

# New Kid on the Block:

## KeyCite Compared to Shepard's

by Elizabeth M. McKenzie



In July 1997, West Group unveiled a major new product, KeyCite. KeyCite, which works much like *Shepard's* but adds some new features that dramatically increase its efficiency for law firm use, has won many glowing reviews (*Law Off. Tech. Rev.* 7/17/97; *Advocate* 10/97; *A.B.A. Journal* 10/97). In this article, I compare the two systems' processes, claims and results. Many thanks are due to the reference librarians who helped me compare the two services: Ellen Beckworth, Ellen Delaney, and Beth Gemellaro. Readers should note the comparisons below are based on *Shepard's* on WESTLAW, which is not always as current as the *Shepard's* on LEXIS.

KeyCite can be used like a citator to discover whether the case is still good law, and to find other, later cases dealing with the same issue, expanding one's research. However, KeyCite offers new features that can speed the legal researcher along. KeyCite uses a system of red, yellow, and blue flags similar to *Shepard's* traffic signals on the CD-ROM version. Red indicates that the case is not safe to use as a precedent; yellow means use the precedent with caution; and blue shows the user that the case has no negative history. In addition, KeyCite analyzes how in-depth the later case's discussion is of the cited case and notes cases that actually quote the precedent case. KeyCite further speeds the researcher by reverse-citing the original case. That is, it looks at the precedent in the original case, and analyzes whether that is still good law. This is called the *Table of Authorities* function. For users of *Shepard's* on CD-ROM, this is similar to "Underpinnings" on that version of *Shepard's*. How does KeyCite compare with *Shepard's* from a user standpoint?

### Test Results

**Methodology.** I selected cases to compare somewhat at random and performed two WESTLAW searches to pull up cases. I searched the Allfeds and the Allstates databases for cases dealing with seizure of a knife in a criminal case. I also searched the Allfeds database for civil cases dealing with trademark issues. From those lists, I selected several very recent cases and several older cases. I selected several cases from the United States Supreme Court, various federal courts of different levels, and state

courts in the states Illinois and Massachusetts, which have always maintained official reports. I selected only officially reported cases; none were available only electronically. I then assigned the cases to three reference librarians, all of whom had taught both *Shepard's* and KeyCite. The librarians ran the *Shepard's* search on WESTLAW since they were more familiar with that gateway, and repeated the search in *Shepard's Preview* and QuickCite to complete each *Shepard's* search. The alert reader will notice that each comparison took three searches to bring the *Shepard's* research up to date, while the KeyCite work was done in one search. *Shepard's* teaches users on LEXIS that they need only one search to completely update on the LEXIS platform. In our comparison, we tried to do both the *Shepard's* and the KeyCite searches on the same day.

### Results

*Michigan v. Long*, 103 S.Ct. 3469 (1983)

<b>Shepard's</b>	<b>KeyCite</b>
1056 unique case cites	1352 unique case cites
48 law review cites	637 law review cites
11 Lawyer's Edition cites	3 PLI article cites
2 ALR cites	2 ALR cites
	1 West's Educ. Rep. cite
261 headnote numbers	2513 headnote numbers

Two hundred, sixty-one of the KeyCite case cites were unpublished decisions that had only the WL citation. Of those, two WL cites appeared in KeyCite's negative indirect history that were not in *Shepard's*. That still leaves 1091 unique case cites in KeyCite that have a regular reporter citation. KeyCite also includes citations to certiorari decisions which *Shepard's* omits.

The *Shepard's* on WESTLAW assigned headnote numbers only in the Supreme Court, Federal, and Federal Supplement reporters. Here as in all other cases checked in this report, headnote numbers appeared only in the *Shepard's*, not in *Shepard's Preview* or in QuickCite. KeyCite's higher number of headnotes is partly accounted for by including headnotes from all state reports. KeyCite even gave headnote assignments to citations of *Michigan v. Long* in non-cases. In fact, most of the journal articles were assigned at least one headnote number. The other reason for KeyCite's higher number is that most cases have more headnote numbers assigned, even in the federal jurisdictions, than does *Shepard's*. These figures and the others below do support West Group's claim that its electronic headnote-assignment system produces more than *Shepard's* manual system. I did not verify the appropriateness of headnote assignments.

*K-Mart v. Cartier*, 108 S.Ct. 1811 (1988)

<b>Shepard's</b>	<b>KeyCite</b>
289 unique case cites	292 unique case cites
16 law review cites	215 law review cites
1 U.C.C. Rptr. Serv.	1 F.R.D.
	3 Bar and other short journal articles
	5 PLI article cites

Twenty-eight of the KeyCite case cites were unpublished opinions, with only the WESTLAW citation. That leaves 264 unique case cites in KeyCite that appear with a recognizable reporter citation, compared to 289 in *Shepard's*. One can see how complex the comparisons are becoming. Note how many more law review cites come up with KeyCite in both cases. I have not run headnote comparisons on this case.

*Conklin v. Barfield*, 334 F. Supp. 475 (W.D. Mo., 1971)

<b>Shepard's</b>	<b>KeyCite</b>
11 unique case cites	14 unique case cites
0 law review cites	0 law review cites
3 ALR annotations	2 ALR annotations
8 headnotes	15 headnotes

The three extra cases that KeyCite turned up were federal district court decisions in Massachusetts and Indiana. Since these were all unpublished, they had only WESTLAW citations. The extra annotation picked up by *Shepard's* was in the pocket part to *ALR Federal*. The extra headnotes from KeyCite include one assigned to an ALR annotation.

*U.S. v. Moore*, 849 F. Supp. 206 (S.D. N.Y. 1994)

<b>Shepard's</b>	<b>KeyCite</b>
2 history citations	2 history citations
0 citing case	1 unique citing case
0 non-cases	0 non-cases

The extra citing case found by KeyCite was unpublished so it had only a WESTLAW citation.

*Twin Books v. Walt Disney*, 83 F3d 1162 (C.A. 9, 1996)

<b>Shepard's</b>	<b>KeyCite</b>
2 unique case cites	4 unique case cites
0 non-case cites	2 law review cites
	3 PLI article cites

The extra law review citations and PLI articles are interesting in light of *Shepard's* claim that it provides much more coverage of law review citations. The two extra cases turned up by KeyCite were the case below (not mentioned in *Shepard's*) and an unpublished federal case from the Southern District of California.

*U.S. v. Stanfield* (C.A. 4, 1997)

<b>Shepard's</b>	<b>KeyCite</b>
4 unique case cites	4 unique case cites
0 non-case cites	0 non-case cites
1 headnote number	3 headnote numbers

*Kuang Yi v. U.S.*, 967 F.Supp. 1308 (C.I.T. 1997)

<b>Shepard's</b>	<b>KeyCite</b>
0 references	0 references

*Illinois v. Arnold*, 116 NE2d 882 (1954)

<b>Shepard's</b>	<b>KeyCite</b>
17 unique case cites	17 unique case cites
2 ALR cites	0 non-case cites
19 headnote numbers	23 headnote numbers

This seems strange since KeyCite found some ALR citations in *Michigan v. Long*, above. Point for *Shepard's*.

*Mass. v. Andrews*, 530 N.E. 2d 1222 (Mass. 1988)

<b>Shepard's</b>	<b>KeyCite</b>
40 unique case cites	42 unique case cites
2 ALR annotations	1 ALR annotation
0 law review cites	1 law review cites
9 headnotes	39 headnotes

KeyCite included headnotes for two non-case citations to *Mass. v. Andrews*. The two extra cases in KeyCite both had WESTLAW citations only, but both were from 1997. This means that they may eventually be published. The other instances in which KeyCite had cases not found by *Shepard's* were all clearly unpublished decisions, usually from another jurisdiction. In this instance, one

decision was a Massachusetts Supreme Court case and the other was a decision from the Massachusetts Court of Appeals. The Supreme Court case citing *Andrews* discussed *Andrews* in some depth, receiving three stars and evidently quotes from *Andrews*. The Court of appeals case was given two stars, citing *Andrews* but not quoting from it. *Shepard's* found one more ALR annotation, but KeyCite found one more law review article. Note the comparative number of headnotes.

*People v. Speight*, 606 NE2d 1174 (Ill. 1992)

<b>Shepard's</b>	<b>KeyCite</b>
17 unique case cites	19 unique case cites
0 non-case cites	3 law review cites

In this case, KeyCite provided two history citations and *Shepard's* provided one. KeyCite has three law review articles citing *Speight* that were not picked up by *Shepard's*.

*Illinois v. Thompson*, 670 NE2d 1129 (1996)

<b>Shepard's</b>	<b>KeyCite</b>
1 unique case cite	1 unique case cite
0 non-case cites	1 law review cite
2 headnote numbers	3 headnote numbers

In this case, KeyCite included a rehearing-denied decision in the direct history without a published cite. *Shepard's* had no history.

*Mass. v. Calderon*, 681 N.E. 2d 1246 (Mass. App. Ct. 1997)

<b>Shepard's</b>	<b>KeyCite</b>
0 unique case cites	0 unique case cites
0 non-case cites	0 non-case cites

## Conclusion

In most instances when KeyCite retrieved more cases than *Shepard's*, the cases *Shepard's* missed were unpublished decisions available only on WESTLAW. However, not all the differences were accounted for in that way. For instance, in *Mass. v. Andrews*, one very important case from the same jurisdiction's supreme court that quoted *Andrews* and discussed it extensively, was picked up by KeyCite but missed by *Shepard's*.

Despite early appearances and marketing, the methods of producing KeyCite is remarkably similar to *Shepard's*. They both use highly trained human editors to analyze the history and treatment of cases, according to Jane Morris (*Shepard's*) and Dan Dabney (West's KeyCite team). This should not be the main point of comparison between the two competitors.

The layouts of the two competitors are very different. It is probably a matter of taste which is preferred. The advantages of *Shepard's* layout are that the cases are organized by jurisdiction and within that grouping, by date. The treatment and history codes are now printed out, and are the familiar ones we know from the books. KeyCite, on the other hand, organizes the citing cases in groups according to depth of treatment of the case in hand. It includes the complete style of the citing case as well as its citation, including parallel citations in one place. The system of flags, stars, and explanatory notes is very easy to use. The user can go to the cited case, to a headnote, or a citing article through hypertext links.

*Shepard's* practice of listing the citing case each time it cites the case in hand may somewhat compare to KeyCite's organization of the citing cases according to depth of treatment of the case in hand.

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But KeyCite's method of determining depth of treatment is more complex and subtle than just counting the number of times the case is cited, noted Dabney. (Dabney said that West Group computers use a combination of the number of times the case is cited with the type of citation, number, and length of quotations to analyze the depth of treatment.) In addition, KeyCite clues the researcher when a citing case has quoted the case in hand. Sophisticated users can also use KeyCite to generate a reproduction of the headnotes from the case in hand, with statistics on how many cases and non-cases cite each headnote. The system will even determine whether the number of citations is average, above or below for the jurisdiction and time period of the case in hand.

Both systems allow sophisticated users to limit the report by jurisdiction or treatment of the case in hand. This is a very nice addition to the citator process, especially for heavily cited cases. While both KeyCite and *Shepard's* cite case law, only *Shepard's* provides citator service for statutes, rules, ordinances, jury instructions, and law review articles. KeyCite does not appear to be planning to extend its coverage beyond cases any time soon.

Nothing else on the current online market provides any service comparable to KeyCite's Table of Authorities. This is a powerful new research tool for the litigator. The ability to gauge the soundness of cases relied on as authority *backwards* in time is unique. To do this with any other citator that I know of, the researcher would have to cite every case relied on by the case in hand, as well as all the cases *forward* in time. Researchers looking for weaknesses in their own or adversaries' cases should definitely use this service.

KeyCite's unique depth of treatment and quote-marking is another big plus. The ability to sort quickly which of the citing cases deal extensively with the case in hand will markedly improve researchers' efficiency. If I were a law firm administrator, I think these last two points alone would persuade me that everybody needed to learn KeyCite. The final straw for that decision would be the fact that KeyCite does the complete job in one search, while *Shepard's* on WESTLAW requires three separate iterations: *Shepard's*, *Shepard's Preview* and QuickCite. Note that *Shepard's* on LEXIS can be completed in a single search.

In most cases, KeyCite appears to be very much equal to *Shepard's* in coverage. Occasionally, one finds a non-case that the other misses, and this happened to both competitors in the cases we tested. In a few cases, KeyCite appears to slightly better *Shepard's* in finding cases, though most of these higher numbers were the result of picking up unpublished decisions. In many cases, KeyCite provided more headnotes to guide the researcher and often provided more non-case citations. Thoughtful readers will recognize that the provision of unpublished decisions citing the case in hand is of marginal utility in most situations. Further, the utility of extra law review citations to practitioners may be slight. This study cannot begin to compare the actual useability of these two products in practice situations. Anecdotal evidence gathered from students and librarians, however, shows KeyCite gaining ground rapidly among new and sophisticated researchers. I have heard much praise of the KeyCite layout and features in casual conversations and in my Advanced Legal Research class.

*Shepard's* is still the standard citator and is certainly an excellent product. However, KeyCite's addition of the Table of Authorities is probably the most important development in citators since *Shepard's* invented the whole genre. As KeyCite continues to expand its coverage and review the databases to improve quality, *Shepard's* will have to develop and improve as well. Power researchers need to learn KeyCite and begin to explore how its new features can speed their research and improve their analysis of precedent. KeyCite is a strong competitor to *Shepard's* and librarians in all library types should evaluate whether their organizations would be wise to begin using KeyCite. I sincerely hope that the entry of a new competitor to the citator market makes both *Shepard's* and KeyCite continue to develop and improve in the future.

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