized Crime Control Act proscribe per se operation of large scale illegal continuous interstate gambling enterprise as defined in 18 U.S.C. 1955?

Title IX seeks to prevent the infiltration of legitimate business operations affecting interstate commerce by individuals who have obtained investment capital from a pattern of racketeering activity and imposes penalties for such activities. The definition of racketeering includes gambling (§1961(5)) as defined in 18 U.S.C. 1955.

Iannelli v. United States (1975) 420 U.S. 770
United States v. Altese (1976) Slip Opinion Second Circuit
United States v. Hawes (1976) 529 F.2d 472
United States v. Moeller (1975) 402 F.Supp. 49
United States v. Lanza (1972) 341 F.Supp. 405

23. Does the invalidity of a patent require the patent holder to repay all sums derived from existence of the patent?

Does the procurement of patent through fraud in the

Patent Office require patent holder to repay all sums derived from the existence of patents?

The finding of invalidity of a patent does not require the patent holder to repay all sums derived from the existence of the patent.

Where a patent has been obtained through fraud on the Patent Office, the patent holder is liable for all sums derived from the existence of the patent.

Invalidity:

P.P.G. v. Westwood Chemical, Inc. (1975) 530 F.2d 700
Atlas Chemical Industries v. Moraine Products (1974) 509 F.2d 1
Troxel Man. Co. v. Schwinn (1972) 465 F.2d 1253
Stewart v. Motrem Inc. (1975) 1975 Trade Cases P60,531
Gladwin v. Midfield (1975) CCH Fed. Sec. P95, 013

Fraud:

Zenith Lab. v. Carter-Wallace (1975) 530 F.2d 508
Troxel Man. Co. v. Schwinn (1972) 465 F.2d 1253
Frey v. Frankel (1966) 361 F.2d 437
United States v. Painter (1963) 314 F.2d 939

25. Can a defendant be convicted of extortion under the Hobbs Act in absence of evidence of threat or threatening act by defendant and in absence of a payment by alleged victim?

A Hobbs Act prosecution may be premised upon "attempted extortion" where less than all elements must be shown. If defendant obstructs, delays or affects commerce by robbery or extortion or commits or threatens physical violence to any person or property in furtherance thereof he has met the necessary elements for conviction.

United States v. Brown (1976) 540 F.2d 364
United States v. Quinn (1975) 514 F.2d 1250

United States v. Crowley (1974) 504 F.2d 992
United States v. Nakaladski (1973) 481 F.2d 289
United States v. Mitchell (1972) 463 F.2d 187

Headnote System Answers And Times For Problem Set Number Two By Researcher 1

SUMMARY OF TIME USED PER QUESTION

Problem No.	Researching	Organizing & Writing	Total
1.	1 hr.	35 min.	1 hr. 35 min.
3.	1 hr. 20 min.	25 min.	1 hr. 45 min.
5.	40 min.	15 min.	55 min.
7.	35 min.	5 min.	40 min.
9.	10 min.	10 min.	20 min.
11.	15 min.	10 min.	25 min.
13.	25 min.	20 min.	45 min.
15.	15 min.	20 min.	35 min.
17.	25 min.	20 min.	45 min.
19.	35 min.	5 min.	40 min.
21.	18 min.	20 min.	38 min.
23.	25 min.	10 min.	35 min.
25.	25 min.	10 min.	35 min.
TOTAL:	6 hr. 48 min.	3 hr. 25 min.	10 hr. 13 min.

1. Does a defendant improperly sentenced under conditions of 18 U.S.C. § 4208(a) have ground for challenging this in a Section 2255 action as an illegal sentence?

Problem: What is meant by "improperly sentenced?"

Closest case (Dicta only):

Where federal prisoner was not attacking the validity of his sentence as imposed by sentencing court but rather was attacking the sentence as it was being executed by attempting to obtain compliance by the parole board with the prisoner's interpretation of statute fixing eligibility for parole, habeas corpus relief in a court in the jurisdiction in which he was confined rather than proceeding on motion to vacate sentence was the proper remedy. 18 U.S.C.A. § 4208(a)(2); 28 U.S.C.A. § 2255.

Jarrells v. U.S., 396 F.Supp. 761 (1975).

Also:
Where sentence improperly enhanced by prior criminal convictions, accused was entitled to § 2255 relief.

U.S. v. Miller, 361 F.Supp. 825 (1973).

NOTE: The search request was very broad for even the headnote system: 4208(a)* & 2255. Most of the cases found dealt with denial of parole consideration rather than improper sentencing.

3. Can an administrative agency be estopped by statements of counsel?

Problem: All headnotes were vague concerning who made the statements--an agent, employee, official, etc.

Examples:

Reports by and advice from Equal Employment Opportunity Office to employer are in no way res judicata, binding,

or grounds of estoppel in action by Attorney General under Civil Rights Act provisions prohibiting discriminatory employment practices. Civil Rights Act of 1964, §§ 701 et seq., 707, 42 U.S.C.A. §§ 2000e et seq., 2000e-6.

U.S. by Clark v. H. K. Porter Co., 296 F.Supp. 40 (1968).

and:

Opinions and advice rendered or given by the FDA that drug is not a "new drug" subject to premarketing approval and clearance can create no estoppel against the Government; the FDA not only has the right but the obligation to change its opinion if it learns its prior position was erroneous. Drug Amendments Act of 1962, § 107(c)(4), 21 U.S.C.A. § 321 note; Federal Food, Drug, and Cosmetic Act, §§ 201(p)(1), 505(a), 21 U.S.C.A. §§ 321(p)(1), 355(a).

Bentex Pharmaceuticals, Inc. v. Richardson, 463 F.2d 363, cert. granted 93 S.Ct. 899, 409 U.S. 1105, 34 L.Ed.2d 686, reversed Weinberger v. Bentex Pharmaceuticals, Inc., 93 S.Ct. 2488, 412 U.S. 645, 37 L.Ed.2d 235, (1972).

Also:
Immigration and Naturalization Service --
Manguerra v. Immigration and Naturalization Service 390 F.2d 358 (1968).
Commodity Exchange Authority --
Goodman v. Benson, 286 F.2d 896 (1961).
Commodity Credit Corporation --
Stone v. U.S., 286 F.2d 56.
Securities and Exchange Commission --
Capital Funds, Inc. v. S.E.C. 348 F.2d 582 (1965);
In re Inland Gas Corp., 309 F.2d 176 (1962).

5. In what circumstances, if any, does a federal court have the power to award costs against the National Labor Relations Board?

Only two cases found:

In proceeding for enforcement of National Labor Relations Board's order, portions of record attributable to

employer's designations were reasonably necessary for consideration of issues and Board should be liable for printing costs when enforcement was denied. U.S.Ct. App. 9th Cir. Rule 17, subd. 6, 28 U.S.C.A.

N.L.R.B. v. Pacific Transport Lines, Inc., 290 F.2d 14 (1961).

and:

Where plaintiff did not substantially prevail in action brought under Freedom of Information Act to compel National Labor Relations Board to disclose certain information and to enjoin Board from conducting certain administrative hearings in connection with unfair labor practice charges against plaintiff until disclosure was made, plaintiff would not be awarded reasonable costs and attorney fees under the Act. 5 U.S.C.A. § 552(a)(4)(E). Id.

Marathon LeTourneau Co., Marine Division v. N.L.R.B., 414 F.Supp. 1074 (1976).

7. What is the compensability for the loss of silt content in water when government's declaration of taking is of land only?

Problem: Found no cases that were even close. Search request as follows:

Appropriate expropriate take* took compensa* pay* paid & silt sand dirt material & water sea river ocean lake stream

9. May a prisoner gain access to the contents of his presentence report under the Freedom of Information Act?

Only one case found:

Presentence report is not an "agency report" which Freedom of Information Act makes available to public. 5 U.S.C.A. § 552. Id.

Cook v. Willingham, 400 F.2d 885 (1968).

11. Is there probable cause for an arrest on a narcotics charge where the officer observes an unmarked vial containing pills?

Two cases found:

Finding by officer of unmarked bottle containing blue and yellow capsules in kitchen of apartment was not probable cause for arrest of occupant of apartment without warrant.

Lucero v. Donovan, 354 F.2d 16 (1965).

and:

Finding by officers who were searching, under a warrant, for stolen clothing, of a bottle of "unmarked pills" could not of itself establish probable cause for a warrant to issue, much less allow officer of his own volition to disobey orders of his warrant and search for whatever he pleased.

U.S. v. Tranquillo, 330 F.Supp. 871 (1971).

13. Must a trial judge inform a defendant who pleads guilty that his federal sentence will not begin immediately?

With exceptions, the rule is:

Where judge receiving guilty plea was aware that defendant was in state custody, it was necessary in order that plea be voluntarily and understandingly made that defendant be informed that his federal sentence would not start to run until such time as he was released from state custody and received at federal institution for service of such sentence. 18 U.S.C.A. § 3568; Fed. Rules Crim. Proc. Rule 11, 18 U.S.C.A.

U.S. v. Myers, 451 F.2d 402 (1972).

Also:
Williams v. U.S., 500 F.2d 42 (1974);

Bender v. U.S., 478 F.2d 332 (1973);
Tendall v. U.S., 469 F.2d 92 (1972);
Love v. U.S., 392 F.Supp. 1113 (1975);
Alaway v. U.S., 345 F.Supp. 978 (1972).

15. Is there a right to a jury trial in an action for back pay under 42 U.S.C. § 1981?

An employer is not entitled to a jury trial of back pay claims in a Title VII employment discrimination suit. 42 U.S.C.A. § 1981; Civil Rights Act of 1964, §§ 706, 707 as amended 42 U.S.C.A. §§ 2000e-5, 2000e-6

U.S. v. U.S. Steel Corp., 520 F.2d 1043 (1975).

Also:
Lynch v. Pan. Am. World Airways, Inc., 475 F.2d 764 (1973);
Devore v. Edgefield County School Dist., 68 F.R.D. 423 (1975);
Boles v. Union Camp Corp., 57 F.R.D. 46 (1972);
Williams v. Travenol Laboratories, Inc., 344 F.Supp. 163 (1972);
Flores v. Local 25, Intern. Broth. of Elec. Workers AFL-CIO, 407 F.Supp. 218 (1976).

17. What is the definition of "point source" as used in 33 U.S.C. § 1314?

Problem: Definition was not in the headnote but in a footnote of the case.

A "point source" is "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch (etc.), from which pollutants are or may be discharged."

American Meat Institute v. Environmental Protection Agency, 526 F.2d 1027 (1975).

Also:
American Iron and Steel Institute v. Environmental Protection Agency, 526 F.2d 1027 (1975);

American Frozen Food Institute v. Train, 539 F.2d 107 (1976);
FMC Corp. v. Train, 539 F.2d 973 (1976);
Hooker Chemicals & Plastics Corp. v. Train, 537 F.2d 620 (1976);
Natural Resources Defense Council, Inc. v. Train, 510 F.2d 692 (1974);
Grain Processing Corp. v. Train, 407 F.Supp. 96 (1976).

19. Does a student have a property right in a college transcript.

Problem: Found nothing on point after looking at about 200 headnotes. Search request as follows:

right* property & college* student* school* universit* & transcript* grade* record* file*

21. Does Title IX of Organized Crime Control Act proscribe per se operation of large scale illegal continuous interstate gambling enterprise as defined in 18 U.S.C. § 1955?

Because the degree of participation intended to be proscribed as criminal by that provision of the Organized Crime Control Act making it an offense to conduct, finance, manage, supervise, direct or own an illegal gambling business is nowhere therein defined, a court can look for guidance to the legislative history behind the parallel, simultaneously enacted provision of the Act describing an "illegal gambling business" in identical terms; the two provisions are to be construed in pari materia. 18 U.S.C.A. §§ 1511, 1955.

U.S. v. Marrifield, 496 F.2d 1278, vacated 505 F.2d 706 (1974).

Also:
U.S. v. Hunter, 478 F.2d 1019, cert. denied 94 S.Ct. 162, 414 U.S. 857, 38 L.Ed.2d 107, rehearing denied 94 S.Ct. 609, 414 U.S. 1087, 38 L.Ed.2d 493 (1973);
U.S. v. Ceraso, 467 F.2d 653 (1972);
U.S. v. Riehl, 460 F.2d 454 (1972).

23. Does the invalidity of a patent require the patent holder to repay all sums derived from existence of the patent? Does procurement of patent through fraud in Patent Office require patent holder to repay all sums derived from existence of patents?

Obligation to pay royalties ends upon "eviction" from license by adjudication in a court of competent jurisdiction of invalidity of the underlying patent; however neither a licensee nor a purchaser from a patentee may recoup royalties already paid.

Zenith Laboratories, Inc. v. Carter-Wallace, Inc., 530 F.2d 508 (1976).

Also:
Troxel Mfg. Co. v. Schwinn Bicycle Co., 465 F.2d 1253, appeal after remand 489 F.2d 968, cert. denied 94 S.Ct. 1942, 416 U.S. 939, 40 L.Ed.2d 290 (1972);
Willis Bros., Inc. v. Ocean Scallops, Inc. 356 F.Supp. 1151 (1972).

25. Can a defendant be convicted of extortion under the Hobbs Act in absence of evidence of threat or threatening act by defendant and in absence of a payment by alleged victim?

Only one case found:

Government failed to establish that defendant had obstructed, delayed, or affected commerce or that he had extorted money or that he had threatened roofing contractors with interruption of business operation on dates alleged in indictment, and conviction based on such proof could not be sustained. 18 U.S.C.A. § 1951.

U.S. v. Critchley, 353 F.2d 358 (1965).

FPI-MAR—12-14-77

END