

the **digitaledge** — How Google Scholar Stacks Up Cost-Effective, Yet Responsible Legal Research

By Douglas R. Miller

As Google™ Scholar's first anniversary approaches, this article compares the free research platform to its competition and suggests a hybrid approach to cost-effective, yet responsible research in case law.

Westlaw® and Lexis-Nexis® were long the only games in town because each offered tools unavailable elsewhere. They also were able to charge accordingly. Each excels at three important functions: (1) an enormous, searchable repository of cases, (2) a sophisticated means of tracking citations, and (3) high-intensity human analysis. To use Scholar responsibly, a lawyer must understand which of these three functions it can and cannot replace.

1. Breadth and searchability of cases—Scholar: Almost as good (in some ways better)

With coverage from the 1650s through yesterday, Westlaw and Lexis-Nexis host essentially every U.S. case ever decided. Scholar features state appellate cases since 1950; federal trial, appellate, tax, and bankruptcy cases since 1923; and U.S. Supreme Court cases since 1791. Unpublished and very recent slip opinions appear in results, although the breadth of this coverage is not clear.

Is this everything? No. But it's a sizeable chunk of everything. Why not use it first? Then, pay only for what is left over. Unlike other free services, Scholar features original pagination, without which online case law can be next to useless.

Scholar's lightning-fast results leave the pokey Westlaw and Lexis-Nexis search engines in the dust. Advanced options permit you to restrict results by date and jurisdiction. For the 90 percent of us who will never memorize arcane relational search operators, Google's interface should turn up more useful results. After all, you've spent the last decade mastering it.

2. Citation tracking—Scholar: About half as good

In the pre-electronic era, "Shepardizing" was the bane of attorneys' existence, so it is no surprise that Westlaw and Lexis-Nexis command a premium for their online Shepard's and KeyCite services. In Scholar, the "how cited" tab retrieves a case's subsequent citing decisions. This function does not warn you if a case is overruled and cannot narrow its results to particular points of the law, although a new feature does allow keyword searches within "how cited" results. Overall, as a free tool for finding later cases in a line of authority, it is pretty impressive.

3. Human analysis—Scholar: Not at all

One hundred and thirty-four years after the West brothers set about classifying cases within a numerical topic index, an army of Westlaw and Lexis research attorneys continue to annotate and taxonomically classify the legion of opinions issued daily by American courts. Headnotes shorten the time needed to review a case by summarizing it and pointing the reader to relevant sections. More sophisticated users bring this human input to bear with "custom digests," topic number searches, and limitations on citing reference searches. Scholar does not pretend to offer this functionality.

A hybrid approach

So, how can the conscientious lawyer fit Scholar into cost-effective research? The optimal use of Scholar is at the outset of a research project, when you "don't know what you don't know." Approach Scholar as you would Google itself: enter a few likely search terms relevant to your research topic and scan the first few pages of results. If you do not find what you are looking for, try some different terms. Utilizing Westlaw or Lexis-Nexis in this manner would be ruinously expensive. But poking around for free on Scholar usually unearths a case or two on point and in your jurisdiction.

Once you have found these cases, surf the law backward in time by clicking the citations hyperlinked in the opinion and then forward in time with the "how cited" tab. After you have amassed a line of relevant cases on your topic at no cost, you can now put Westlaw or Lexis-Nexis to targeted use. Paying a few dollars to KeyCite or Shepardize your best cases will yield not only any unpublished or slip opinions missing from Scholar, but also the editor-assigned topic numbers. Running searches or custom digests on these numbers ensures that you have covered your subject and also sweeps in cases that pre-date Scholar's coverage.

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But before you file anything with a court, also Shepardize the cases you cite to make sure they have not been overruled. Crucially, as you work through the paid components of your research, you will rarely need to purchase a case. Before you click that \$14 hyperlink, paste the case name or citation into Scholar. It is probably there, and it is always free.

With all of this said, there are two caveats: (1) Newly released WestlawNext™ and the Lexis-Nexis competitor that soon will follow promise more “Google-like” search functions, which might narrow Scholar’s ease-of-use advantage; and (2) If you bill by the hour, a cheap, slow research technique is penny-wise but pound-foolish. The method outlined here for incorporating Scholar in case law research is intended to approximate the speed of an all-paid approach. But if you find that it does not, then forget it. Your clients’ most expensive research tool is you.

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