

## IS "GOOGLE SCHOLAR" THE LEXIS/WESTLAW-KILLER?

by: *Brian D. Wassom\**

On November 17, 2009, the internet search giant Google added a new feature to "Google Scholar,"<sup>1</sup> the company's already-impressive database of scholarly literature. It now includes full-text, searchable copies of state and federal court opinions, as well as articles from scores of law reviews and legal journals. By relentlessly pursuing its goal of organizing all of the world's information, Google has already radically disrupted established business models in such industries as publishing, mapping, broadcasting, and journalism, just to name a few. Does this new feature signal the end for such paid, premium legal research tools as Lexis/Nexis and Westlaw?

The bottom-line answer is "no" — or at least, "not yet." When Google launched its case law database, its stated goal was to "empower the average citizen by helping everyone learn more about the laws that govern us all."<sup>2</sup> And Google Scholar certainly accomplishes that goal. But for litigators, court opinions are more than enlightening reading; they are commodities we use to ply our trade. To be useful, a legal research solution must not only be able to quickly locate a particular court opinion, but must also provide tools for analyzing the cases, pinpointing the portions we need, and extracting those excerpts for use in memoranda, letters, motions, and briefs. Litigators must also have a comfort level that the search results are comprehensive, and that the cases we cite are authoritative.

Google Scholar has a long way to go before it can rival Lexis and Westlaw in these respects. Nevertheless, even this introductory version of Google Scholar is a useful supplement that, at a minimum, may help some attorneys reduce their electronic research expenses.

### IN GOOGLE SCHOLAR'S FAVOR

These aspects of Google Scholar make it attractive for use in law offices.

*It's free.* If you have an internet connection, you have access to Google's entire database of case law and secondary legal publications. Given the price of subscription-based research tools, it is little wonder that not a few solo and small-firm practitioners danced in their offices upon learning of Google's new service. And you can bet that the more clients become aware of such resources as Google Scholar (as well as FindLaw and other free sites), the more pressure there will be to keep research costs down.

*Ease of use.* Google Scholar works just like a typical Google search. Simply type your search terms into the white box in the center of the screen, or refine it using several "advanced" features. The same Boolean operators are available to help narrow your search results. But there are no special formats, modifiers, or terminology to learn.

*Suggestions for misspelled words.* Also like Google proper, Google Scholar will suggest to you alternative spellings when it thinks you may have misspelled a search term. This is a handy feature that Lexis/Nexis and Westlaw do not offer.

*Abstracted quotations.* Using the Shepard's feature in Lexis, or Westlaw's KeyCite function, will return a list of cases that cite your opinion. But to find out what these cases actually say about the Shepardized opinion, you need to open each one individually.

\* *Brian D. Wassom is a partner with Honigman Miller Schwartz and Cohn LLP in Detroit. His commercial litigation practice focuses primarily on copyright, trademark, publicity rights, media, and entertainment cases.*

By contrast, Google Scholar's "How Cited" tool groups its results by how the citing case quotes the original, and offers you a snippet of that quote right there in the initial results page. In other words, if the case you start with uses the words "We hold these truths to be self-evident," all subsequent opinions quoting that exact text will be grouped together. Other cases cite the line, "This is a case about the Declaration of Independence," for example, those results will be grouped together in another line. This makes it much easier to hone in on just those cases that cite the opinion in the manner you're looking for.

And did I mention it's *free*?

### IN FAVOR OF LEXIS AND WESTLAW

A free, Google-powered legal research tool *sounds* like a game-changing development. But once you actually *use* Google Scholar to do legal research, the glamour soon fades.

*Cite Checking.* Shepard's and KeyCite are one of the most valuable benefits that the paid research services offer. A court opinion has limited value in the litigation context without the ability to confirm that its holdings remain good law, and to see how subsequent decisions have applied it. With colored flags and explanatory notes, Shepard's and KeyCite go out of their way to make this information handy.

By contrast, the citations returned by Google Scholar's "How Cited" button are organized by the exact text of the quotes taken from the original case. As noted above, this approach could be useful for some purposes. But when you need to know if the case has been reversed, upheld, modified, questioned, or explained by other courts, the bright green, yellow, and red flags are a lot more helpful. Google Scholar makes no effort to explain a case's continued vitality or authority.

*Smaller Database.* Besides relying on the Shepard's/KeyCite flags attached to an opinion, a careful researcher forms an independent determination of how courts have applied the opinion by reading the subsequent cases. But the reliability of your conclusion necessarily depends on your being able to *find* those citing cases. Even if you muddle through the "How Cited" results to read the citing cases, you still need a reasonable degree of assurance that you've read all the citing opinions there are to read.

Google Scholar does not give that assurance. Although I haven't located any objective count of the cases in its database relative to that of Lexis or Westlaw, anecdotal evidence suggests that Google Scholar contains far fewer opinions. For example, one search I performed on Lexis returned 10 results, while the identical query on Google Scholar found only four. More than once, I have used Google Scholar to look for a particular citation that I know exists, only to find that Google Scholar doesn't include it.

The difference is particularly stark when it comes to opinions that are designated unpublished or found only in specialty reporters. Lexis and Westlaw revolutionized legal research years ago by making these cases just as accessible as "published" opinions. But Google Scholar's database does not appear to include many, if any, of these resources.

Results like these cast serious doubt on Google Scholar's ability to give anyone assurance that their search results are comprehensive.

*Narrowing Results.* More often than not, when litigators search for federal case law, they are most interested in cases from a particular, authoritative jurisdiction. Lexis and Westlaw will even show you opinions written only by a specified judge. Yet Google Scholar offers no ability to search only cases from a particular federal court. Even for advanced searches, your choices are limited to either "US federal court opinions," or opinions from a particular state. And unless you choose one of these filters, your results will contain both court opinions *and* articles from law reviews and other legal journals—which makes it that much more difficult to hone in on authoritative results (but, on the positive side, may lead your research in directions that it might not otherwise have gone).

Equally frustrating are the lack of specialized search modifiers that, for example, require two search terms to appear within a certain distance of each other, or for a certain term to appear a specified number of times. The only limitation on results offered by Google Scholar is to restrict the beginning year of the search's range. Users accustomed to "Natural Language Searches" on Lexis or Westlaw may not mind this omission, but those accustomed to refining their searches more precisely will quickly turn back to the paid services.

*Cutting, Pasting, and Citation Tools.* Google Scholar's lack of easy cut-and-paste tools is one of the biggest

frustrations for users accustomed to incorporating their electronic search results directly into a document. With Lexis's "Copy w/ Cite" tool, for example, you can highlight the text you want, click a button, and receive an excerpt for cutting and pasting that comes complete with proper citation and pinpoint page numbers. By clicking another button, you can toggle back and forth between the different reporters in which the opinion is published, so that the pagination lines up to the citation form you wish to use.

Not so with Google Scholar. Even if you find the opinion you're looking for, you're reduced to copying the text and the citation separately, then editing the bugs out yourself. To its credit, as you scroll through an opinion, Google Scholar does provide a pop-up text box that reminds you of the case name and citation. And the opinion itself is interspersed with page numbers. But the pinpoint does not appear in the pop-up box. And—even worse—Google Scholar does not allow you to specify which reporter's pagination you'd like to use. Michigan appellate decisions, for example, are paginated using only the Northwest Regional Reporter's numbering. So, to use the citation in a Michigan court, you'll need to use a different service to find another copy of the opinion anyway.

## CONCLUSION

Google Scholar, as it currently exists, is definitely targeted to "scholars" and the lay public—not to legal professionals. It does have some utility for litigators—if you need a quick copy of a particular opinion, for example, or are looking for starting points from which to launch more comprehensive lines of research, or simply can't afford the paid services. But there is no clear and present danger of attorneys abandoning their Lexis/Westlaw subscriptions *en masse* in favor of Google Scholar.

That said, however, this is *Google* we're talking about. It may well have launched "Google Lawyer" before this article even sees print. And when that happens, those companies whose business model is selling access to court documents will have genuine reason to worry.

## ENDNOTES

1. Available at [scholar.google.com](http://scholar.google.com).
2. Official Google Blog, *Finding the laws that govern us*, Nov. 17, 2009, available at <http://googleblog.blogspot.com/2009/11/finding-laws-that-govern-us.html> (last accessed Jan. 11, 2010).