

## Is Google Scholar a Worthy Adversary?

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Google's free new case law tools are unlikely to make Lexis and Westlaw executives quake in their boots -- yet.

Nonetheless, Google Scholar represents competition to the two companies that have dominated the legal research market for decades. From in-house counsel to pro se litigants to people simply interested in reading cases, Google has made decisional law freely available.

One thing should be made clear from the outset: Lawyers cannot currently rely on Google Scholar in the same way they can depend on the authority of Lexis and Westlaw. Some features essential for legal research are currently unavailable on Google Scholar, most notably the ability to "Shepardize/KeyCite" cases to ensure they are still good law.

Yet in deploying its infamous search algorithms, lightning-quick servers and renowned brain power, Google has served notice to the current duopoly of Lexis and Westlaw that their business models may be challenged.

By visiting <http://scholar.google.com> and selecting "legal opinions and journals," every opinion that American courts have published during the past 60 years can be searched instantly -- plus older cases in federal courts. The advanced options allow one to limit searches by jurisdiction. While reading an opinion, one can click on any case cited by the court and read the cited case, just like any other hyperlinked page online.

Moreover, Google uses its advanced-search algorithms to deliver impressive results. I typed "separate but equal" and *Brown v. Board of Education* and *Plessy v. Ferguson* appeared. I entered "personal jurisdiction" and the cases that often flummox first-year law students were at the top of the list. Misspell something and -- as in a regular Google search -- Google suggests what it thinks was actually meant.

The results are instant, and, of course, free. The savings to law firms and their clients, who currently pay Westlaw and Lexis several hundred dollars for *each* search of their "all state and federal cases" databases, could be substantial.

Yet, considerable "buts" remain.

As mentioned previously, no easy or definitive way exists for determining whether a case is still good law. For example, the 9th U.S. Circuit Court of Appeals published the en banc opinion *Fair Housing Council of San Fernando Valley v. Roommates.com LLC*, 08 C.D.O.S. 3857, which had several substantive legal errors. Several months later, the circuit court published a corrected version. Both versions appear on Google Scholar. If users click on the earlier decision, they would be unable to ascertain that the opinion has been superseded.

Google Scholar does not provide headnotes or case summaries, which may slow down the process of locating the part of the case desired for review. In addition, state cases are cited only by regional reporter citations.

It is unknown how comprehensive Google Scholar is, or will be. A 4th Circuit case published last month was not yet available on Google Scholar, even though it appeared on Lexis and Westlaw within a day or two of its publication. It is difficult to determine which, if any, unpublished cases are part of Google's database.

For now, Google Scholar is best for quick-and-dirty legal research. It can provide a general idea of the law in a particular area and is great if one needs a citation for a general principle of law.

Litigators are unlikely to cancel their Westlaw accounts anytime soon, or draft briefs based on their Google Scholar research. But this does not mean it will never happen.

If Google wants to devote its resources to addressing its current limitations, the future of legal research could become very different. Many courts accept briefs electronically. Why not hyperlink cited cases in the brief to the cases' free Google page?

Many lawyers are not pleased with Shepard's/KeyCite notations -- it seems that every case more than two years old carries a caution flag, rendering the sign virtually meaningless. Can Google create an easier way to explain how a case has been subsequently discussed or distinguished? Or can Google automate the entire headnotes system, based on the way other courts cite to, and describe, certain portions of an opinion?

The winners in this competition are likely to be users. Google has issued a formidable challenge to Westlaw and Lexis. Both must continue to innovate and add the type of analytical value that can be provided only by humans -- not merely by computer algorithms. And, in fact, they are doing just that. Both have rolled out new search tools this year that better reflect how attorneys conduct online legal research. With Bloomberg also entering the market, a new era of competition, innovation and efficiency in legal research is under way.

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