Catch a Little R & R

Research Redux

March 26 - April 12

CITATORS:
Shepard’s & KeyCite

Is my case still good?
What Is a Citator?

Simple concept: take a case (or other document) and generate a list of citing cases.

The resulting product tells us if the case was appealed and if so what happened to it on appeal.

A citator is a tool that shows when and how a particular legal authority has been cited.

It gives you quantitative information (the number of citing references) and qualitative information (the kind of treatment a particular legal authority has received).
Purposes of a Citator

1. **For validation**: to determine that a case, statute, regulation, or administrative decision is still good law and therefore can be used as the basis of your legal argument.

2. **For research**: to get citations to other relevant cases, administrative decisions, or secondary sources to support your legal argument.
Don’t Let This Happen To You

http://www.youtube.com/watch?v=QFOY0Glg0gU
How to Use a Citator

**Direct History**
(prior and subsequent history of your legal authority)

- Was your case appealed? Was it affirmed, reversed, remanded?
- Is your statute reversed, amended, affected by a pending legislation?

**Indirect History (or Citing References)**
(listing of other cases and secondary sources that cite to your legal authority)

- Did a later case overrule, criticize, or distinguish your case?
- Are there cases and secondary sources that cite your case?
Lexis Citator Signals

* Signal Legend:
- Warning: Negative treatment is indicated
- Questioned: Validity questioned by citing refs
- Caution: Possible negative treatment
- Positive treatment is indicated
- Citing Refs. With Analysis Available
- Citation information available

* Click on any Shepard's signal to Shepardize® that case.

“Neutral Citations”

“Refs (e.g. law revs.) themselves have no treatment signals”
Westlaw Citator Signals

▶ Red flag
The case or administrative decision is no longer good law for at least one of the points of law it contains.

▶ Yellow flag
The case or administrative decision has some negative history, but has not been reversed or overruled.

✠ Blue H
The case or administrative decision has some history.

○ Green C
The case or administrative decision has citing references but no direct history or negative citing references.
Additional Westlaw Signals

Quotation marks indicate that the citing case or administrative decision directly quotes the cited case.

Depth of treatment stars:

★★★★★ Examined: The citing document contains an extended discussion of the cited case or administrative decision, usually more than a printed page of text.

★★★★ Discussed: The citing document contains a substantial discussion of the cited case or administrative decision, usually more than a paragraph but less than a printed page.

★★ Cited: The citing document contains some discussion of the cited case or administrative decision, usually less than a paragraph.

★ Mentioned: The citing document contains a brief reference to the cited case or administrative decision, usually in a string citation.
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.”

Always remember that these case status symbols are judgment calls made by editors working for the database.

Use the status indicators as guides but be sure to read the cases and determine the status of the original case for yourself.
Determine whether the action taken by the court hearing the appeal affects the specific holding that applies to your situation.

This will determine whether you can still use the case.
Read only citing cases that discuss the specific rule in which you are interested (use the number assigned to each headnote to determine which cases discuss your issue).
Where do they come from???
Where do they come from???

Prior history → C → Subsequent history

Your case

Statute (or Administrative Regulation) Overrules
Effect of Decision

UPHELD
Where do they come from???

Prior history

Unrelated and unfavorable case from outside jurisdiction… questioned, criticized, distinguished…

Unrelated and unfavorable case from within jurisdiction ➔ overrules your case (directly or on same point of law).

Your case

C

Subsequent history

Unrelated and favorable case from any jurisdiction

I'm still yellow !!!

Uh-Oh!
Sometimes it’s less straightforward…

“subsequent” history does not always mean higher court

Prior history → [C] → Subsequent history

Trial Court → Int. Court → Higher App. Court

New Opinion

Your case

Remand
Case Example:
616 F.2d 956
Also, don’t forget about higher cases from your jurisdiction that deal with the same issue but do not actually cite your case (or your citing references).

You can find those cases (*if any*) with West’s Topic and Key Number System!
All cases on Westlaw for “Tortsk387” for all jurisdictions

247+ cases

State & Feds 6th Cir. “Torts Key # 387” aka “379k387” = 18+

“Citing References” State & Feds 6th Cir. cases that cite your case = 10

Your case 616 F.2d 956

379 Torts 379IV Privacy and Publicity 379IV(C) Use of Name, Voice or Likeness; Right to Publicity 379k386 Conduct or Misappropriation Actionable in General 379k387 k. In General. Most Cited Cases
Red flag
In statutes and regulations, a red flag warns that the statute or regulation has been amended by a recent session law or rule, repealed, superseded, or held unconstitutional or preempted in whole or in part.

Yellow flag
In statutes and regulations, a yellow flag warns that a statute has been renumbered or transferred by a recent session law; that an uncodified session law or proposed legislation affecting the statute is available (statutes merely referenced, i.e., mentioned, are marked with a green C); that the regulation has been reinstated, corrected or confirmed; or that the statute or regulation was limited on constitutional or preemption grounds or its validity was otherwise called into doubt, or that a prior version of the statute or regulation received negative treatment from a court.
How Current Are Online Citators?

• KeyCite
  • Direct History is added within four hours of receipt of a case.
  • Overrulings are identified by the editors within 24 hours of receipt.
  • Negative indirect references are added within a few days.
  • Citing references are available in KeyCite when a case or statute is added to Westlaw.

• Shepard’s
  • Treatment and history analyses are constantly updated—typically within 24 to 48 hours of receipt of an opinion.
Non-legal Citators!

Who’s Citing Whom?

http://guides.library.nd.edu/subject-guide/78-Who-s-Citing-Whom-?tab=662
Why do it?

- Citation searching can....
  - help you locate newer material related to a publication;
  - show you how others are using a publication;
  - connect you to other researchers in a given field;
  - provide evidence of your influence and impact in a given field.
Online Citators

Updated Feb. 15, 2006 by Mary Whisner.
Originally prepared by Jonathan Franklin for Bridge the Gap.

- What Is a Citator?
- Why Use a Citator?
- How Current Are Online Citators?
- What Are the Other Major Differences Between Shepard’s and KeyCite?
- Where Can I Get a Refresher on These Services?
- How Does GlobalCite from LoisLaw Compare to KeyCite and Shepard’s?
- Three Important Points
- Citator Comparison Table
- Final Thoughts

PowerPoint slideshow on Online Citators, for 2006 Basic Legal Skills.

What Is a Citator?

A citator is a tool that helps you determine what has happened to your case, statute, or regulation after it was released. The two major online citators are Shepard’s (available on LexisNexis) and Keycite (available on Westlaw).

Why Use a Citator?

1. To find a parallel citation.
2. To find direct history (such as subsequent reversal on appeal).
   a. Cases include prior and subsequent history.
   b. Statutes include reversal, amendment, or pending legislation.
3. To find primary and secondary sources on a particular narrow topic.
   a. To find negative treatment (such as your case has been overruled or your statute having been amended).
   b. To find positive treatment (such as another case agreeing with the analysis in yours).

How Current Are Online Citators?

- Citation - As current as Westlaw and LexisNexis: same day.
- Negative analysis
  ○ Westlaw – 9-10 days.
  ○ LexisNexis – 3-4 days.
  ○ This means that even though a case will appear on your list of citations, if it is a very recent case, it might overrule your case, but has not been analyzed by the editors yet.
  ○ Lesson: Don’t rely on the graphic for cases that came down that month. When updating the same case, results between the two systems can vary.
  ○ Tip: Consider using both systems when possible.
- Availability
Gallagher Law Library provides access to KeyCite for all users.
King County Law Library has both systems for the public.

**top**

**What Are the Other Major Differences Between Shepard’s and KeyCite?**

**Shepard’s**

- Organizes cases by jurisdiction.
- Permits you to limit the citation list with a Boolean search by using the FOCUS feature to search the text of citing cases.
- Includes a positive treatment signal.
- Permits you to change the defaults (under Options or Preferences).
- Offers citation services for law review articles.
- Lists the status of each case cited in your case (Table of Authorities).

**Keycite**

- Organizes cases by treatment and then depth of analysis.
- Permits you to limit the citation list with a Boolean search by using the LOCATE feature to search the text of citing cases.
- Helps determine how deeply other cases analyze your case (KC Stars).
- Identifies cases that quote your case (KC Quotation symbols).
- Helps keep you up-to-date on the latest changes in status (KC Alert).
- Lists the status of each case cited in your case (KC Table of Authorities).

Tip: Bells and whistles you do not need are not useful in deciding which service to use.

**Where Can I Get a Refresher on These Services?**

- Shepard’s

**How Does Global Cite from LoisLaw Compare to KeyCite and Shepard’s?**

**GlobalCite**

- Searches subsequent cases for citations to your case.
- Permits you to view any case that cites the one you are viewing.
- Lacks editorial analysis and many other citator features.

**Three Important Points**

1. Use citators early in your research to find more recent relevant secondary sources, statutes, cases, and regulations.
2. Use online citators for verification whenever possible.
3. Don’t rely the graphical symbol when determining whether your case is still good law because every case and statute stands for multiple legal propositions. The red or yellow symbol you see might be for a totally different legal point in that case or statute.
## Citator Comparison Table

<table>
<thead>
<tr>
<th>Features</th>
<th>KeyCite</th>
<th>Shepard’s on LexisNexis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case finding from a term or concept</td>
<td>KeySearch Service</td>
<td>Search Advisor Service</td>
</tr>
<tr>
<td>Secondary source finding from a statute, case, or regulation</td>
<td>KC Citations: Includes ALR, Am. Jur., law reviews, CLEs, and treatises</td>
<td>Includes law reviews and ALR</td>
</tr>
</tbody>
</table>
| Case finding from a case | • KC History  
  • KC Citations  
  ○ Stars indicate depth of treatment  
  ○ Primary sources first, by treatment and stars  
  ○ Use Limit feature  
  ▪ Jurisdiction limits  
  ▪ Show citation counts  
  ○ Search text of citing cases with LOCATE  
  ○ Use KeyCite Notes to limit to a headnote  
  • Most Cited Cases  
  • KeyCite Alert  
  • TOA (Table of Authorities) lists cases your case cites  
  ○ Stars  
  ○ Flags  
  ○ Quotation marks | • Main screen  
  ○ Combines history and citations.  
  ○ Primary sources first, arranged by jurisdiction.  
  ○ Use Custom restrictions  
  ▪ Jurisdiction limits  
  ▪ Search text of citing cases with FOCUS  
  ▪ Limit to major cases by choosing “any analysis”  
  • Table of Authorities lists cases your case cites |
| Case and regulation finding from a statute | • KC History  
  • KC Citations: Pending legislation  
  • KeyCite Alert | • More focus with the ability to search subsections, but harder to get all relevant citations  
  • Use FOCUS or Custom restrictions to limit  
  • Can find cases but not regulations |
| Regulation finding | • KC History  
  • KC Citations: Apply limits  
  • KeyCite Alert | • More focus with the ability to search subsections, but harder to get all relevant citations  
  • Use FOCUS or Custom restrictions to limit |
| Secondary source finding from a law review article | Covers law reviews available on Westlaw | Covers law reviews available on LexisNexis plus selected law reviews back to 1957 |
| Case updating | • Red = No longer good law for at least one point of law  
  • Yellow = Some negative history  
  • H = Some history  
  • C = Citing references only  
  • KeyCite Alert | • Red = Strong negative history or treatment  
  • Orange = Questions precedential value  
  • Yellow = History or treatment may have significant negative impact  
  • Green = Positive treatment  
  • A = Neutral citations only |
### Final Thoughts

- Finding secondary sources: Try KeyCite first.
- Finding cases: Toss up – Which organizational scheme do you prefer? Also, would you rather limit by Key Number (KeyCite) or term (Shepard's)? KeyCite claims to include more sources than Shepard's.
- Updating cases: Either service, ideally both. Shepard’s has positive feedback signals and might be more up-to-date.
- Updating statutes and regulations: KeyCite seems more up-to-date.
Lawyer: In this case we have no newly discovered facts with respect to the motion for reconsideration of Laura McKinney.

Judge: But basically doesn’t the case law dealing with that particular code section conclude criminal cases if you Shepardize that, (if you Shepardize that, if you Shepardize that) you come up with some critical cases?

Lawyer: We did. I believe that none were found your honor. We don’t have any in our motion. Which leads me to believe that no, that aren’t any criminal cases under that section.

Judge: There are.

Lawyer: You ask me that question because you knew that it was Louis Rodes motion, huh?

Judge: No

Lawyer: But, no, as far as I know there are no criminal law cases that involve that section because it’s not recognized in criminal law. So, I mean, at least in theory, we didn’t have to have all the argument. But,

Judge: So, if my Pepperdine law clerks found some?

Lawyer: Did they? Criminal cases? What did they say?

Judge: They say it’s applicable to criminal law cases.

Lawyer: O.K.

Judge: There’s a rule in the civil procedure that an unfounded motion for reconsideration is a subject of sanctions. Just an aside.