Maurer School of Law: Indiana University

Digital Repository @ Maurer Law

Articles by Maurer Faculty

Faculty Scholarship

2008

Citators: Past, Present, and Future

Laura C. Dabney

Indiana University Maurer School of Law, lcdabney@indiana.edu

Follow this and additional works at: <https://www.repository.law.indiana.edu/facpub>

Part of the [Legal Writing and Research Commons](#)

Recommended Citation

Dabney, Laura C., "Citators: Past, Present, and Future" (2008). *Articles by Maurer Faculty*. 2113.

<https://www.repository.law.indiana.edu/facpub/2113>

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.

LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Citators: Past, Present, and Future

Laura C. Dabney

ABSTRACT. Citators are one of the oldest and most important tools in the legal researcher's arsenal. They serve both as precautionary measures against bad law, and as a means of doing primary legal research. The evolution of citators plays an important roll in the development of both the legal publishing industry and legal research itself. This article examines many aspects of the legal citator—its history, development, uses, and possible future.

KEYWORDS. Citators, Shepard's, KeyCite, Westlaw, Lexis, product, development

INTRODUCTION

It is difficult to imagine the practice of U.S. law today without citators. Citators have been an important legal research tool for more than 130 years. They let the lawyer know that the case he is using is still good law, they assist him in finding new case law and secondary sources, and they let him know who is talking about his case, and why. This article takes a closer look at these tools, particularly Shepard's² and KeyCite,³ the two major citators on the market today. The first section looks at the history of citation indexes. The history of the print citator, mostly Shepard's, was beautifully examined by Patti Ogden⁴ in 1993. This article touches on the

Laura C. Dabney is Assistant Librarian for Outreach Services/Adjunct Lecturer in Law, Indiana University–Bloomington Law Library (E-mail: lcdabney@indiana.edu).

Legal Reference Services Quarterly, Vol. 27(2–3) 2008

Available online at <http://www.haworthpress.com>

© 2008 by The Haworth Press. All rights reserved.

doi: 10.1080/02703190802365671

165

early days but then takes the reader through the years since the Ogden paper. The past 15 years have seen a great deal of development online, most importantly the introduction of Shepard's major competition, KeyCite. A second section compares the two systems. The article then turns to possibilities for the future of citators and the move away from print citators. Finally, by looking at features that are available today, this article speculates as to future innovations.

A citator can be defined as an index of connections between cases (and, of course, statutes and secondary sources). At the same time, though, it has a large variety of different uses for the legal researcher. The use of citators today is huge—if you do no legal research other than to find one relevant case, it is often to run that case through a citator. The history of the citator is not only tied inexorably to the history of the legal profession, but also to changes in the world of legal publishing and the creation of new legal research strategies. Because of their widespread usage, citators are a perfect case study for those interested in the growth and development of legal tools. They also have a very rich and interesting history, which is an excellent place for this article to begin.

THE HISTORY OF THE CITATOR

As soon as U.S. case law became voluminous enough that any one lawyer practicing in any one area was unable to remember all the law that he needed to know, the citator became necessary. This happened very quickly, as the country and the court system grew. Today the U.S. legal system is huge, and we argue across jurisdictions all the time. Our common law is such a morass that no one can be expected to know much of the law outside his direct field of practice.

As mentioned above, the early history of the print citator has been well documented by Patti Ogden, so this article provides only a brief gloss of the most cogent points and products. Early in the nineteenth century, lawyer Simon Greenleaf lost a case relying on precedent that, unbeknownst to him, had been recently overruled.⁵ Greenleaf saw a need and tried to fill it by creating an alphabetical list of overruled cases.⁶ This was the first of several citation indexes, but the idea reached its pinnacle in print when Frank Shepard introduced his product in 1873.⁷

Shepard called his new product "Adhesive Annotations," and printed his notes to overruling cases on gummed paper that could be pasted into the reporters next to the cases themselves. Ogden was not terribly impressed with this invention, claiming that it was difficult and time-consuming to

use.⁸ The method has posed some problems for the modern librarian who is interested in book preservation. While it is always fascinating to come across a reporter updated with the original Shepard's method, these books are very delicate. As the paper of the book becomes more brittle over time, the edges of the citation stickers and their adhesive become sharper, making it difficult to turn pages without tearing them.⁹ The modern Shepard's, however, remembers this incarnation of their product as a key stepping-stone—it was modeled after lawyers who would hand-write notes about later overrulings into the margins of cases.¹⁰

The first Shepard's citations pages were printed entirely on gummed paper. To use them, the lawyer (or more likely his clerk) would cut the page into pieces smaller than a postage stamp, and stick the relevant citations into the margins of his reporter set, next to the cited case. This meant that when a lawyer looked up a case, he immediately saw references to any cases that overruled it, as well as to citations that criticized, distinguished, explained, followed, limited, or modified the decision.¹¹ It was not until several years later that, by customer request, Shepard began to print his citations into bound volumes in some jurisdictions.¹² This meant that his product was more portable; however, it also meant that Shepard's became an extra step at the end of the research process; previously updating information was immediately presented to the user during the course of reading a case.

Whether the gummed paper was instrumental to the success of Shepard's citations or not, what really made Frank Shepard's product sell over several competitive products was his dedication to it. Unlike many other citation index printers of the day, Shepard updated and maintained his product. With the body of the common law constantly expanding, this was really a necessary feature. Other citators, which were only published once, were out of date almost as soon as they came off the presses. Shepard's was a unique alternative—an index that was updated and frequently republished.¹³ There were still other (often more innovative, according to Ogden) competitors; however, they dropped in and out as time went on.¹⁴ Shepard's eventually had the high ground of establishment behind it.

Shepard's remained much the same as it began for the next several years, not even abandoning the sticky paper until after the death of its founder in 1900. At that point, Frank's brother in law, Reid A. Kathan, moved the operation to New York, where it remained until the 1940s. It was during Kathan's tenure that Shepard's dropped the adhesive annotations and moved entirely to bound volumes. In 1947, William Guthrie Packard, Kathan's successor, moved the company to its final home, Colorado Springs. This move was for several reasons—the enjoyable climate

and the central location for distribution purposes among them. Possibly the most important and interesting reason was safety—New York, as a coastal city, was potentially more open for attack, and Shepard's wanted to protect its information. Ironically, Colorado Springs later became home to the U.S. Air Force Academy and to the North American Aerospace Defense Command, making it a considerably less safe place to be.¹⁵

In 1966, Packard's shares were bought by McGraw-Hill, which owned Shepard's for the next 30 years.¹⁶ It was not until the leap to online citation databases that much changed in the world of citators. Even today, though KeyCite rivals Shepard's in popularity, many still call the process of using any citation index "Shepardizing." (This is in fact an error on the part of the users. "Shepardize[®]" and "Shepardizing[®]" are both registered trademarks that apply specifically to the use of Shepard's. The legal department at Shepard's has tried for some time to prevent the use of these terms for other products.)

Two major print publishers of legal materials dominated the twentieth century.¹⁷ They were the West Publishing Company (West) in St. Paul (and later Eagan), Minnesota and Lawyer's Cooperative Publishing Company (LCP) in Rochester, New York.¹⁸ These two had been competitors for a long time in the print world, and they both subscribed to the Shepard's citation services. However, Shepard's was not a fast service, and both companies, independently of one another, were concerned that Shepard's was not current enough to meet the needs of their editorial operations. Neither company wanted to miss a key overruling. So both companies developed in-house programs.¹⁹ LCP developed Auto-Cite, and West developed a program called InstaCite.

Neither of these programs did what Shepard's did, either then or today.²⁰ Both were designed to look at only the most necessary case history—direct history and severe indirect negative treatment, especially overrulings. West and LCP editors did not get neat lists of all the cases that had ever cited a case. An editor did, however, find out whether or not a case was still good law, which often was all that he was really looking for. Both systems were considerably more current than Shepard's.

In 1973, the Mead Corporation introduced electronic legal research with a product called LEXIS (Lexis).²¹ West was soon competing with its own computer product, Westlaw, which debuted in 1975.²² LCP was still West's largest print competitor, but they did not follow Lexis and West into the world of online publishing. Consequently Lexis and LCP quickly became fast friends—seeing that "the enemy of my enemy is my friend." For several years after that, even when most of the legal publishing battle

was moved online, LCP's role in the competition was essentially to be the editorial arm of Lexis. They were distinct but friendly companies, and Lexis benefited greatly by offering the public exclusive online access to LCP products, the most notable of which was the *American Law Reports*. In the mid-1970s LCP made a belated foray into the online world by going public with their in-house product, Auto-Cite. Because of the relationship between the two companies, Auto-Cite was made available through Lexis in 1979²³—another LCP product to which Lexis could claim exclusive distribution rights.

Shepard's elected to license their data rather than design an online product of its own. So it was that, in the early 1980s, Lexis and West both began to offer Shepard's online.²⁴ Although not a large portion of their sales, Shepard's was a good way for the two companies to compete. Each company offered subtle improvements in the product interface to entice customers. For example, West first pulled ahead by offering hypertext links to cases in its Shepard's service. Lexis was not far behind in adding this feature. Auto-Cite on Lexis served essentially as a second step after Shepard's—Shepard's online would retrieve citing references and older overrulings, and then Auto-Cite would update Shepard's. This was only the first in a series of products by both companies aimed at improving currency for citation checking.

Sometime in 1984, West, feeling threatened, made InstaCite, its in-house citator, publicly available to compete with Auto-Cite.²⁵ Both companies had recognized their internal need for a current electronic citation database; however, it was not until the success of Auto-Cite that it occurred to them that customers might need it too. The two products were very similar, but there were small differences. Because both systems were primarily dependant on cases published by West, and since West had a chance to process those cases before they appeared in the advance sheets, its InstaCite product was slightly more current than Auto-Cite. West did not use loose-leaf services as a source for case law, so some cases that were first printed in a loose-leaf service, such as those published by CCH, appeared first on Auto-Cite. InstaCite had a few little oddities, though. The most amusing one is probably that it had no negative indirect history for cases pre-1967. InstaCite would find a case that had been reversed on appeal, but not one that had been overruled by a later case. Fortunately for West, user statistics showed that most of their customers were blithely unaware of this fact, and used InstaCite no less for pre-1967 cases than for more recent cases.

West decided to offer yet another layer of currency. "Shepard's PreView,"²⁶ which had no relation to the Shepard's product other than

a license for the Shepard's trademark, offered very recent citing cases, but did not include the history tags that told users what they were looking at. A researcher using this program could see that a case had been cited recently, but the results provided no explanation for why it was cited. Shepard's Pre-View never made much money, and it definitely did not make the Shepard's company much in the way of royalties. However, it did have one significant consequence, which was that Shepard's contracted, as part of the license, to get electronic records of citations West parsed out of its most recent case law. This added greatly to Shepard's currency.

Both Lexis and Westlaw soon added yet another feature to their online updating products, a program that treated a citation like a search term and searched for it through all the most recent cases. This search retrieved any other cases that cited the original citation, but like Shepard's PreView, the search result gave no explanation of citing case treatment; it only identified later citing cases. The Lexis version was "Lexcite,"²⁷ and the West version was "QuickCite."²⁸ This process is probably the simplest way to do guerilla legal citation even today.

There were now three different steps to update cases on Lexis and four on West—Shepard's, Auto-Cite or InstaCite, Lexcite or QuickCite, and, on Westlaw, Shepard's PreView. Each step got the user more and more current but told the user less and less about what he was actually looking at. The people in charge of training customers to use the systems were beginning to rebel.

On top of all this, Shepard's had a few other quirks, the most notable of which was how it handled parallel citations.²⁹ Because coverage between Shepard's products was genuinely different, a user could get different results based on which citation he typed into the system. Checking a citation to a state reporter yielded only citations from that state; checking a regional reporter citation yielded citations from all jurisdictions. Headnote markers only appeared for cases that were within the same region—no reporter boundaries were crossed. The state citation would also check law reviews, but the regional citation would not, so the savvy user would have to run multiple Shepard's searches for the same case on top of all the other steps that West and Lexis inflicted on their users. Like the pre-1967 InstaCite problem, though, users in general seemed unaware of this and would only run one search.

This oddity was a product of Shepard's in print—in fact, since the data from the print product was the source for the online product, several idiosyncrasies of the print version were carried over to the electronic products. One reason Auto-Cite and InstaCite were so important to the

development of modern citators is that, since they were not relying entirely on the Shepard's print data, they solved some of the inherent problems that arose from it.

There is another important plot point that enters the story now, and that is the Shepard's company's increasing unhappiness with its contracts with West and Lexis. Shepard's had long-term contracts with both companies for a relatively small percentage of the usage charges. When Lexis and West first approached Shepard's with contracts, Shepard's was making a very steady profit from its book sales; selling information to Lexis and West that it already had was essentially found money. As time wore on, though, book use started to fall in favor of online usage, and Shepard's realized just how much money Lexis and West were making from their product.

With all this intrigue, both Lexis and West were very worried about the possibility of an exclusive contract between Shepard's and their competitor, while presumably each was trying to secure such a contract for themselves. Each company began to look into the possibility of creating its own rival citation product. Lexis asked its old ally LCP to design a new citation index, and LCP put time into the project (code-named project "Franklin") before eventually deciding it would be unworkable. West conducted an internal study of the difficulties of replicating Shepard's data. Preliminary estimates were grim. West estimated it would take seven years and \$300 million to design the product; these numbers were enough to make them drop the idea.

In the meantime, wanting a better position in the online world, Shepard's introduced a product called "Shepard's Daily Update," the primary feature of which was, obviously, that it was updated daily.³⁰ This feature, which was available with CD-ROM versions of Shepard's and as part of its print product, offered an additional currency feature. With Shepard's Daily Update, a user could call Colorado Springs and talk to a researcher, who would look up a citation and provide up-to-the-minute currency. Shepard's approached both West and Lexis and tried to sell them this new product at a very marked increase in price.

Neither company was happy with this new state of affairs. Neither company wanted to destroy the market for its own product, either Auto-Cite or InstaCite, and, of course, neither company wanted to pay Shepard's any more than necessary. The two companies took different stances, though. Lexis bought the updated system. West, on the other hand, stood firm and claimed that their contract with Shepard's entitled them to the best Shepard's service available at the time.

Shepard's contracts with both companies had clauses calling for a renegotiation of the service contract in the event that the company should be sold. Thus, when Mead sold Lexis to Reed Elsevier in 1994, Shepard's renegotiated its contract with Lexis, and Lexis picked up the more current Shepard's Daily Update. Presumably this was a much more profitable arrangement for Shepard's than the previous one.

The playing field soon changed again. West, previously a closely held corporation, was acquired by the Thomson Corporation of Canada for about three and a half billion dollars.³¹ This acquisition of West by Thomson had several important effects on the history of citator development.

At the time that Thomson bought West, they already owned LCP. LCP, once an ally of Lexis, was now part and parcel of Lexis's chief competitor. Brian Hall, the president of LCP (and a former president of Shepard's), suddenly became the president of West. The merger depended on the grace of the Department of Justice; the Department required that the new company divest several directly competitive products, including Auto-Cite. Essentially all of these divested products were bought by Lexis. But a small and important consequence of the brush between West and Auto-Cite was that West was left with a copy of the Auto-Cite data when Auto-Cite was sold to Lexis. This data would later be used in the creation of KeyCite, mooting the problem that West lacked pre-1967 data.

In the early stages of KeyCite and prior to the sudden acquisition of the Auto-Cite data, West was somewhat concerned about the pre-1967 problem, and whether researchers would notice the difference in this shiny new product. So West built a special parser designed to search case law for overrulings. It was not a perfect system—it grabbed a lot of cases that it did not need along the way—but it did find essentially all of the overrulings. There is only one known instance in which the program missed an overruling. After West got its hands on Auto-Cite, it ran the parser over all the case law and came up with 200 overruled cases that had been found by neither program.³² That parser is still used on occasion today.

Another effect of the Thomson-West merger was that the renegotiation clause of the contract between Shepard's and West was triggered. Unlike Lexis, West declined to purchase the Shepard's Daily Update product. Thus, while Shepard's probably was in a better position than it had been previously, it did not get the substantial increase in price from West that it had selling the new product to Lexis. Maybe the biggest change in the new contract was that the duration was considerably shortened—West's right to Shepard's now expired in 1999.³³

Now, to back up the story a little bit, in December 1994 Shepard's entered into its first exclusive contract when they signed with the Michie Company to build a CD-ROM product for the state of Alabama with citations and cases on the same disk. This was not a particularly exciting project, but when the announcement reached the desk of Vance Opperman, the President of West, he became concerned. Although the product was not particularly worrisome, the possibility that Shepard's would sign more exclusive contracts—and worse, that they were leaning in the direction of Lexis (which owned Michie)—was troubling.

Opperman ordered West to build a similar product. He was not envisioning a product on a national scale; that possibility had already been explored and found to be too expensive to develop. What Opperman wanted was a CD-ROM product for the state of Alabama to compete with the Michie product. The idea was to ensure that, in the future, Shepard's would know better than to offer any more exclusive contracts. He asked Forrest Rhodes, who had served as the Chief Technical Officer of Shepard's for a time, and knew a great deal about citators, to develop the product. Rhodes called upon the only person who directly reported to him at the time, Daniel Dabney.³⁴ Rhodes and Dabney began to build the idea behind today's modern KeyCite.

Neither Rhodes nor Dabney was interested in building a small, Alabama-based CD-ROM product, but while figuring out how it could be done, they also figured out how to build a national system—without spending \$300 million and seven years to do it. Unsure that Opperman would risk alienating Shepard's, they made sure that their initial efforts were, to all appearances, directed only at developing an Alabama CD-ROM product. During product testing for KeyCite, all original test data came from Alabama. Six weeks later they announced to senior management that they could do better than just Alabama. They could design a citation system for the entire country.

This potential product looked like it would force the question of whether or not West could afford to alienate Shepard's and bring about the dreaded exclusive contract to Lexis. This was not an easy question to answer, so, possibly, it was fortunate that the point became moot with another big merger. McGraw-Hill, the company that owned Shepard's, sold it in 1995.³⁵ Or, rather, they exchanged it. McGraw-Hill traded Shepard's to Times Mirror for a line of educational products that fit better with its other products. McGraw-Hill owned no other legal publishing interests at this point; Times Mirror did. They owned Matthew Bender. Times announced its intention to share ownership of Shepard's with Reed Elsevier,

the company that had, only a year earlier, become the parent company of Lexis.³⁶

Most of the legal world was concerned at this point by this potential merger. West was most concerned of all, of course, but the legal research community in general recognized how important the Shepard's citation system was to market share and free competition. The American Association of Law Libraries (AALL) wrote to the Department of Justice expressing their concern that, if Shepard's were in the hands of just one of the major competitors, everyone would suffer.³⁷

For West, a competitor product suddenly became a necessity rather than a luxury. InstaCite and Auto-Cite were still around, making the updating process difficult and confusing (really, hardly better than using Shepard's on paper), and a strong Lexis hold on Shepard's could shift market share decisively in their favor. KeyCite was already well under way, but West was still concerned and fought to secure access to Shepard's for as long as possible, because the idea of a real competitor for Shepard's was such a new one.

Because of the importance to West of not alienating Shepard's until it was absolutely unavoidable, KeyCite was kept so secret, even internally, that an employee one cubicle over from a KeyCite worker was not supposed to know about it.³⁸ Staff at the Department of Justice (DOJ) were among the first outsiders to know about the project. When Shepard's was sold, West petitioned the DOJ and requested that they force a longer contract between Shepard's and West for anti-monopoly reasons. At that time, West was forced to disclose KeyCite. West admitted that they had a citator product in the works, while, at the same time, the company argued that the product could not compete with Shepard's. The Department of Justice did not grant relief.

The KeyCite project (originally called "WestCite") was code-named "Gabriel," a tongue-in-cheek reference to the Archangel Gabriel in Luke 2:9: "And lo, the angel of the Lord came upon [the shepherds] . . . and they were sore afraid."³⁹ The name KeyCite is unsurprising, as West devised the name with the West Topic and Key Number System in mind. However, in an interesting side note, Lexis had filed a notice of intent to use the trademark "KeyCite." West scrambled to find a new name. Lexis did not actually have a product attached to the name, and when West asked Reed Elsevier about the notice, they withdrew it. KeyCite was again the name of the new West product. Some within West thought this looked like a knowing, preemptive strike; however, Lexis seemed genuinely surprised when KeyCite was rolled out at the 1997 AALL meeting a short time later.

It was, of course, important to West to have a product to compete with Shepard's, once Lexis actively owned part of it. But there were also other reasons that this was an especially advantageous time for the unveiling of KeyCite. During this time, neither Shepard's nor Lexis was as organized as usual. Shepard's was now newly owned by two companies. Matthew Bender, Lexis, and Shepard's, although suddenly all connected, were running separate marketing campaigns, as opposed to KeyCite's one focused campaign. KeyCite's initial marketing depicted an egg. As time went on, the egg slowly hatched to reveal the KeyCite logo.⁴⁰ Visually, it was a well-designed campaign. During the unveiling at AALL, West's Forrest Rhodes stepped out of a giant egg to introduce the product. To this day, according to Jane Morris of Lexis, some Lexis sales representatives refer to KeyCite errors as "scrambled eggs," because that is what competitive examples showing KeyCite problems were first called.⁴¹ Matthew Bender, Lexis, and Shepard's, on the other hand, were still getting used to the joint venture and were not as responsive to KeyCite as they might have been. Before 1997, there were very few advertisements for Shepard's. Once KeyCite was on the market, though, there are several ads with very distinct approaches from the different companies.⁴²

KeyCite debuted at the AALL conference in 1997. It had a few features that were not commonly available on Shepard's. For example, while some early Shepard's CD-ROM products used signal indicators, KeyCite introduced and standardized flags in the online environment. KeyCite also invented the "Depth of Treatment" stars, which signaled to a user the extent to which the citing case had examined the cited one. Depth of Treatment stars actually came about as a response to Shepard's positive treatment markers. West wanted to match Shepard's feature for feature as much as they could, but they had trouble with positive treatment. It can be subjective (though all treatment can), and they were not entirely sure what research purpose it served. Asking customers, though, West discovered that people used the positive treatment markers largely as indicators for an in-depth treatment—a citing case that treated a cited case positively had probably talked about it at some length to warrant the plus sign. West used the "Depth of Treatment" stars to address this need in a different way.⁴³ KeyCite results are organized by the number of stars each citing case is assigned, with four-star cases appearing at the top of a results page. Shepard's organizes its display by jurisdiction. Each arrangement has its advantages.

KeyCite also provided one-stop shopping, rather than three or four stops: Shepard's, Auto-Cite or InstaCite, Shepard's Daily Update, the term search, etc. KeyCite had another large advantage. The contract between West and

Shepard's had not yet run out, and West, therefore, had both programs available. Users could try KeyCite but fall back on Shepard's without ever leaving the West umbrella. Users could explore the new product with relative safety, and did not have to make a choice immediately.

KeyCite was also a pioneer in the legal publishing world in that it was not tied to any print data. The origins of Shepard's are in many ways a great strength, putting a century of experience and human editing behind the product. However, KeyCite was free of the quirks that came with Shepard's print system, such as the problems caused by differences in coverage between print products. West was aware of this—they declared KeyCite unsuited to print. While some even expressed a desire to see a KeyCite CD product, as there had been previous Shepard's CDs, West refused, insisting that KeyCite would never appear in any form but the live, and constantly updated, one.⁴⁴

In 1999, Shepard's rolled out "New Shepard's," which was also one-stop shopping—it combined Shepard's, Auto-Cite, and Lexcite into one. (There is an interesting indication of a difference in corporate philosophy here. Where West has bundled all its products into KeyCite and never looked back, Lexis maintains Auto-Cite and Lexcite along with Shepard's in its modern service, allowing the sentimental researcher to use whichever he prefers.) As part of the 1999 release, Shepard's introduced FOCUS, which allowed the user to search within Shepard's results, and greatly strengthened its use as a finding aid. It was not until later that KeyCite matched this feature with "Limit KeyCite Display." The 1999 "New Shepard's" release also addressed and solved the parallel citation issue.

All these nice features make a difference today, when both citators are firmly established and trusted, and ease of use is important. At the debut of KeyCite, however, these were not the features that legal information professionals were really studying at the time. Lawyers and librarians alike were far more interested in finding out which system worked better.

COMPARISONS BETWEEN SHEPARD'S AND KEYCITE

KeyCite was a surprise to the legal world. There had been no real competitors to Shepard's for a very long time. For over a hundred years, Shepard's had been the established product, and no one had any experience with any other comprehensive citation research system. With only one option, there had been no need to examine how that option worked. But, suddenly, researchers had to make a choice, form an opinion, or, at the very

least, know the strengths and weakness of the two systems. When KeyCite was released, it was not only picked apart in great detail, but people turned a critical eye toward Shepard's to see how the systems stacked up to one another. Accordingly, a flurry of comparison between the two systems ensued for the next several years.

When KeyCite first came out, Shepard's argued that they had significantly more negative treatment indicators than KeyCite did. This was largely true because InstaCite, from which a lot of KeyCite data was taken, did not yet recognize "distinguished" treatment, which accounted for about 80 percent of all Shepard's negative treatment indicators. West solved this problem in part by building a specialized parser similar to the one they built to find overrulings, only this time looking for distinguishing treatment. The use of the parser itself was another cause for comparison, as Lexis claimed that Shepard's citations were read by editors, and thus superior to KeyCite's electronic eyes.⁴⁵ The perception that KeyCite is more computerized and Shepard's more human is one West has devoted considerable time to combating, and, in fact, it is largely untrue. While Shepard's was, of course, done entirely manually for a long time, today both programs do case analysis editorially, and the rest of the process, including finding citations and headnote assignment (and, in KeyCite, depth of treatment and quotations), is done programmatically. At the time KeyCite was released, it did have a little more automation than Shepard's, which still had editors assigning headnotes. Today the programs are very similar.

Comparisons of Shepard's and KeyCite happened in several ways. There were debates, often hosted by various chapters of the AALL, in which an employee or employees from each company represented their product. These are fondly remembered alternatively as "shoot-outs" by Jane Morris of Lexis or "cage matches" by Dan Dabney of West. There were also several articles written and responded to as people examined the systems. Shepard's improved very rapidly, and within a year or two had fixed the parallel citation problem, had bundled all the steps that made online citation such a difficult process, and had added signal indicators, including red warning signs and yellow caution triangles—its own equivalent of the KeyCite flags. (This is a pleasant parallel to the first Shepard's product. A user looked at a case in an early reporter and saw, pasted next to the name of the case, an indication of later treatment. Today a user looks up a case online, and next to the title he immediately sees a colorful indication of the kind of treatment this case has received.⁴⁶) The improvement of Shepard's made people even more interested in seeing how it and KeyCite stacked up.

The first article to hit the stands comparing the two was a study by Fred Shapiro, which appeared in the *Legal Information Alert* newsletter.⁴⁷ The study was a basic numbers comparison—running 421 cases through both programs and comparing the results. KeyCite almost invariably came out on top by receiving the greatest number of citations per case. This was mostly due to its coverage of unpublished cases and significantly more law reviews and journals. The same issue included an answer to the study by Shepard's⁴⁸ that made several points. Shepard's again hit heavily on KeyCite's alleged use of machines rather than human editors (going so far as to call results from the two systems "two different types of data"⁴⁹) and complained of misreadings. It pointed out that Shapiro was looking at numbers alone, and not actually making any quality judgments about the citations, and it belittled the use of unreported cases. The reply made several valid points. However, they were all presented very defensively (along with a few less valid points), and the tone of the article suggested how new and strange the idea of a competitive product was to the Shepard's company.

The next comparison article appeared a few months later in the *AALL Spectrum*.⁵⁰ Again, there was a basic comparison of the numbers of citations returned, although the author, Elizabeth McKenzie, delved a little further into quality control, and the two products actually ranked fairly closely. McKenzie made a few unique points. She quoted both Morris and Dabney saying that it was not true that KeyCite was the more automated system. Both systems, according to this article, start with human editors, and the processes were, in fact, remarkably similar.

McKenzie also drew attention to the headnotes. KeyCite referenced markedly more headnotes. In the Shepard's response to the Shapiro study, the company made a point of remarking that their product searched several different brands of headnotes, whereas KeyCite was limited to West headnotes.⁵¹ Headnotes had long been a problem for Lexis, because the West headnotes had always been the ones, by far, in greatest use. Shepard's had always used West headnotes, and if users on the Lexis version of Shepard's wanted to look at a headnote, they had to go to a West product. It was not only an extra step, it was an extra step that reminded the user of the competition.

Lexis has since added its own summaries and headnotes to its online case collection—a massive editorial undertaking. Lexis headnotes, unlike West headnotes, use the actual language of the court. West, in contrast, tries to recast the phrasing of the headnote to make it more intelligible when read outside the context of the case, as in a printed digest. This is particularly

apparent in what West editors refer to as “concrete” headnotes, which apply the law to the particular facts of the case, and thus generally need to summarize the facts relevant to a particular headnote. Lexis does not make such “concrete” headnotes, making only points that are, in West parlance, “abstract” headnotes. “Abstract” headnotes make a general statement of the law without rehashing the facts relevant to the issue.⁵² While headnote searching has improved enormously on Lexis, there is nothing that looks quite like the West Topic and Key Number System. It was not until 2005 that Shepard’s finally fully integrated Lexis headnotes into the system. In 2006, Lexis stopped identifying headnotes from West sources, and today Lexis is actually in the process of removing Shepard’s references to West headnotes.⁵³

The next two comparisons appeared on the Law Library Resource Xchange (LLRX) one month apart. The first article, by Tobe Liebert,⁵⁴ is important for a couple of reasons. One is that it marks time by noting that “New Shepard’s” debuted in March of that year, i.e., 1999. It also laid out five factors to judge the two systems on: citation type, the range of citations covered, the use of the system for further legal research, the cost, and the currency and accuracy of the system—this last being “arguably the most important basis of comparison.” This article alluded to an upcoming study by William Taylor, which is probably the most comprehensive of all studies comparing the two products.

The second LLRX article⁵⁵ is essentially a record of one of the shoot-outs mentioned earlier, in which speakers from both companies debated the merits of the systems, led by Dan Dabney for West, though with an unfortunate and recurring misspelling of his name, but sadly not Jane Morris for Lexis. The article did not make any serious comparisons between the two systems, though the author did do a little of her own citing later. Mostly it serves as a good record of the kind of scrapping the companies were doing at the time.⁵⁶

In 2000, William Taylor’s article⁵⁷ hit the stands, so hot that responses from both Morris⁵⁸ and Dabney⁵⁹ appeared in that same issue of *Law Library Journal*. Taylor started by listing all the comparisons that had come before and then recreating part of the Shapiro study. He found that very little of what Shapiro had found in 1998 was true in 2000; Shepard’s had caught up quickly, to the point where it often came out just slightly ahead of KeyCite. Taylor then went on, though, to do his own study by building his own, small-scale citation index, essentially just picking a jurisdiction, reading all the cases that came out of it, and then deciding which ones needed to be recognized by a citator.

Both companies answered first with congratulations to Taylor for his excellent work, and then by noting ways in which their respective products did not make as many mistakes as Taylor counted. Jane Morris pointed out that Shepard's had a more diverse scale of treatment than simply "negative," and Taylor did not take this into account. Dan Dabney explained that the appearance of a negative in one system but not the other was not necessarily a mistake by the system lacking the negative. It could be a false negative, which would make it a mistake for the system that counted it, rather than the one that did not. West apparently conducted a further experiment and found that several of what Taylor counted as "mistakes" by KeyCite were actually false negatives.

In many ways, the Taylor article is less a comparison between the two systems as a critique of both. One can (and probably does) compare his numbers for how many citations he got, how soon he got them, and how many cases each system missed. But really the moral of his story is that we should be more skeptical than we are of the two systems. He made suggestions for what West and Lexis could do to improve their products, but he also suggested that, really, lawyers should check out the last two days themselves to make sure nothing had changed.

As the lack of user response to the pre-1967 problem with InstaCite and the parallel citation problems with early Shepard's show, users of these systems tend to be a little on the credulous side. Taylor's point seems to be that our modern Shepard's and KeyCite are no different, and they are fully capable of making mistakes.

One article identified what the authors considered a serious problem with both systems.⁶⁰ Alan Wolf and Lynn Wishart developed a not entirely unusual sequence of events—case A relies heavily on case B, case B is later overruled by case C, and, thus, case A is indirectly overruled as well, though C never actually mentions A. The McKenzie article⁶¹ actually pointed out that KeyCite's new, pre-flagged "Table of Authorities" made this less of a problem than before—a tool that gathered all cited resources—potential A cases—into one spot and made it more easy for the researcher to spot a problem. Shepard's added its own "Table of Authorities" in 2001,⁶² and because Shepard's includes indications of how the cited case was treated, such as "followed by" treatment, it is even easier to spot a sub silentio overruling. However, this is still the type of problem that is hard for users to notice, so few (if any) people actually take the precaution of looking at the "underpinnings" of a case and running them through a citator as well. The Wolf/Wishart article also addresses the Taylor problem of users not asking enough questions, and complains that West and Lexis add to the

problem with deceptive advertising and slogans that draw attention away from such difficulties.

THE DEATH OF PAPER

Some elements of the future of citators seem clear. Print Shepard's, for example, are less and less common. Not only is it tedious and difficult to use the paper Shepard's,⁶³ but because of the requirements of printing, binding, and shipping Shepard's in print is, by necessity, less current than its online counterpart. More and more people are asking whether or not it will soon be malpractice to use Shepard's in paper.⁶⁴

Making the transition from print to electronic citators has not always been easy, especially for libraries that serve the public. A major roadblock was how to offer public access to an online citator system for the pro bono lawyer or for members of the public coming in off the street. In the academic law library, law students and faculty check citations through Shepard's or KeyCite, which they access with their Lexis and Westlaw passwords. But library users without personal passwords had no access to these systems and had been reliant on print Shepard's, and few libraries had the budget to offer free public Westlaw and Lexis access. It was, of course, still possible to search in a free database for a citation or case name as a term, and then read each cited case, doing essentially what Lexcite and QuickCite did, but this can be a long and involved process. Additionally, free databases often cover materials only from a certain timeframe or jurisdiction, and they may lack the resources to design search engines on par with larger, pay databases.⁶⁵ So, for a long time, many libraries felt that they had to continue to offer Shepard's in paper.

The problem was solved in large part by Penny Hazelton, the head of the University of Washington's Marian Gould Gallagher Law Library. The Gallagher Law Library had always been very serious about its service to the public, so Hazelton approached West and proposed that they sell KeyCite separately from the rest of Westlaw for public use at a low, affordable price. West agreed, and, thus, it became possible to wean away from the time and money-consuming print versions of Shepard's to an all-online system.⁶⁶ The Gallagher library then began canceling its Shepard's in print. Today, only their Washington state and federal print Shepard's remain current.⁶⁷ They have cancelled more than half of their Shepard's subscriptions. Shepard's now offers a public access product as well. Although considerably cheaper than the print version, it is still more costly than public KeyCite.

This price difference is mostly because the public Shepard's includes access to the case law results of a search, whereas a public KeyCite user must go to the books to read the actual case. This may be because West owns the majority of print case law and does not mind sending a user to another West product. In a situation similar to that of the headnotes, Shepard's wants to offer its service without sending the user to a competitor's product.⁶⁸ Gallagher is not the only library to have the public KeyCite arrangement, but it was the first.⁶⁹

The other reason that print Shepard's is disappearing is one of cost. Subscriptions to print Shepard's for a single title can often be well over \$1,000, and a library could spend tens of thousands of dollars yearly to keep print Shepard's current. Even cautious schools, like Indiana University in Bloomington, which wanted to hold onto the paper, eventually chose to switch to online citators for financial reasons—keeping only the two titles that, as of 2001, were not available electronically. IU currently offers its patrons a free, stand-alone Shepard's, and access to KeyCite via a WestPac subscription.⁷⁰

NEW USES FOR CITATORS

"Although we learned to use citators primarily as a defensive tool to ensure that the cases upon which we were relying remained 'good law,' it now becomes clear that the electronic citator is also a powerful tool for initial research; a single case that deals with a point of law can open the entire universe of legal research data with a click of a mouse."⁷¹

Though Shepard's has always been intended as a tool to do original legal research in addition to updating, the introduction of KeyCite was a sharp reminder that the citator has a real role as a legal research tool, and that checking a citator is not just the last step in the research process. While it was certainly true that a good citation in Shepard's in print could lead to more cases on topic, hypertext links and the Limit and FOCUS features on KeyCite and Shepard's have made citators more widely used than ever before as research tools.⁷² The ability to search within citator results makes those results useful case and secondary source-finding tools.

All the new and recent innovations to citators put them on par with digests as a tool for finding relevant new material, both primary and secondary. One good case often leads to other good cases, as well as citations to journal and law review articles, *American Law Reports* annotations, and many other references. In addition, the FOCUS and Limit KeyCite display features in the respective programs make searching easier than ever.

The user, with the click of a mouse, as Bayer says above, can narrow the more than seventeen thousand documents that cite *Roe v. Wade*⁷³ down to the only one New York lower court case before 1989 that deals with headnote 15 in great depth and contains the word “abortion,” or just look at briefs or secondary sources. Shepard’s and KeyCite take the list of sources that are in some way relevant to the user’s own case and make them highly searchable and browseable. In addition, new kinds of documents are becoming citator friendly every day. When Shepard’s began, it was used to update case law. Since then citators have begun to cover restatements, regulations, law review articles, etc. Materials that are not actively covered, like treatises, often show up at least in the table of authorities, so even sources not covered directly by KeyCite and Shepard’s can be discovered by using a citator.

Statutes, of course, are also covered by both citators. Despite the success of KeyCite, many people at West were still surprised and concerned when Shepard’s did not renew its contract with them in 1999. The expectation at West had been that the company remained a source of revenue and that Shepard’s would not want to lose it. At this point, though, Matthew Bender, Lexis, and, consequently, Shepard’s all belonged to Reed Elsevier, and Elsevier wanted to compete rather than to make that small profit. One result of this was a KeyCite program for statutes. Shepard’s had a statutory program that comprised a very, very small percentage of their sales, but when West officially lost Shepard’s, they wanted to make sure to offer as many of the same services as they could, so the statutory citator was built. The only real improvement of the KeyCite statute citator over Shepard’s was the addition of yellow flags for pending legislation, though that is not a negligible improvement.

West offers a feature with KeyCite that will return a list of topics and key numbers that are similar to the headnotes in the case keyed into the system. Shepard’s offers a summary that pulls the most important information, like overrulings, to the top of the page. KeyCite and Shepard’s are now able to evaluate and predict what a user is looking for, a task far beyond simply making sure that a case is still good law.

Since 1999, Shepard’s has offered two different ways to Shepardize—KWIC for just finding out if your case is still good law, and the default FULL for users more interested in browsing the references than finding a quick answer. (The distinction in KeyCite between the “History” button and the “Citing References” button performs a not unrelated function; however, the researcher does not get the choice. KeyCite puts direct and strong negative indirect history onto a front page automatically

for each use of the system, whereas Shepard's lets the user select only the service that suits his needs.) This distinction acknowledges the separate purposes for which Shepard's can be used.

KeyCite recently introduced a new feature called "Graphical KeyCite"⁷⁴ that is not a research feature and is definitely not an updating feature. If anything, this new program might be seen as an educational feature. For some cases, it is well nigh impossible to follow the intricate twists and turns the case takes through the courts without a pictorial representation (both the *Miranda* decision⁷⁵ and the *Roe v. Wade* decision⁷⁶ spring readily to mind, and both make very pretty pictures in the Graphical KeyCite feature. Most cases are not half so interesting though). The more obvious use of Graphical KeyCite, though, is to give the user a handle on what the court system looks like and how a case progresses through it.

Probably the last topic to consider when thinking about the future of citation indexes is the possibility of alternative citators. While this article did not go into great depth about any of the multitude of print citators that competed with Shepard's in the early days, the author would like to comment briefly about competitors for Shepard's and KeyCite that are on the market today.

Unfortunately, there is really very little to talk about. The future of a product is almost always dependent upon competition and the drive to improve, and although a variety of tools call themselves citators for specialized subject matter,⁷⁷ none of them can compete with the vast scale or the currency of KeyCite and Shepard's. Many of them are still in print.

One general citation index is GlobalCite on LoisLaw. GlobalCite, however, is not on the scale of KeyCite or Shepard's. Although it spans the materials on LoisLaw, it is limited only to those materials. KeyCite and Shepard's show results that are not actually available to use on their systems. GlobalCite is a wonderful poor man's tool, though. It links to full sources free of charge. This means that clever users can get all that LoisLaw has to offer on one subject with only a single search. One case leads to another, and that to a third, and so forth. The limitation would again be that LoisLaw does not have materials as comprehensive as either Lexis or West.

GlobalCite is interesting in that LoisLaw really thinks of it as a tool for legal research. In the blurb about the product, LoisLaw states that GlobalCite often takes the place of traditional annotations in the research process.⁷⁸

Other online services have citator features, but they are rarely particularly user-friendly. Some of the bigger databases on BNA offer citations, but they are just hyperlinked citing cases, and offer no treatment indicators.

The same seems to be true for the growing alternative Casemaker. The citator on CCH lists cases by the section number that they cite—it is very difficult to navigate. Very recently, two free sources, AltLaw⁷⁹ and PreCYdent,⁸⁰ have introduced citators. It is wonderful to see alternative citators; however, they suffer from all the same problems that other alternatives do—the AltLaw citator does not include treatment indicators, and the PreCYdent product is a little difficult to use.⁸¹ So far, neither is in the same league as Shepard's and KeyCite.

JustCite, a UK resource that indexes UK and EU case law and legislation among other things, is a vendor-neutral search engine combined with a citator. The user can search by citation or keyword among other things. A particular document calls up an "information screen," which provides links to the full text of the document from a variety of different sources, and has sections for case law and legislation that cite the document. JustCite has a text indicator of treatment, like "mentioned" or "affirmed," but it does not include the handy little icons that tell Shepard's and KeyCite users the status of a document at a glance. The terms used are not always self-explanatory, so it is helpful to have the JustCite key handy. However it certainly is a vast improvement over confusing paper products (which Americans may not have access to) and the near lack of online citators for European law that persisted until fairly recently.⁸² JustCite is another example of a citator feature that is part and parcel of a tool that is meant to do primary legal research.

Though there is not much in the way of competition for the completeness and ease of use that Shepard's and KeyCite offer, there probably should be. Just as the AALL pointed out in its letter to the Justice Department on the occasion of the probable sale of Shepard's to Reed Elsevier,⁸³ competition makes systems develop and improve in ways that they would not otherwise be motivated to, if the market were secure. One avenue for future development might be greater focus on the use of citators as legal research tools—maybe starting to try to anticipate user interests and needs. While one can set up an alert on either Shepard's or KeyCite that will automatically send the user an e-mail if a recently run citation has a significant change, there is no feature designed to help the user keep abreast of new case law by subject. Such a feature might be welcome on KeyCite or Shepard's. A user could set the system to send out alerts about the new cases and statutes decided based on topical considerations.

There is also a growing trend to combine citators with other kinds of information searching. A Google innovation, for example, was to integrate

citations (hyperlinks, in this case) and the anchor text for those citations into its search function.⁸⁴ Google pays attention to how often a webpage is cited, and why it is being cited. Citators can be a very powerful tool, and software developers are constantly coming up with new ways to use them.

Other systems, citators and other tools alike, are offering new and interesting ideas, and it is this kind of competition that keeps established programs on their toes and makes sure that citators, in general, will keep improving. Only time will tell what will be the next feature to revolutionize the world of citation.

CONCLUSION

The history of the citation index is fascinating, and using a citator is a vitally important step in any legal research process. A citator can be a final step to update and to make sure that all primary sources of law are still valid, or a citator can be a really active part of the primary research process, finding cases, statutes, and secondary sources. The future of the citation index, if its history and the present are any indication at all, is looking bright. Both Lexis and West are committed to continuing to improve and grow. These products are very visible to the eye of the legal community. Between the necessary functions these products perform and the market forces that are constantly acting upon them, citators cannot help but improve. In only a couple years KeyCite revolutionized the world of citators that had remained relatively unchanged for a hundred years. The recent introduction of citators on free sites in particular suggests that legal research tools, and especially citation indexes, are growing by leaps and bounds. Possible future products that will come out of Shepard's, KeyCite, JustCite, and other start-up products like it make this an exciting and constantly changing field and a particularly interesting time for the modern lawyer and law librarian.

NOTES

1. The author of this article would like first and foremost to offer her gratitude to both Jane Morris of LexisNexisTM and Daniel Dabney (the author's father) of Thomson WestTM for providing materials, information, and several amusing anecdotes that made researching this topic thoroughly enjoyable.

2. Shepard's[®] is a registered trademark of Reed Elsevier Properties Inc.

3. KeyCite[®] is a registered trademark of West, a Thomson Business.

4. Patti Ogden, *Mastering the Lawless Science of our Law: A Story of Legal Citation Indexes*, 85 L. Libr. J. 1 (1993).

5. *Id.* at 2.

6. SIMON GREENLEAF, A COLLECTION OF CASES OVERRULED, DENIED, DOUBTED, OR LIMITED IN THEIR APPLICATION: TAKEN FROM AMERICAN AND ENGLISH REPORTS (Portland, Arthur Shirley, 1821).

7. This is actually a date of mild contention. This author chooses to use the date provided in materials published by LexisNexis, (*see* SHEPARD'S, AN ONGOING TRADITION OF "INDISPENSABLE SERVICE" TO THE LEGAL PROFESSION (1998) and SHEPARD'S, "THE LAWYER'S ROSETTA STONE" (2001)). However, Ogden lists the date as 1875 and notes the debate in a footnote. Ogden, *supra*, at 27.

8. Ogden, *supra*, at 32.

9. Many thanks to Ann Nez, Librarian and Head of Bibliographic Control at the Marian Gould Gallagher Law Library for both her tips on book preservation and information about Gallagher's use of citators.

10. SHEPARD'S, AN ONGOING TRADITION OF "INDISPENSABLE SERVICE" TO THE LEGAL PROFESSION (1998). (This is a 16-page brochure published in honor of Shepard's 125th anniversary and does not have page numbers. On file with author.)

11. *Id.*

12. *Id.*

13. Ogden, *supra*, at 29.

14. Ogden mentions several, but for those interested in a really full history, also see Michael J. Lynch, *Citators in the Early Twentieth Century—Not Just Shepard's*, 5 Leg. Ref. Servs. Q. 16 (1998).

15. E-mail from Jane Morris, Director of Customer Programs, LexisNexis, to author (16 May 2007, 20:23:22 PCT) (on file with author).

16. ONGOING TRADITION, *supra*.

17. Much of the discussion that follows over the next few pages comes from a telephone interview with Daniel P. Dabney, Thomson West, in Zug, Switzerland (April 27, 2007).

18. Lynn Foster & Bruce Kennedy, *Technological Developments in Legal Research*, 2 J. App. Prac. & Process 275, 278 (2000). (LCP was the first successful competition to West.)

19. Ogden, *supra*, at 37.

20. Peter Nycum, *Law and Computers: Overview Update 1975*, 68 L. Libr. J. 234, 244 (1975).

21. Ian Gallacher, *Forty-Two: The Hitchhiker's Guide to Teaching Legal Research to the Google Generation*, 39 Akron L. Rev. 151, 164 (2006).

22. *Id.*

23. LEXISNEXIS, WHAT IS THE AUTO-CITE SERVICE? http://support.lexis-nexis.com/online/record.asp?ArticleID=Auto_Cite.

24. Tobe Liebert, *The New Generation of Citators*, 10-Fall Exper. 28, 29 (1999).

25. Ogden, *supra*, at 37.

26. WESTLAW, SHEPARD'S PREVIEW AND SHEPARD'S CITATIONS (Supplement to the WESTLAW REFERENCE MANUAL, THIRD EDITION) (1989).

27. LEXISNEXIS, THE LEXCITE FEATURE, <http://support.lexis-nexis.com/online/record.asp?ArticleID=LEXCITE>.

28. WESTLAW, DISCOVERING WESTLAW: THE STUDENT'S ESSENTIAL GUIDE, 51 (1991). This manual mentions West's "new" citator service, QuickCite, though for several years prior to that time West materials had included a section on using Westlaw as a citator through a free text search. See WESTLAW, REFERENCE MANUAL, 17/1 (1985 ed. with 1987 inserts) (1983).

29. Barry D. Bayer & Benjamin N. Cohen, *West Group Unveils a New Electronic Citator*, 149 N.J.L.J. 566 (1997).

30. *Shepard's Update Service*, 13 NO. 13 Law. PC 13 (1996).

31. KENDALL F. SVENGALIS, LEGAL INFORMATION BUYER'S GUIDE AND REFERENCE MANUAL 2002, 8, (2002 ed.) (1996).

32. This was fairly impressive, but at the same time, it was not really something that West could advertise—"Use West—this time, we got it right."

33. Interview with Daniel P. Dabney, *supra* note 17.

34. Dabney for KeyCite and Jane Morris for Shepard's are two product experts cited in several articles. The author of this article would again like to thank them for their generous assistance.

35. Svengalis, *supra*, at 11.

36. ONGOING TRADITION, *supra*.

37. Letter from Robert L. Oakley, American Association of Law Libraries, to Craig Conrath, Chief, Merger Task Force Antitrust Division, U.S. Department of Justice (Sept. 13, 2006) available at <http://www.aallnet.org/aallwash/lt091396.html>.

38. Interview with Daniel P. Dabney, *supra*, note 17.

39. *Id.*

40. Back issues of the AALL spectrum and the ABA journals of the time display the ads—the September 1997 shows the fully hatched logo and includes a smaller picture of the pre-hatched egg.

41. E-mail from Jane Morris, *supra*.

42. Again, see back issues of the ABA JOURNAL and the AALL SPECTRUM.

43. Telephone interview with Daniel P. Dabney, Thomson West, in Zug, Switzerland (October 21, 2007).

44. David Beckman & David Hirsch, *New Approach to Cite-Seeing*, ABA JOURNAL, Oct. 1997, at 85.

45. Barry D. Bayer, *Shepard's Edges Out KeyCite—Only Because of Presentation, Ease of Use*, 157 N.J.L.J. 366 (1999).

46. See SHEPARD'S, "THE LAWYER'S ROSETTA STONE," (2001).

47. Fred R. Shapiro, *KeyCite and Shepard's—Coverage and Currency of Citations to Recent Cases: A Comparative Study*, Legal Info Alert, Apr. 1998, at 1.

48. Shepard's, Shepard's Response, Legal Info Alert, Apr. 1998, at 4.

49. *Id.*

50. Elizabeth McKenzie, *New Kid on the Block: KeyCite Compared to Shepard's*, AALL SPECTRUM, Oct. 1998, at 8.

51. Shepard's Response, *supra*, at 14.

52. There is a great deal more to be said about headnotes and the different ways the two companies handle them; however, it does not go directly to the focus of this article.

53. E-mail from Jane Morris, *supra*.

54. Tobe Liebert, *New Shepard's v. KeyCite: How Do We Compare?*, L. Libr. Resource Xchange (June 1, 1999), available at <http://www.llrx.com/features/keycite.htm>.

55. Victoria Szymczak, *The Great Citator Debate*, L. Libr. Resource Xchange (July 1, 1999) available at <http://www.llrx.com/features/citator.htm>.

56. At about this time also, Barry Bayer was doing a series of short articles on the two systems in the New Jersey Law Journal. He finds for Shepard's by a nose. See Barry D. Bayer, *Sifting Through the Pros and Cons of Shepard's vs. KeyCite*, 157 N.J.L.J. 142 (1999), Barry D. Bayer, *Shepard's and KeyCite: Solid Information, Reasonable Price*, 157 N.J.L.J. 246 (1999), and Barry D. Bayer, *Shepard's Edges Out KeyCite—Only Because of Presentation, Ease of Use*, 157 N.J.L.J. 366 (1999).

57. William L. Taylor, *Comparing KeyCite and Shepard's for Completeness, Currency, and Accuracy*, 92 L. Libr. J. 127 (2000).

58. Jane W. Morris, *A Response to Taylor's Comparison of Shepard's and KeyCite*, 92 L. Libr. J. 143 (2000).

59. Daniel P. Dabney, *Another Response to Taylor's Comparison of KeyCite and Shepard's*, 92 L. Libr. J. 381 (2000).

60. Alan Wolf & Lynn Wishart, *Shepard's and KeyCite are Flawed (Or Maybe It's Just You)*, 75-SEP N.Y. St. B.J. 24 (2003).

61. McKenzie, *supra*, at 29.

62. Note from Jane Morris, Director of Customer Programs, LexisNexis, to author (13 November 2007) (on file with author).

63. Charles, *Why in the World are You Still Using Shepard's in Print?* 63-APR Or. St. B. Bull. 33 (2003).

64. PENNY A. HAZELTON ET AL., WASHINGTON LEGAL RESEARCHER'S DESKBOOK 3D, 31 (2002). Also, though it does not actually presume to answer the provocative question posed by its title, Phil Johnson, *Have Online Citators Made Print Obsolete?* 92 Ill. B.J. 155 (2004) is an example of someone else asking the all important question.

65. Actually, two major free databases, AltLaw and PreCYdent, have very recently begun to offer citators of their own. They are not on par with the big guys yet, but this may be the start of a new trend. For more information, see Bonnie Shucha, *Review of Free Citators Available in AltLaw & PreCYdent*, WisBlawg (May 21, 2008) available at http://www.law.wisc.edu/blogs/wisblawg/2008/05/review_of_free_citators_availa.html.

66. Thanks to Penny Hazelton, Associate Dean for Library and Computing Services at the Marian Gould Gallagher Law Library for all her help.

67. Thanks again to Ann Nez, Librarian, Head of Bibliographic Control at the Marian Gould Gallagher Law Library for providing information about the Gallagher policy toward Shepard's in print.

68. Note from Jane Morris, *supra*.

69. Some other examples include the University of Houston and Rhode Island State University.

70. Many thanks to Richard Vaughn, Acquisitions Librarian, Associate Librarian & Lecturer in Law at the Indiana University Bloomington School of Law Library for providing information about the IU Law Library's policy toward print Shepard's.

71. Barry D. Bayer & Benjamin N. Cohen, *West Group Unveils a New Electronic Citator*, 149 N.J.L.J. 566 (1997).

72. The potential power of a citation system to be an even more primary research tool has been flirted with in the past. According to Dan Dabney, a few years before he went to work for West he approached the Shepard's company with an idea to use Shepard's information and the West Key Number System to design a new and really powerful free text retrieval program. The project unfortunately never came to fruition.

73. *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705 (1973).

74. West, *Beyond Citation Checking: Graphical KeyCite Paints a Picture of the Procedural History of Case Law*, 22 NO. 22 Law. PC 7 (2005).

75. *Miranda v. Arizona*, 86 S.Ct. 1602 (1966).

76. *Roe*, 410 U.S. 113.

77. For example, the UNITED STATES DEPT. OF THE INTERIOR BOARD OF INDIAN APPEALS, IBIA CITATOR (1988) or DAN P. DANILOV, DANILOV'S U.S. IMMIGRATION LAW CITATOR (1981).

78. LoisLaw, GlobalCite, <http://www.loislaw.com/> (follow "Product Information" hyperlink; then follow "GlobalCiteTM" hyperlink at the bottom of the page) (last visited Oct. 22, 2007).

79. AltLaw Home Page, <http://www.altlaw.org/>.

80. PreCYdent Home Page, <http://www.precydent.com/>.

81. Shucha, *supra*, note 65.

82. Stephen E. Young, "*Shepardizing*[®]" *English Law*, 90 L. Libr. J 209 (1998). Sweet & Maxwell, a company mentioned by Mr. Young, does offer an online citation index today in conjunction with Thomson; however, this author did not have a chance to evaluate it.

83. Letter from Robert L. Oakley, *supra*.

84. Sergey Brin & Lawrence Page, *The Anatomy of a Large-Scale Hypertextual Web Search Engine*, Proceedings of the seventh World Wide Web Conference (WWW7), Brisbane, also in a special issue of the journal COMPUTER NETWORKS AND ISDN SYSTEMS, Volume 30, issues 1-7 (1998), available at <http://dbpubs.stanford.edu:8090/pub/1998-8>, by clicking on the pdf link.