The Third Series: A Review

Gerald Lebovits
Court of Dreams

An improbable victory in the national pastime, high drama in the executive branch, and passing notes behind the high court bench.

Skip Card

Also in this Issue

More on Daubert
The Third Series: A Review
Determining Legislative Intent
Mortgage Satisfaction
Create a Case Chronology
While the Boston Red Sox were preparing to crush the New York Yankees on the way to Boston’s first World Series win in 86 years, a group of lawyers in Albany were preparing for what, to New York lawyers, will surely be a more fortunate and significant series: The Third Series.

The year 2004 marked the Bicentennial of official New York law reporting. The Official Reports have evolved over the past 200 years: from 1804, when the first Official Reports were published, to 1847, when the First Series of the current Official Reports was published, to 2004, when New York State’s Law Reporting Bureau (LRB) began to compile the Third Series of Official Law Reports. The Third Series is the most comprehensive revision of New York’s Official Reports since the First Series was published.

From Earliest Times

Reporting cases is older than the common law, with a history of twists and turns. While Moses may be considered the first reporter, Sir Edward Coke created the modern case reporter.

Compiling and organizing New York’s case law before 1804 consisted of practitioners and judges relying on their memory of case law. James Kent, best known as Chancellor of New York’s Court of Chancery but who also served as Chief Justice of New York’s Supreme Court of Judicature, began the push for judicial reporting. He encouraged judges to transcribe their decisions and to rely on written decisions. Before 1804, judges rarely wrote opinions. American and British judges delivered their judgments orally.

Starting in 1804, the Legislature empowered the Court for the Trial of Impeachments and the Correction of Errors, the state’s highest court, and the Supreme Court of Judicature to compile and publish nominative reports of decisions. Nominative reports were collections of decisions a reporter would collect, edit, and publish in volumes named after himself. George Caines published a nominative report entitled Caines’ Reports from 1803 to 1805, while serving as New York’s first reporter of decisions. William Johnson, who succeeded Caines, published a nominative report entitled Johnson’s Reports, which were noted for their thoroughness and accuracy and set a high standard for official reporting in New York. Some reports still name the reporter on the bound volume’s spine, and New York is an example. But nominative reports no longer exist.

In 1846, the Legislature abolished the Court for the Trial of Impeachments and the Correction of Errors and created the Court of Appeals. That same year, the Legislature also authorized the publication of officially reported judicial opinions in the New York Reports supervised by a reporter of decisions known as the State Reporter, appointed by the Executive Branch.

Since 1804, the reporter of decisions has overseen the organization and publication of the state’s judicial work product. Twenty-five men have served as State Reporter. Many went on to other achievements. Some became influential judges, including Hiram Denio (1845–48) (Chief Judge, Court of Appeals), George F. Comstock (1847–51) (Chief Judge, Court of Appeals), Samuel Hand (1869–71) (Judge, Court of Appeals, and
father of Judge Learned Hand), and Edward J. Dimock (1943–45) (U.S. District Court, S.D.N.Y.). Other State Reporters held important government positions, including Francis Kernan (1854–56) (U.S. Senator for New York) and Henry R. Seldon (1851–54) (Lieutenant Governor of New York). Still other State Reporters, like J. Newton Fiero (1909–31) (New York State Bar Association president), held leadership positions in the bar.

The Official Reports First Series served as New York’s Official Reports from 1847 to 1955 and consisted of 833 volumes. During those 108 years, the courts and law reporting experienced important innovations. In 1894, the Fourth State Constitution created the Appellate Division and the Appellate Term. In response to these new courts, the Legislature introduced the Appellate Division Reports and the Miscellaneous Reports to publish the new courts’ decisions. The Miscellaneous Reports were also intended to include selected opinions of non-appellate courts. In 1894, the Legislature authorized the State Reporter to begin compiling and distributing advance sheets to tell lawyers about decisions before a full, bound Official Reports volume was published.

In 1925, a New York constitutional amendment allowed the Legislature to create the LRB. Yet, for 13 more years, the responsibility to publish the Official Reports continued to be divided among the offices of the State Reporter, the State Supreme Court Reporter, and the Miscellaneous Reporter. In 1938 the Legislature finally established the LRB,11 headed by a State Reporter appointed by the Court of Appeals.12 The LRB was and continues to be charged with compiling, editing, and organizing for publication all decisions of the Court of Appeals and the Appellate Division and selected opinions from other courts of record.13

The New York Official Law Reports Third Series is the most comprehensive revision of New York’s Official Reports since the First Series was first published in 1847.

The Second Series survived for almost 50 years, from 1956 to 2003, and consists of 605 volumes. The Second Series was published when legal research transformed from storing opinions on microfiche, to transferring them to CD-ROM technology, and finally to creating searchable Internet databases. But the Second Series could not fully integrate the new methods of legal research that practitioners now use every day. The Court of Appeals therefore approved in April 2003 the publication of a Third Series to address advances in technology and changes in the law. The LRB started publishing the Third Series in January 2004.

In the federal system, the only official reporter is the United States (U.S.) Reports.14 The Thomson West Publishing Company (West) publishes the Supreme Court (S. Ct.) Reports and collects lower-court opinions in unofficial reporters like the Federal Supplement 2d and the Federal Reporter 3d, respectively for District Court and Court of Appeals cases.15 In the state system, 28 states and the territory of Puerto Rico have official reporters of judicial opinions.16 Rather than favor a particular unofficial reporter over another unofficial reporter, eight states have adopted a “vendor neutral” or “medium neutral” citation format for cases in the public domain.17 Mississippi’s public-domain format, adopted for cases decided after July 1, 1997, is cited like this, according to the Bluebook: Pro-Choice Miss. v. Fordice, 95-CA-00960-SCT (Miss. 1998).18

Operation of the Law Reporting Bureau
New York has long had an interest in officially reporting, publishing, and distributing its courts’ opinions, as the Court of Appeals has noted.19 The LRB’s function is to make this happen.

Since the Legislature authorized the LRB in 1925 and funded it in 1938, the LRB has served as the liaison between New York’s judiciary and the public for New York case law.20 Currently, the LRB operates under the direction and control of a State Reporter and is supervised by the Court of Appeals, which has the power to appoint and remove the State Reporter.21 After the Court of Appeals or the Appellate Division issues an opinion, it is submitted to the LRB. Before the opinion is published in the Official Reports, the LRB’s editors perform a process that law review editors call cite-and-substance checking. They verify every citation to assure support for the cited proposition. They also assure that every quotation is accurate, that grammar and style are proper and clear, and that the citations conform to the Official Edition New York Law Reports Style Manual (Tanbook), which governs the format of opinions published in the Official Reports.22

The LRB’s editors also check Court of Appeals and Appellate Division opinions for factual errors and for dis-
crepancies between the opinion and the record by comparing the appellate record and briefs with the court’s opinion. They further verify the parties’ names and designations as defendant, plaintiff, respondent, petitioner, appellant, or respondent (New York’s appellee) and put the case titles in the proper form. The LRB corrects over 16,000 substantive mistakes and countless grammar and style mistakes every year. If the LRB catches an error, it will notify the court or judge, which has the final say on whether to accept the suggestions.

Judiciary Law § 433 requires the LRB to prepare and publish headnotes, tables, and indexes of every cause determined in the Court of Appeals and the Appellate Division. The name of the judge or justice who presided at the hearing or trial in the court of original jurisdiction must also be included in the Court of Appeals and Appellate Division opinions. In addition to the opinion, the reports must contain as much of the facts, arguments of counsel, decision, or any other matter the State Reporter deems necessary.

The LRB is also responsible for compiling, editing, and contracting the Official Reports for publication. The LRB assures publication of the Official Reports CD-ROM version, the official version of New York opinions published online, and the Official Reports microfiche version.

The LRB splits the printed Official Reports into three separate volumes that represent the three levels of New York State’s judiciary. The volumes are designated New York Reports Third Series (N.Y.3d) for the Court of Appeals, Appellate Division Reports Third Series (A.D.3d) for the Appellate Division, and the Miscellaneous Reports Third Series (Misc. 3d) for the Appellate Term and the trial courts.

Currently, the LRB staff includes State Reporter Gary D. Spivey, Deputy State Reporter Charles A. Ashe, Assistant State Reporter William J. Hooks, Chief Legal Editor Michael S. Moran, and 31 others. They edit and publish a mountain of judicial opinions every year.

**Why a Third Series?**

The LRB instituted the Third Series to modernize the Official Reports. The LRB’s goal was to integrate the print version of the Third Series with the electronic databases, new research methods, and changes to the law. For the Third Series, the LRB enhanced the Second Series’ format and arrangement of the additional research tables that the LRB provides to practitioners to make research easier and to improve the Official Reports’ utility.

Print and electronic materials have been integrated by including research references to online materials in the print materials. This integration is important to maintaining the relevance of the Official Reports to this generation of lawyers, who use electronic-research mediums in addition to the traditional print-research mediums.

**Significant Changes**

The modernization of the Third Series began with changes in the look of the volumes and the content of the advance sheets. The general appearance of the Third Series’ bound volumes has been updated by changing the binding from a grey-green to a glossy, speckled green; State Reporter Spivey’s name remains on the spine. Advance sheets now have greater detail, including abstracts of other courts’ opinions selected for online publication. Abstracts are created in Third Series Miscellaneous Reports for Appellate Term and trial-level opinions selected for online publication only.

In 1804, George Caines, the first official reporter, included a Digest Index in the Official Reports to enable researchers to find decisions by topic. That Digest Index system is still used today. The LRB modernized the Official Reports by updating the language of the Digest Index for the Third Series. Modernization was necessary because lawyers no longer use some of the archaic terms found in the Digest Index of the Second Series. For example, the LRB dropped the topic of “Master/Servant,” the principle that employers are sometimes responsible for their employees’ acts. The concept embodied by “Master/Servant” is now found within “Employment Relationships.”

Another research tool in the Official Reports Third Series is the Total Client Service Library (TCSL) References. The LRB includes the TCSL References after the headnotes and before the appearances of counsel. The TCSL refers the researcher to encyclopedias, case reporters, statutes, finding aids, and practice guides. These resources are organized by topic to allow comprehensive research. The LRB has expanded the TCSL References for the Third Series to include more secondary sources like treatises, especially New York-centered sources like David D. Siegel’s *New York Practice*.

The Third Series also ensures that practitioners will learn about mistakes found in the printed volumes. In the Second Series, the LRB issued corrections, sometimes by issuing an entirely new, corrected volume. The LRB’s new method of issuing corrections after an opinion is published in the bound volume is more efficient. The Third Series has an “errata table,” an innovation that allows users to discover mistakes found in an earlier volume of the Official Reports. The table contains corrections that
apply to bound versions of the previous volume’s opinions. The opinions in the Official Reports Internet database (NY-ORCS in Westlaw or through the State Reporter’s Web site) are also corrected and available to users immediately after correction. With the inclusion of the errata table, the LRB provides print users with a service comparable to that enjoyed by professionals who research on the Internet.

Another one of the LRB’s significant changes to the format of the print-published opinions in the Third Series is the addition of sample queries that researchers can plug into a Westlaw search to bring up the topic in Westlaw’s electronic database. The LRB’s addition of sample queries, entitled “Find Similar Cases on Westlaw,” allows researchers to find New York case law on related topics. Look up Bansbach v. Zinn, 1 N.Y.3d 1 (2003). The LRB has supplied lawyers with the query “shareholder /4 derivative & 626 & ‘collateral estoppel’” and the Westlaw database in which to conduct a search: NY-ORCS. The sample queries are printed after the annotation reference section and before the points of counsel in the New York Reports and before the appearances of counsel in Appellate Division and Miscellaneous Reports.

Changes Specific to N.Y.3d
The New York (N.Y.) volume of the Third Series contains the officially reported opinions of the Court of Appeals, New York State’s highest court. One notable change from the N.Y.2d is the LRB’s inclusion in N.Y.3d of a table of cases overruled, disapproved of, or otherwise limited by the cases in that volume. The new criminal leave tables provide “opinion below” information citations to cases reported below. The Second Series included only title, disposition, and judge. The Third Series also prints the official citation in the criminal tables.

The LRB has introduced an interim volume published roughly every six months to reduce the number of advance sheets that users must collect before publication of the bound volume. The interim volume is soft-bound and contains all the cases reported until that point. Subscribers can discard the interim volumes after the bound volume is distributed.

Changes Specific to A.D.3d
The Appellate Division (A.D.) volume of the Third Series contains the officially reported opinions of the four departments of the Appellate Division, New York’s intermediate appellate court. The LRB now publishes head-notes for Appellate Division memorandum decisions, defined as brief, conclusory decisions that follow established principles. In both the First and Second Series, the headnotes for memorandum opinions appeared only in the Digest Index. In the Third Series, the headnotes appear at the beginning of each memorandum opinion. The LRB continues to apply to the Third Series opinions a three-pronged approach to including headnotes for Appellate Division memorandum opinions. All other opinions are fully headnoted. If the Appellate Division’s memorandum opinion contains enough material, it will be given a full headnote. If its memorandum opinion has some relevant material but not enough to support a full headnote, the opinion is summarized and classified according to its topic. And no headnote will be included and the memorandum opinion will not be classified if the opinion is based on a specialized set of facts.

Changes Specific to Misc. 3d
The Miscellaneous volume of the Third Series contains selected officially reported opinions of different lower courts of record. Misc. 3d includes selected opinions of the Appellate Terms — appellate courts that exist only in the first and second departments and hear appeals from the District Courts, City Courts, Town Courts, Village Courts, and the New York City Civil and Criminal Courts.

Misc. 3d also includes selected opinions from all of New York State’s other lower courts: Supreme Court, Court of Claims, Family Court, Surrogate’s Court, New York City Criminal Court, New York City Civil Court, County Court, District Court, and 61 City Courts, 932 Town Justice Courts, and 552 Village Courts. Although the LRB publishes all the opinions of the Court of Appeals and the Appellate Division, the LRB is not required to publish all submitted Appellate Term and trial-court opinions. The LRB publishes in the Miscellaneous Reports only about 26% of judicial opinions submitted each year.

Reported cases in Misc. 3d are now arranged differently from the way they were in the earlier two series. The LRB has included the Appellate Term opinions in the front half of the volume and trial-court cases in the back half of the volume instead of mixing them together. Also included in each half of Misc. 3d are the abstracts of opinions selected for online publication. The abstracts provide the case name, authoring judge or justice name, decision date, classifications to the Official Reports Digest-Index.
headings, and slip-opinion citation. A slip opinion is an opinion that exists before it is published in a bound reporter.

Each opinion published in the electronic database is assigned a slip-opinion number and given page numbers to allow users to cite the specific pinpoint (jump cite) page.

Submission of Opinions
Under Judiciary Law § 432, every judge or justice of a court of record must promptly deliver to the State Reporter a copy of every written opinion rendered, although no one complies with that rule. Judges submit to the LRB only those opinions they hope to publish. Under Judiciary Law § 431, the LRB is required to publish all opinions and memoranda that the Court of Appeals and the Appellate Division transmit to the LRB. Unlike some jurisdictions, New York has no court rule or statute that prohibits citing unpublished opinions.35

The LRB is authorized by Judiciary Law § 431 to publish select Appellate Term and trial-court opinions in the Miscellaneous Reports.36 The LRB takes into account numerous factors to determine whether to publish a lower-court opinion. Factors include precedential significance, novelty, public importance, practical significance, subject matter diversity, geographical diversity, author diversity, and literary quality.37 Opinions of interest only to the litigants or that contain primarily factual or discretionary matters or dicta are ineligible for publication.38

Judiciary Law § 431 limits publication of an Appellate Term or trial-court opinion to one that is “worthy of being reported because of its usefulness as a precedent or its importance as a matter of public interest.”

The Committee on Opinions was created in 1963 to hear appeals from the State Reporter’s refusal to include opinions submitted for publication in the Miscellaneous volume of the Official Reports. The Committee is made up of a rotating panel of Appellate Division justices. Judges who believe that their opinions have been overlooked may appeal to the Committee. Since the Committee began, judges have appealed approximately 100 times the State Reporter’s decision not to publish an opinion. No judge has prevailed.39

In 2003, the LRB published 148 Court of Appeals decisions in N.Y.2d and 301 Appellate Division decisions in A.D.2d. The LRB also accepted 584 trial court and Appellate Term decisions for publication in the Miscellaneous Reports. The LRB withheld 1687 opinions from Miscellaneous publication, for an acceptance rate of 26%. This rate has remained constant for several years. Of those opinions withheld from publication in the Miscellaneous Reports, 1261 were accepted for online publication,40 including all Appellate Term opinions not published in the Miscellaneous Reports. Trial-court opinions not accepted for publication in the Misc. 3d or for online-only publication may not be published, except in the New York Law Journal.41

People send about 2400 opinions to the LRB for publication in the Miscellaneous Reports every year. Attorneys may submit lower-court opinions for publication. The LRB sometimes solicits from the authoring judge an interesting opinion it finds in the New York Law Journal or elsewhere. Judges themselves submit most of the lower-court opinions the LRB selects for publication.42 Judges may themselves publish their decisions on the Web; some judges even maintain their own non-court-approved Web sites. But the decisions must contain the following two admonitions: (1) “This opinion is not available for publication in any official or unofficial reports, except the New York Law Journal, without the approval of the State Reporter or the Committee on Opinions (22 N.Y.C.R.R. 7300.1)” and (2) “This opinion is uncorrected and subject to revision in the Official Reports.”

Although judges are protected from liability for all acts done in the exercise of judicial functions, one state opinion has held that publishing opinions elsewhere than in the Official Reports is not required by law and is therefore not an act performed in a judicial capacity,43 although some federal courts have taken a broader view of the immunity available to publishers of opinions.44

To request that an opinion be published, a practitioner may send a letter with a copy of the opinion to the Honorable Gary D. Spivey, State Reporter, One Commerce Plaza, 17th Floor, Suite 1750, Albany, New York 12210. To submit an opinion, judges and their staffs should attach the opinion in WordPerfect or Microsoft Word (but not Microsoft Word 2002) to an e-mail to <reporter@courts.state.ny.us>. Include the phrase “Opinions Submitted Electronically” in the “Subject” line. If someone other than the authoring judge — such as a judge’s secretary or law clerk — is submitting the opinion, a carbon copy must be sent to the authoring judge.

Official vs. Unofficial
The LRB is responsible for content in the Official Reports, but the LRB does not publish the Official Reports. Judiciary Law § 434 requires that the Official Reports be printed and distributed under a competitively bid five-
The Cumulative Tables and Index pamphlet.

The publication’s value correlates to the extra materials the reporter includes to create a more accessible and useful research tool.

Content and Cost

Numerous differences separate the Official Reports Third Series from the N.E.2d and the N.Y.S.2d, the unofficial reports. In the New York Reports (N.Y.3d), a section named “Points of Counsel” contains the attorneys’ arguments. The section is separated into issues brought up by the attorneys along with cases on which the attorneys relied for their arguments. The N.E.2d and N.Y.S.2d contain the attorneys’ names for the parties involved, but their arguments and the cases they cite are absent.

Another major difference between the Official Reports Third Series and the N.E.2d and N.Y.S.2d is their cost. A subscription to N.Y.3d, A.D.3d, and Misc. 3d costs less than a subscription to the unofficial reporter. The N.E.2d consists of 815 volumes and costs $11,307 for the entire set. Individual volumes of the N.E.2d cost $150.75. The N.Y.S.2d consists of 780 volumes and costs $5000. Individual volumes of the N.Y.S.2d cost $97.50.

Subscription to the Third Series bound volumes is $19.67 a volume plus tax and $10.00 plus tax for interim volumes, effective January 1, 2005. The LRB compiles approximately 19 volumes (17 bound and 2 interim volumes) each year for publication. A subscription to the Official Reports for one year costs about $360 (17 bound volumes and 2 interim volumes at $10 each). Advance sheets are included at no additional charge. Practitioners may subscribe only to the advance sheets, for $98.56 a year, effective January 1, 2005.

The space that these reporters take up on the subscribers’ bookshelves is a factor to consider. A subscriber to the Official Reports must have enough shelf space for the three separate bound series (N.Y.3d, A.D.3d, and Misc. 3d), published each year. The N.Y.S.2d and the N.E.2d are each in separate bound series. The N.E.2d is a good investment for those who practice in several (arbitrarily grouped) states in the Northeast, but for those whose practice is in New York alone, buying the N.E.2d does not make economic sense. A lawyer practicing in New York will find it more economical to purchase only the N.Y.S.2d, which contains decisions from the Court of Appeals, the Appellate Division, and other selected Appellate Term and trial courts.

The publication’s value correlates to the extra material that reporters add to their publications to make it easier to research a given legal topic. Judicial opinions enjoy no federal copyright protection, although copyright protection, when available, extends to the reporter’s own writings, including headnotes, statements of fact, statements of arguments, syllabuses, case tables, and other materials the reporter includes to create a more accessible and useful research tool.

Beware Corrections

The prime reason to use the Official Reporter is that the LRB has scrutinized and edited the decisions it publishes. If a lower-court opinion is edited for length in the Official Reports, the authoring judge decides what material is cut for publication. The unofficial reporters are not edited, or at least not as comprehensively as the Official Reports. When cited in an opinion or a lawyer’s brief, therefore, the version of the opinion in the unofficial reporter might not have been corrected, depending upon whether the unofficial reporter has incorporated the corrections that the LRB makes available. The LRB gives unedited slip opinions selected for official publication to West, which then publishes the unofficial reports. The unofficial reports might not contain the LRB’s corrections approved by the courts and included in the Official Reports, although the LRB makes corrections available to vendors, and West and Lexis make every effort to incorporate the corrections. Moreover, although the unofficial reporters publish unedited slip opinions, courts amend, clarify, vacate, and depublish slip opinions, occasionally without the unofficial reporter’s knowledge.

Practitioners should, thus, always consult the Official Reports to verify a case citation. That advice applies to online research as well: lawyers should always read and cite the official version of New York case law. Although West is reliable, West sometimes makes mistakes of substance. There is no reason not to rely on the Official
Practitioners should at least use the star-pagination tool in the unofficial reporters to cite the Official Reporter correctly if they do not refer to the Official Reports directly. In the past, an advantage to the unofficial reporters was that they were published more quickly than the Official Reporter. West was faster because the Official Reporter was delayed by the official editing process. But subscribers to both the unofficial reports and the Official Reports are offered advance sheets to keep them up to date. For some time now, the Official Reports have been as current as the unofficial reports; Court of Appeals opinions now come out faster in the Official Reports than in the unofficial reports.

**Tanbook Citation**

A further advantage to using the Official Reporter is that the edited opinions from the state courts contain the official Tanbook citation. The LRB developed the Tanbook in 1956, when it inaugurated the Second Series. Called the Tanbook because its cover is tan with black print, it provides the rules for citing New York statutes, cases, rules, regulations, and secondary authority. The Official Reports provide practitioners with the correct New York State citation format. The 2002 Tanbook, prepared by the LRB board of editors headed by Senior Legal Editor Katherine D. LaBoda, replaced the 1998 edition. In 2004, soon after the Third Series appeared, the LRB issued a supplement to the 2002 Tanbook.55

Studying Tanbook citations in the edited Third Series opinions simplifies employing the correct citation format. The opinion will have the correct abbreviations, capitalization, quotations, word selection, and case-name style. West’s unofficial reports use a modified version of the Bluebook. But the Bluebook violates several New York rules. Practitioners should cite according to the Tanbook when they write for a New York court. Attorneys must cite the Official Reports if the case was published in New York’s Official Reports. This advice makes practical sense. The Official Reports are the only reports that New York’s judiciary receives under the LRB contract with West, and they are likely the only reports a judge will have in chambers to refer to when reviewing an attorney’s papers. Moreover, all judges are entitled to receive the Official Reports, but most are not given the unofficial reporters. The court must separately pay for subscriptions to unofficial reporters. Citing the unofficial reports means forcing judges and their law clerks to convert the citation to the Official Reports.

The Official Reports also make legal research easier than the unofficial reports. The LRB has integrated the print and the electronic Official Reports and developed a style of citation to tell readers where to find cases. All cases published in the Official Reports are assigned a slip-opinion number. The decisions can then be found on the LRB’s Web site, <http://www.courts.state.ny.us/reporter/Decisions.htm>.

The Tanbook has a new rule for citing those opinions that are assigned a slip-opinion number but are included only as an abstract in the hard copy of the Miscellaneous Third. To illustrate, *City Realty Assocs. Ltd. v. Westreich* is cited (in Tanbook format) as 3 Misc. 3d 127(A), 2004 NY Slip Op 50344(U) (App Term, 1st Dept 2004, per curiam). Including the “(U)” after the slip-opinion number denotes that the full opinion is not published in the hard copy of the Official Reports. Including the “(A)” signals readers that they will need Internet access to read the full version of the opinion. The LRB’s Web site provides the public with easy access to a free source of New York case law.

**Headnotes or Key Numbers**

The LRB’s headnotes in New York Official Reports have advantages over West’s Key Number system. West’s Key Numbers published in N.E.2d and N.Y.S.2d are specific and include every point of law, whether the point is part of the opinion’s holding or dictum. The LRB’s headnotes sort cases by a general category and then sort them again into a specific category. For example, in *Matter of Town of Southampton v. New York State Public Employment Bd.*, 2 N.Y.3d 513 (2004), the headnote reads: “Civil Service — Public Employees’ Fair Employment Act — Jurisdiction of Public Employment Relations Board.” This headnote derives from the general issue of civil service and then specifically addresses the public employees’ Fair Employment Act and whether the Public Employment Relations Board has jurisdiction over the charge. The category of the headnote is then related to the specific part of the opinion to which it refers.

West’s Key Number system breaks the law down into major areas. Each topic is divided into smaller and smaller concepts. The legal concepts are assigned unique numbers at each step in the process. Over 80,000 different, unique numbers correspond to a single point of law. West’s attorney editors pick out all the points of law in an opinion and write a brief headnote and assign a series of
Key Numbers to the point. The point of law gets a Key Number.

The Official Reports’ headnotes refer researchers to specific points in an opinion that stand for the point of law the headnote addresses. The headnotes also contain a topic heading that allows a researcher to look up those topics headings in New York’s Official Reports Digest Index to find other case law with those same points of law. West’s Key Number system refers researchers to the legal points made in the case and to the West’s Digest Index. The researcher can then look up the Key Number in the Digest Index and find the headnotes of cases that have the same points of law. When researching online, Key Numbers make it particularly easy for a researcher to find cases from different jurisdictions that deal with similar issues because the Key Number system is used for all the West’s reporters that cover every state and federal court.

Important differences exist between the content of the headnotes and which topics are headnoted in the official and unofficial reports. In the Official Reports, 29 Holding Corp. v. Diaz, 3 Misc. 3d 808 (Sup. Ct. Bronx County 2004), has two headnotes. The proposition that New York State Supreme Court parts are not bound by Appellate Term precedent is included in the first headnote. The central holding of 29 Holding — that a residential landlord has a duty to mitigate — is in the second headnote along with the basic reasoning for the holding. In the unofficial report, 29 Holding (775 N.Y.S.2d 807) has five headnotes, the last two of which cover the same propositions as the Official Reports headnotes. The 29 Holding court noted in passing a point of law that is pure dictum, yet it is given a Key Number and included as a headnote in the unofficial reports. A researcher looking for controlling or persuasive precedent on a point of law would waste time looking at 29 Holding for that point of law. The case is not precedent on that point and would never be expressly overruled on that point. The Official headnotes, as opposed to the West headnote, list the points of law at issue but leave the dictum out.

The difference between the two headnotes reflects a difference in the editorial staff of the LRB and West. The Official Reports’ stated goal is to provide the New York bar with a concise, accurate summary of the published opinion. West refers to its Key Number system as “the most comprehensive and widely used indexing system for finding caselaw materials.”61 Practitioners who want nationwide, comprehensive coverage might wish to invest in West’s unofficial reporters. The benefits of investing in the Official Reports are greatest for those who are concerned with New York law alone.

Both the Third Series and the unofficial reporters include a summary of the facts and holding of the court, also known as a syllabus. The syllabus is not an official part of the decision, and may not be cited as legal author-

The Big Picture

The LRB’s integration of the print and the electronic research mediums in the new Third Series is an important innovation. The Third Series is a not just a new binding or a way to start volumes from one onward. It is a new way of using the Official Reports as the source of New York law for a new era in the practice of law. After doing so well for so long, the Yankees did not advance to the World Series last season. But the LRB hit a home run with the Third Series.


6. John Caher, The Exciting Work of Putting the Law Between Hard Covers, N.Y. L.J., July 29, 2004, at 1, col. 4 ([accounting Chancellor Kent’s complaining that “[w]hen I came to the Bench there were no reports or State precedents”).

7. See Celebrating, supra note 5, at 12.

Reports), and New York State Reporter Gary D. Spivey (“200 Years of Official Law Reporting in New York”).


10. Celebrating, supra note 5, at 23.

11. Law of 1938, Ch. 494, § 1.


15. See id.


18. See Bluebook supra note 17, at 211 tbl. T.1.

19. See Williams Press, 35 N.Y.2d at 503, 323 N.E.2d at 695, 364 N.Y.S.2d at 156.

20. See generally Caher, supra note 6, at 1, col. 4.

21. Judiciary Law § 430. Judge Victoria A. Graffeo is the current liaison to the LRJ.


25. See id.


29. See id. at 52.


34. See Selection of Opinions for Publication at http://www.courts.state.ny.us/reporter/Selection.htm#Criteria> (last visited Feb. 4, 2005). New York is selective of opinions for publication. See generally Caher, supra note 6, at 1, col. 4 (reporting that LRJ publishes in print about 25% of opinions submitted for publication and publishes online about 50% of opinions submitted for publica-


40. See Caher, supra note 6, at 1, col. 4.


42. See 22 N.Y.C.R.R. 7301.1.


44. See Murray, 290 N.Y. at 57, 48 N.E.2d at 259.

45. E.g., Beary v. West Publ’g Co., 763 F.2d 66, 68–69 (2d Cir. 1985) (disavowing Murray, 290 N.Y. at 59, 48 N.E.2d at 260, while holding unofficial reporters immune).


49. Wheaton v. Peters, 33 U.S. 591, 668 (1834) (holding that individual reporter’s publisher may not claim copyright in judicial opinions).

50. See Callaghan v. Myers, 128 U.S. 617, 647 (1888) (holding that copyright could be obtained covering portions of compilation resulting from intellectual labor).

51. See Muller, supra note 32, at 625 (noting that Axel-Lute honesty principle requires citation to source writer actually uses) (citing Paul Axel-Lute, Legal Citation Form: Theory and Practice, 75 Law Lib. J. 148, 149 (1982)).

52. See id. at 625–26 (noting that final edited text of Official Reports might include headnotes, summaries, syllabuses, and other editorial enhancements that authoring court approved).


57. See CPLR 5529(e) (requiring that “New York decisions . . . be cited from the reporters in which the opinion is published.”)


60. See Murray, 290 N.Y. at 57, 48 N.E.2d at 259.

61. Id.