

## A Response to Taylor's Comparison of Shepard's and KeyCite\*

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*Ms. Morris, Shepard's Brand Manager for LEXIS Publishing, comments on the methodology used by William Taylor to assess the accuracy of Shepard's analysis.*

¶1 We commend Bill Taylor on his comparative analysis of Shepard's<sup>1</sup> Citations Service and KeyCite.<sup>2</sup> Mr. Taylor's research<sup>3</sup> is the first of which we're aware to examine both the currentness and accuracy of the two citation services.

¶2 We appreciate this opportunity to respond briefly to the "accuracy" portion of Mr. Taylor's study, which compares "citing pairs that showed a negative analysis in either KeyCite, Shepard's, or both."<sup>4</sup> A total of 146 citations in his study met this criterion. He further describes his methodology: "If one system lacked a negative analysis that the other system had, I counted that as a failure by the first system."<sup>5</sup> In 77 instances, both Shepard's and KeyCite had negative analysis. In 36 instances, Shepard's identified negative analysis and KeyCite did not. In 33 instances, KeyCite identified negative analysis and Shepard's did not.<sup>6</sup>

¶3 Mr. Taylor adds in a footnote: "It is possible that some of these negative analyses are unique to one system because they are mistakes. Looking at the text of each citing opinion, I did find some that I thought were incorrectly identified as negative, but I have decided not to interpose my own judgment in this very subjective area."<sup>7</sup>

¶4 We would add another important reason for some of the discrepancies: Shepard's includes a full range of editorial treatment codes, from positive to negative, while KeyCite is limited to negative treatment. Two citations in Mr. Taylor's study provide excellent examples of how this difference in assigning treatment analysis impacts his findings about accuracy.

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1. Shepard's is a registered trademark of Reed Elsevier Properties Inc.

2. KeyCite is a registered trademark of West Licensing Corporation.

3. William L. Taylor, *Comparing KeyCite and Shepard's for Completeness, Currency, and Accuracy*, 92 L. LIBR. J. 127, 2000 L. LIBR. J. 13 (2000).

4. *Id.* ¶ 22.

5. *Id.*

6. *See id.* ¶ 24.

7. *Id.* ¶ 22 n.17.

¶15 KeyCite shows that in *United States v. Davis*,<sup>8</sup> the court “distinguished” its earlier decision in *United States v. Boyer*.<sup>9</sup> Shepard’s shows that *Davis* “harmonized” *Boyer*. In *Davis*, the court of appeals affirmed the district court’s order suppressing the defendant’s inculpatory statement “because the officers’ delay in presenting *Davis* to a magistrate for a determination of whether probable cause supported her warrantless arrest was for the sole purpose of investigating whether *Davis* had committed federal firearm offenses.”<sup>10</sup> Regarding *Boyer*, the court wrote: “The result we reach today is also entirely consistent with our prior decisions in [another case] and [*Boyer*]. In both of those cases, administrative processing provided an adequate explanation for the delay in presenting the detained individual to a magistrate for a probable cause determination.”<sup>11</sup> Shepard’s “harmonized” analysis is based on the court’s statement that its decision in *Davis* is “entirely consistent with” *Boyer*, despite the factual dissimilarities between the two cases.

¶16 KeyCite applies the analysis code “holding limited” to describe the treatment of *Black v. Coughlin*<sup>12</sup> in *Jenkins v. Haubert*.<sup>13</sup> Shepard’s shows that the court in *Jenkins* “explained” its earlier holding in *Black*. Here is the court’s language:

In [*Black*], we held that a cause of action under [42 U.S.C.] § 1983 for the denial of due process in a prison disciplinary hearing accrues for statute of limitations purposes at the time that a prisoner succeeds in having the disciplinary ruling reversed in state court. We now read *Black* as applying only to challenges to the fact or length of a prisoner’s confinement where federal habeas corpus is otherwise actually available. Although *Black* could be read as having applied the *Heck* rule to a conditions of confinement case where federal habeas was unavailable, we decline to read *Black* that way, especially in light of the Supreme Court’s decision in *Spencer*. The availability of § 1983 or habeas corpus was not the focus of *Black*, nor had the Supreme Court issued *Spencer* before *Black* was decided.<sup>14</sup>

Shepard’s “explained” analysis is based on the court’s clarification of how its earlier decision in *Black* should be read.

¶17 The two Shepard’s analysis codes in these examples—“harmonized” and “explained”—are not classified as negative. Therefore, in Mr. Taylor’s study, they were identified as “failures.” However, as the examples show, Shepard’s editors use a variety of analysis codes to characterize the impact of citing decisions on the authority cited. Shepard’s provides treatment analysis ranging from strong negative (“overruled”) to strong positive (“followed”), with a spectrum of potentially

8. 174 F.3d 941 (8th Cir. 1999).

9. 574 F.2d 951 (8th Cir. 1978).

10. 174 F.3d at 942.

11. *Id.* at 946 (citations omitted).

12. 76 F.3d 72 (2d Cir. 1996).

13. 179 F.3d 19 (2d Cir. 1999).

14. *Id.* at 28 (citations omitted).

cautionary negative analysis (such as “criticized” and “distinguished”) and more neutral analysis (including “explained” and “harmonized”) between these two poles. An individual legal editor determines which analysis code best applies.

¶18 We’ve included these examples to illustrate that decisions identified by Shepard’s as “explaining” or “harmonizing” previous cases should not be considered “failures by the system.” A full spectrum of editorial analysis is, we believe, one of the advantages of the Shepard’s system.

¶19 As Mr. Taylor suggests, there is still more we can do to make citation research easier, faster, and more powerful. We hope he and other scholars will continue to study and report these advances.