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2015

### Researching Judicial Opinions

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#### Recommended Citation

Courtney L. Selby, *Researching Judicial Opinions* 67-98 (2015)

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## Chapter 4

# Researching Judicial Opinions

Courts write judicial opinions—informally called “cases”—to explain their decisions in litigated disputes. Cases are published in rough chronological order in print volumes called “reporters.” Some reporters include cases decided by only a certain court, for example, the New York Court of Appeals. Other reporters include cases from courts in a specific geographic region, for example, the northeastern United States. Still other reporters publish only those cases that deal with a certain topic, such as bankruptcy, media law, or rules of civil and criminal procedure. Reporters are fundamental tools of legal research regardless of whether a researcher is using print or online sources because, typically, case citations are keyed to print reporters even when found in online services.

This chapter begins with an overview of court systems in New York and at the federal level. Then it explains reporters and the features added to opinions when they are published in reporters or online research services. Next, the chapter discusses how to use various publishers’ topical indexing systems to locate relevant case law when conducting research in print or online. The chapter ends with suggestions for reading cases effectively.

## I. Court Systems

The typical American court structure resembles a pyramid.<sup>1</sup> At the base is a broad set of trial courts that hear many cases. In the middle are the inter-

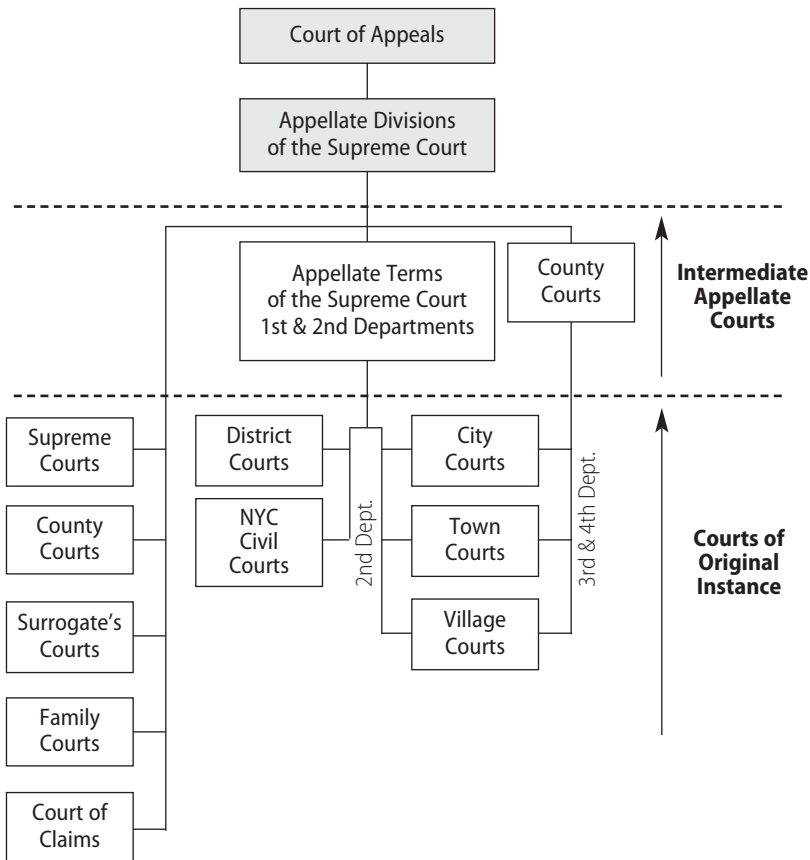
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1. The following discussion omits tribal courts in New York. Information is available online for a number of tribal courts. For example, links are available from the New York Federal-State-Tribal Courts and Indian Nations Justice Forum at [www.nyfedstatetribalcourtsforum.org](http://www.nyfedstatetribalcourtsforum.org) and the National Indian Law Library at [www.narf.org/nill](http://www.narf.org/nill) (click on “Tribal Law Gateway”).

mediate courts of appeals, which hear cases that have been appealed from the trial courts. At the top is the ultimate appellate court, which hears cases on appeal from an intermediate appellate court.<sup>2</sup>

Most states use this structure, as does the federal government. New York’s court system, called the Unified Court System, is similar but slightly more complex.<sup>3</sup> See Figure 4-1 for a graphic display of the civil court system in New York.

**Figure 4-1. Civil Court Structure**



Source: <http://www.nycourts.gov/courts/structure.shtml>.

2. Some decisions, such as criminal cases concerning the death penalty, are appealed directly to the highest court.

3. One complicating factor in New York’s Unified Court System is that New York City’s court structure is different from the rest of the state, particularly at the trial court level. New York City courts are discussed in Chapter 9, Part VI.

## A. New York State Unified Court System

The highest court in New York is the Court of Appeals, which hears appeals from intermediate appellate courts. There are seven judges on the New York Court of Appeals.

New York has three types of intermediate appellate courts: the Appellate Divisions of the Supreme Court and two inferior appellate courts called the Appellate Terms of the Supreme Court and the County Courts. The state is divided geographically into four judicial departments, each with an Appellate Division of the Supreme Court. The Appellate Divisions hear appeals from the two inferior appellate courts, from some trial courts, and from administrative agencies.

The Appellate Terms of the Supreme Court hear appeals from some trial courts in the first and second judicial departments. The County Courts are primarily trial courts, but they hear appeals from various trial-level courts in the third and fourth departments.<sup>4</sup>

There are many trial courts in New York. Trial courts of superior jurisdiction include the Supreme Court,<sup>5</sup> the County Courts, the Surrogate's Courts, the Family Courts, and the Court of Claims. Trial courts of limited jurisdiction include City Courts, District Courts, and others. There are some major differences between the New York City courts and courts in other parts of the state.<sup>6</sup>

## B. Federal Courts

In the federal judicial system, the highest court is the US Supreme Court. It decides cases concerning the US Constitution and federal statutes. This court

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4. While New York has a relatively complicated court structure, most states have a simpler three-tier court system that is more like the federal court structure. Most states have just one intermediate appellate court rather than the two levels in New York, and a few states have no intermediate appellate court. Moreover, unlike New York, most states label their ultimate appellate court the "supreme court" and label their intermediate appellate court the "court of appeals." Two other states, Massachusetts and Maine, call their highest court the "Supreme Judicial Court."

5. New York's Supreme Court is not to be confused with the US Supreme Court. In this book the federal Supreme Court will be preceded by "US" to distinguish it from the New York trial court.

6. For detailed information, visit the New York State Unified Court System website at [www.courts.state.ny.us/courts](http://www.courts.state.ny.us/courts) (click on "Overview of the Courts" under the heading "General Information").

does not have the final say on matters of purely state law because that authority rests with the highest court of each state. Parties that wish to have the US Supreme Court hear their cases must file a petition for certiorari; this petition may be granted or denied because the court has discretion over which cases it hears. The website for the federal judiciary contains maps, court addresses, explanations of jurisdiction, and other helpful information.<sup>7</sup>

Intermediate appellate courts are called US Courts of Appeals. There are courts of appeals for each of the thirteen federal circuits. Twelve of these circuits are based on geographic jurisdiction. Eleven numbered circuits cover all the states; the twelfth is the District of Columbia Circuit. The thirteenth circuit, called the Federal Circuit, hears appeals from district courts in all other circuits on issues related to patent law and from certain specialized courts and agencies.<sup>8</sup>

New York is in the Second Circuit. This means that cases from the US District Courts in New York's four federal districts are appealed to the US Court of Appeals for the Second Circuit. This circuit encompasses New York, Vermont, and Connecticut.

The trial courts in the federal system are called US District Courts. There are ninety-four district courts in the federal system, with each district drawn from a particular state. A state with a relatively small population might not be subdivided into smaller geographic regions, while states with larger populations and higher caseloads are subdivided into multiple districts. The entire state of Vermont, for example, makes up the federal District of Vermont. Meanwhile, New York has four districts: northern, southern, eastern, and western. District courts are located in several cities within each district.

## II. Reporters

### A. Reporters for New York Cases

Because case law in the United States has been published in print resources for more than 100 years, the language used to describe the reporting, publishing, and citing of cases is still very much rooted in the print publication system. However, case law is now found as often in online resources as in print reporters if not more often. Thus, any discussion of case reporters references multiple formats: the print reporters and the electronic databases that also publish cases.

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7. The website is [www.uscourts.gov](http://www.uscourts.gov).

8. A map showing the federal circuits is available at [www.uscourts.gov/courtlinks](http://www.uscourts.gov/courtlinks).

Note that the print reporters are often the official publications of the state or publications of West Publishing (Thomson Reuters).

The New York State Law Reporting Bureau is responsible for the three official reporters for New York State cases. *New York Reports* publishes cases of the Court of Appeals; *Appellate Division Reports* publishes cases of the Appellate Divisions of the New York Supreme Court; and *Miscellaneous Reports* publishes cases of lower appellate courts and trial courts.

Additionally, West Publishing is responsible for New York Court of Appeals cases in a regional reporter called *North Eastern Reporter*. As with other regional reporters, *North Eastern Reporter* combines several courts' opinions under a single title. *North Eastern Reporter* publishes cases from the appellate courts of Illinois, Indiana, Massachusetts, New York, and Ohio.<sup>9</sup> Other West Publishing regional reporters are *Atlantic Reporter*, *South Eastern Reporter*, *Southern Reporter*, *South Western Reporter*, *North Western Reporter*, and *Pacific Reporter*. Because the publisher decided which states to group together in regional reporters, these groupings have no legal impact. Moreover, the coverage of each regional reporter is not the same as the composition of the federal circuits.<sup>10</sup>

West Publishing also publishes a separate series called *West's New York Supplement*, with cases from the Court of Appeals and other lower courts in New York. The various reporters for New York's cases are summarized in Table 4-1.

Reporters are published in series. *New York Reports* began a third series in 2004. *North Eastern Reporter* is in its second series, and it will begin a third series soon. To find a case in a reporter with multiple series, you must know in which series the case was reported. This information is included in the citation to the case, as explained below.

As print reporters see less use and researchers turn to the convenience of electronic access for case law, it is increasingly important to think of case publication as both a print and an electronic activity. LexisNexis and West Publishing have been the primary commercial providers for both print and electronic access to case law in the past, but recent years have seen a proliferation of both free and commercial electronic legal research services. Individual courts

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9. While *North Eastern Reporter* includes only Court of Appeals cases from New York, it includes cases from both the intermediate and the highest appellate courts of the other states.

10. Remember that the Second Circuit contains New York, Connecticut, and Vermont, while *North Eastern Reporter* publishes cases from New York, Illinois, Indiana, Massachusetts, and Ohio.

**Table 4-1. Reporters for New York Cases**

<b>Court</b>	<b>Reporter Name</b>	<b>Abbreviation</b>
New York Court of Appeals	<i>New York Reports</i> (official)	N.Y., N.Y.2d
	<i>North Eastern Reporter</i>	N.E., N.E.2d
	<i>New York Supplement</i>	N.Y.S., N.Y.S.2d
New York Supreme Court, Appellate Division	<i>Appellate Division Reports</i> (official)	A.D., A.D.2d, A.D.3d
	<i>New York Supplement</i>	N.Y.S., N.Y.S.2d
New York's lower intermediate courts and trial courts	<i>New York Miscellaneous Reports</i> (official)	Misc., Misc. 2d
	<i>New York Supplement</i>	N.Y.S., N.Y.S.2d

often publish their opinions online,<sup>11</sup> Google Scholar and Cornell University’s Legal Information Institute provide free access to the text of many legal opinions, and commercial services such as Bloomberg Law, Casemaker, Fastcase, and Loislaw offer researchers platforms for finding case law.

### 1. Citing New York Cases

Case citations are still most frequently constructed to refer to print publications, such as the reporters described in this section. However, states are increasingly moving toward “vendor neutral” or “public domain” citation practices, which do not reference case law as found in various published reporters but rather offer citations that are independent of any print publication.<sup>12</sup> These citations typically contain the party names, the year, the court, a sequential number, and when appropriate, a paragraph number.<sup>13</sup> While New York has not yet adopted statewide or local rules requiring the use of vendor

11. The opinions of New York courts are published on the official website of the courts, [www.courts.state.ny.us/courts](http://www.courts.state.ny.us/courts).

12. American Association of Law Libraries Digital Access to Legal Information Committee, *Universal Citation Guide* 1 (3d ed. 2014).

13. Library of Congress Judicial Decisions Legal Research Guide. The website is [www.loc.gov/law/help/judicial-decisions.php](http://www.loc.gov/law/help/judicial-decisions.php).

neutral citation, it is worth noting that this trend is likely to continue and may one day impact citation to New York case law.

At present, a citation to a New York case requires the names of the parties, the volume and abbreviation for the reporter, the initial page of the case, and the date.<sup>14</sup> *New York Reports* is abbreviated as “N.Y.” The case *People v. Lewis*, 68 N.Y.2d 923 (1986), is in volume 68 of the second series of *New York Reports* and starts on page 923. The case was decided in 1986.

In New York, all documents submitted to New York courts must cite the official reporters;<sup>15</sup> citing additional reporters is optional. For documents that are not going to be submitted to a New York court, a lawyer usually follows the custom of his or her firm or office. Often that custom may be to cite to the West Publishing regional reporter listed above. Especially when writing a memo for a firm outside New York, you would likely cite to the New York case mentioned above in *North Eastern Reporter* or *West’s New York Supplement*. To indicate the state of origin for a decision printed in a regional reporter, include an abbreviation at the beginning of the date parenthetical.

EXAMPLE: *People v. Lewis*, 502 N.E.2d 988 (N.Y. 1986).

Sometimes you will want to include citations to all reporters that have published an opinion. Multiple citations that refer to the same case in different reporters are called “parallel citations.”

EXAMPLE: *People v. Lewis*, 68 N.Y.2d 923, 510 N.Y.S.2d 73, 502 N.E.2d 988 (1986).

Note that the New York Court of Appeals case in the example has three parallel citations. Typically, most state cases appear in only two reporters, so the cases have two parallel citations.

## 2. Features of a Reported Case as Published by West Publishing (Thomson Reuters)

The following discussion relates to cases published in *North Eastern Reporter* or *New York Supplement*. Both of these reporters are published by West Publishing. Because West publishes most American cases, this discussion of the features of a reported case applies to cases in other West Publishing reporters as well. Moreover, these features are available whether you review the case in

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14. The following citations adhere to *Bluebook* and *ALWD Guide* format for practice documents. For format adhering to the *New York Law Reports Style Manual*, see Appendix A at the end of this book.

15. N.Y. C.P.L.R. § 5529(e).



print or on WestlawNext. This overview of case law as published by West Publishing will also be used as a touch point for discussion of the features of case law provided by other publishers and online research service providers.

A case published by West Publishing contains the exact language of the court's opinion. Additionally, the publisher includes supplemental information intended to aid researchers in learning about the case, locating the relevant parts of the case, and finding similar cases. Some of the information in the research aids is gleaned from the case's court record, while the publisher's editorial staff writes others. Most reporters include most of these items though perhaps in a different order. To best understand the following discussion, retrieve the *People v. Lewis* case noted above, or refer to the case excerpt in Figure 4-2 for examples of most of the concepts explained below. The *New York Reports* version is printed in Appendix 4-A.

*Parallel citation.* The reporter provides the citation for the case in any official or unofficial reporter in which the case is also printed.

*Deciding court.* The reporter gives the full name of the court that decided the case.

*Parties and procedural designations.* Most reported cases are from appellate courts. The appealing party is called the "appellant," and the other party is the "respondent."<sup>16</sup>

*Date of decision.* Each case heading provides the date of the court's decision. Some reporters include additional dates, such as the date the case was argued or submitted to the court. For citation purposes, only the year the case was decided is important.

*Docket number.* The docket number is assigned by a court for keeping track of documents pertaining to a particular case. (Not shown in Figure 4-2.)

*Synopsis.* The synopsis is a short summary of the key facts, procedure, legal points, and disposition of the case, typically written by the publisher's staff. Reading a synopsis can quickly tell you whether a case is on point. You cannot rely exclusively on a synopsis, and you must never cite it, but it is a very useful research tool.

*Disposition and opinions.* The disposition of the case is the court's decision to affirm, reverse, remand, or vacate the decision below. If the appellate court

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16. In the federal system and in some states, the terms "appellant" and "appellee" are used when a party has a right to appeal, while the terms "petitioner" and "respondent" apply to parties when the court has discretion to hear the appeal.

Figure 4-2. Case from WestlawNext, *People v. Lewis*, 502 N.E.2d 988 (N.Y. 1986)

68 N.Y.2d 923

Court of Appeals of New York.

The PEOPLE of the State of New York, Plaintiff,

v.

Alfredo LEWIS, Defendant.

Alfredo LEWIS, Respondent,

v.

COMMISSIONER OF DEPARTMENT OF CORRECTIONAL SERVICES OF the STATE OF NEW YORK, Appellant.

Nov. 11, 1986.

Prisoner awaiting sentencing and transfer to correctional facility brought declaratory judgment action challenging validity of directive of Department of Correctional Services requiring that male prisoners receive initial haircut. The Supreme Court, Queens County, Dunkin, J., held that directive was unconstitutional as applied to prisoner, and State appealed. The Supreme Court, Appellate Division, 115 A.D.2d 597, 496 N.Y.S.2d 258, affirmed. On appeal, the Court of Appeals held that prisoner who had not cut his hair for over 20 years due to his sincere religious beliefs was not required to comply with directive mandating that all newly received inmates have haircut for reasons of health and sanitation as well as to permit taking of initial identification photographs.

Order affirmed.

**West Headnotes (2)** Change View

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**1 Constitutional Law**  
 Prison regulation challenged on ground that it impinges on First Amendment rights will be upheld, giving due deference to discretion and expertise of prison authorities, if regulation furthers substantial governmental interest of security, order or rehabilitation, and its encroachment on First Amendment freedom is no greater than necessary to protect interest involved. U.S.C.A. Const.Amend. 1.

3 Cases that cite this headnote

92 Constitutional Law  
 92X First Amendment in General  
 92X(B) Particular Issues and Applications  
 92k1193 Prisons  
 92k1194 In General  
 (Formerly 92k82(13))

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**2 Prisons**  
 Prisoner who had not cut his hair for over 20 years due to his sincere religious beliefs was not required to comply with directive of State Department of Correctional Services mandating that all newly received inmates have haircut for reasons of health and sanitation as well as to permit taking of initial identification photographs, where identification photographs could be successfully taken if prisoner simply pulled his hair back, and there was no regulation governing length of hair following initial haircut. U.S.C.A. Const.Amend. 1.

7 Cases that cite this headnote

310 Prisons  
 310II Prisoners and Inmates  
 310II(B) Care, Custody, Confinement, and Control  
 310k151 Religious Practices and Materials  
 310k153 Hair, Grooming, and Clothing  
 (Formerly 310k4(14))

**Figure 4-2. Case from WestlawNext, *People v. Lewis*,  
502 N.E.2d 988 (N.Y. 1986), continued**

**Attorneys and Law Firms**

\*\*\*73 \*923 \*\*988 Robert Abrams, Atty. Gen. (Esther Furman, New York City, O. Peter Sherwood, Albany, and Howard L. Zwickel, New York City, of counsel), for appellant.

Alan E. Kudisch, Kew Gardens, for respondent.

\*924 Arnold S. Cohen and Caesar D. Cirigliano, New York City, for Legal Aid Society and another, amici curiae.

Janet Packard, Michael Raskin, Robert Selcov, Poughkeepsie, Stephen M. Latimer and David C. Leven, New York City, for Prisoners' Legal Services of New York, amicus curiae.

**OPINION OF THE COURT**

MEMORANDUM.

The order of the Appellate Division, 115 A.D.2d 597, 496 N.Y.S.2d 258, should be affirmed.

Plaintiff, a convicted felon, challenges as a violation of his First Amendment rights the application to him of defendant's directive requiring that male prisoners receive an initial haircut. Plaintiff is an avowed Rastafarian, wears his hair in dreadlocks, and has not cut his hair for 20 or more years. It is undisputed that he is sincere in his beliefs, that they are of religious nature, and that a haircut would impinge on those beliefs. The challenged directive provides that males received as new commitments have an initial haircut and \*\*\*74 \*\*989 shave for reasons of health and sanitation as well as to permit the taking of the initial identification photographs; following the initial haircut, there is no restriction on the length of an inmate's hair. On this appeal, defendant urges only that the initial haircut is essential to prison security in that photographs taken at that time facilitate quick identification of inmates and escapees. \*

**1** A prisoner retains First Amendment rights "not inconsistent with his status as a prisoner or with legitimate penological objectives of the corrections system." (*Pell v. Procunier*, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495.) A regulation challenged on the ground that it impinges on First Amendment rights will be upheld if—giving due deference to the discretion and expertise of prison authorities—the regulation furthers substantial governmental interests of security, order or rehabilitation, and its encroachment on First Amendment freedoms is no greater than necessary to protect the interest involved (*Wali v. Coughlin*, 2nd Cir., 754 F.2d 1015, 1029; *Phillips v. Coughlin*, 586 F.Supp. 1281, 1283).

**2** Plaintiff urges that the regulation must be stricken because it does not constitute the "least intrusive means" of satisfying \*925 defendant's administrative concern;

Source: WestlawNext. Reprinted with permission of Thomson Reuters.

agrees with only part of the lower court's decision, the appellate court may affirm in part and reverse in part. If some judges filed concurring or dissenting opinions, the opinions will be noted in this section.

*Headnotes.* A headnote is a sentence or short paragraph that sets out a single point of law in a case. Most cases will have several headnotes. The text of each headnote often comes directly from the text of the opinion. But because only the opinion itself is authoritative, do not rely exclusively on headnotes in conducting research, and do not cite them in legal documents. At the beginning of each headnote is a number identifying it in sequence with other headnotes, usually called the “headnote number.” In the text of the opinion, the same headnote number will appear in bold print, in a box, or in brackets at the point in the text supporting the headnote. Using these headnote numbers to find the point of law in the text is a quick way to locate particular points that interest you.

Along with the headnote number and headnote language, you will see a word or a phrase, a key symbol, and a number or series of numbers. These are “topics” and “key numbers,” tools to help you locate other cases that discuss similar points of law. For headnote 2 in Figure 4-2, the topic is Prisons. The number 310 next to the topic is just a numerical designation for the topic. Do not confuse this with the key number. The key number selected for this point of law is 153. Using our example, Prisons 153 are the topic and the key number for the point of law related to hair, grooming, and clothing in the area of law related to prisons. These topics and key numbers are part of a system of indexing cases by subject matter called the West Publishing Digest System and can be used both in print and online in WestlawNext. Research strategies for using this system to find additional relevant case law will be discussed in Part III of this chapter.

Headnotes are generally the product of a given reporter’s editorial staff, even when the text of the headnote is identical to language used in the opinion. Thus, the number of headnotes—and the text of the headnotes—will differ in various reporters. Because the official and unofficial reporters are published by different publishers, the headnotes in *New York Reports*, *Appellate Division Reports*, and *New York Miscellaneous Reports* (the official reporters) and those in *North Eastern Reporter* and *New York Supplement* (West Publishing reporters) are quite different. See Appendix 4-A to compare the headnote in the official reporter to the West Publishing headnotes in Figure 4-2.

*Procedural information.* Most reporters provide a variety of procedural information. For example, the attorneys for each party will be listed. Some reporters indicate the court from which the case was appealed, the judges who heard the appellate case, and the judge who wrote the decision. Note that the initials following a judge’s name may be “C.J.” for the chief judge (or “P.J.” for

the presiding justice in the intermediate appellate courts) or “J.” for another judge or justice.<sup>17</sup>

*Opinion.* In West’s *North Eastern Reporter*, the actual opinion of the court begins immediately following the name of the judge who wrote the opinion. If the judges who heard the case do not agree on the outcome or the reasons for the outcome, there may be several opinions. The opinion supported by a majority of the judges is called the “majority opinion.” An opinion written to agree with the outcome but not the reasoning of the majority is called a “concurring opinion.” An opinion written by judges who disagree with the outcome supported by the majority of the judges is called a “dissenting opinion.” While only the majority opinion is binding precedent, the other opinions provide valuable insights and may be cited as persuasive authority. If there is no majority on both the outcome and the reasoning, the case will be decided by the opinion that garners the most support, which is called a “plurality decision.”

Cases decided by the New York Court of Appeals are heard by all seven of its judges. Cases decided by the Appellate Division are heard by four or five justices sitting as a panel of the full court.

### 3. Advance Sheets

Publication of the bound volumes of print reporters can take months, with official reporters usually taking much longer than commercial reporters. To make cases available in print sooner, some publishers supply subscribers with softbound booklets called “advance sheets” that contain the most recently published court opinions. The advance sheets are typically published weekly. The ubiquity of online access to recent court opinions has all but eliminated the need for advance sheets unless a researcher is limited strictly to print resources.

### 4. Other Sources for New York Cases

To provide access to cases even faster than advance sheets can be published, slip opinions are available either from the court that decided the case or online.<sup>18</sup> A “slip opinion” is the actual document produced by the court without the editorial enhancements normally added by the publisher. Slip opinions are added to court websites within two or three business days. In addition, cases are

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17. In New York, the appellate court judges at the Appellate Division, Appellate Term, and Supreme Court levels are called “justices.” Judges in the Court of Appeals and most trial courts are called “judges.” The terms vary from state to state and in federal courts also.

18. The website is [www.courts.state.ny.us/decisions](http://www.courts.state.ny.us/decisions).

added daily to Bloomberg Law, Casemaker, Fastcase, Google Scholar, Lexis Advance, Loislaw, and WestlawNext, which are often the fastest sources for finding a new opinion.

## B. Reporters for Federal Cases

Reporters are also published for cases decided by federal courts. Table 4-2 lists the federal court reporters along with their citation abbreviations.

**Table 4-2. Reporters for Federal Court Cases**

<b>Court</b>	<b>Reporter Name</b>	<b>Abbreviation</b>
US Supreme Court	<i>United States Reports</i> (official)	U.S.
	<i>Supreme Court Reporter</i>	S. Ct.
	<i>United States Supreme Court Reports, Lawyers' Edition</i>	L. Ed., L. Ed. 2d
US Courts of Appeals	<i>Federal Reporter</i>	F., F.2d, F.3d
US District Courts	<i>Federal Supplement</i>	F. Supp., F. Supp. 2d

Decisions of the US Supreme Court are reported in *United States Reports* (official), *Supreme Court Reporter* (West Publishing), and *United States Supreme Court Reports, Lawyers' Edition* (LexisNexis). Although the official *United States Reports* should be cited if possible, that series frequently publishes cases several years after they are decided. Thus, for recent cases, lawyers often cite *Supreme Court Reporter*. Another source for finding recent cases from the US Supreme Court is *United States Law Week* from the Bureau of National Affairs. This service publishes the full text of cases from the US Supreme Court and provides summaries of important decisions of state and federal courts.

Cases decided by the federal intermediate appellate courts are published in *Federal Reporter*, now in its third series. Some Court of Appeals cases that were not selected for publication in *Federal Reporter* may be published in a relatively new reporter series, *Federal Appendix*.<sup>19</sup> Selected cases from the US District

19. The precedential value of opinions published in *Federal Appendix* varies by federal circuit. Check the rules of the court with jurisdiction over your case.

Courts, the federal trial courts, are reported in *Federal Supplement* and *Federal Supplement, Second Series*.

US Supreme Court opinions are widely available online. The court's website<sup>20</sup> includes slip opinions soon after the decisions are rendered. Limited access to Court of Appeals and District Court cases may be available from the individual court's website. Cornell's Legal Information Institute also publishes federal cases quickly.<sup>21</sup> Bloomberg Law, Lexis Advance, and WestlawNext publish federal opinions soon after they are released. Remember that online research services such as these may make available selected "unpublished" opinions, including those published in *Federal Appendix* and those not published in any reporter. Check the court rules to determine the weight each court gives to unpublished opinions.

### III. Finding Cases

Until approximately twenty-five years ago, researching judicial opinions was performed primarily using print resources and finding aids. Research texts and courses focused on the use of these print materials but gradually began to include more information about online access to opinions as databases developed ever-more refined and user-friendly ways of assisting researchers. In modern practice, researchers work predominantly on electronic databases and on the open web. While this format shift transforms the approach to finding cases, the fundamental principles of thorough and thoughtful case law research remain largely unchanged. Thus, this portion of this chapter will explore the essential elements of excellence in researching judicial opinions with emphasis both on electronic access and on the bedrock principles of case law research that apply regardless of the format.

#### A. Retrieving Cases by Citation

The use of a known case citation remains the simplest and quickest way to retrieve a judicial opinion. As noted above in the discussion of reporters, case citations are rooted in the tradition of printing judicial opinions in reporters in chronological order. To find the case in question, you simply needed to find the appropriate volume in the stated reporter and turn to the page listed in

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20. The address is [www.supremecourt.gov/opinions/opinions.aspx](http://www.supremecourt.gov/opinions/opinions.aspx).

21. The address is [www.law.cornell.edu](http://www.law.cornell.edu).

the citation. Legal research databases rely on precisely the same information for retrieving cases. Consider this example:

EXAMPLE: *People v. Lewis*, 502 N.E.2d 988 (N.Y. 1986).

## 1. Commercial Databases

Retrieving judicial opinions in commercial databases, such as Bloomberg Law, Fastcase, Lexis Advance, and WestlawNext, merely requires typing the citation for the case into the search box on the home screen of any of these services. You may type in the entire citation as shown in the example above, or you may provide as little as the volume, reporter abbreviation, and page of the case, such as 502 N.E.2d 988. You should not, however, attempt to enter only the name of the case. Typing *People v. Lewis* will yield thousands of results, causing you either to restart your search or to filter the results to find the *Lewis* case you desire. Such an outcome would be inefficient and potentially frustrating, so avoid using only the case name to retrieve the case. Searching for case law with limited information about the desired case is discussed more fully later in this chapter.

## 2. PACER for Federal Cases and Case Filings

Public Access to Court Electronic Records (PACER) is an electronic public access service that allows researchers to obtain case and docket information online from federal appellate, district, and bankruptcy courts and the PACER Case Locator. The federal judiciary provides PACER to fulfill its commitment to public access to court information.<sup>22</sup> While PACER is an excellent resource for both judicial opinions and case filings in federal courts, it is not as functional for finding a case by a known citation as the commercial databases referenced above. Rather than using a case citation in PACER, you should know the deciding court and the docket number for the case. Consider the following example:

EXAMPLE: *Singh v. Goord*, 520 F. Supp. 2d 487 (S.D.N.Y. 2007)

While you could retrieve this case quickly from the commercial databases listed above using this citation, an additional piece of information is necessary to retrieve the case on PACER. It is clear that the deciding court for this opinion

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22. The website is [www.pacer.gov](http://www.pacer.gov).



is the Southern District of New York. However, you would also need to know the docket number of the case to retrieve it from PACER without conducting an advanced search. The docket number for the *Singh* case is 1:05-cv-9680. It is unlikely that you would have the docket number for the case prior to retrieving the case itself. Thus, if you had the citation to *Singh*, you might instead choose to retrieve the case in a commercial or free source and then use the docket number for the case to retrieve it on PACER. The advantage to using PACER is that you have access not only to the judicial opinion but also to all of the public filings available in the case.<sup>23</sup>

### 3. Using Free Online Sources

#### a. Court Websites

Most New York court websites either offer direct access to judicial opinions delivered by the court or provide instructions for accessing case law through other online sources. The New York Court of Appeals provides access to recent opinions<sup>24</sup> along with instructions to visit the Law Reporting Bureau's site for older opinions.<sup>25</sup> The Law Reporting Bureau publishes all state appellate court decisions and selected trial court decisions as well as motion decisions of the Court of Appeals and the Appellate Division and Appellate Term of the Supreme Court. Additionally, the site offers the ability to browse or use an advanced search feature to locate relevant case law. For the most comprehensive access to free online sources of New York State court opinions, begin with the New York State Unified Court System website.<sup>26</sup> Judicial opinions from the federal courts in New York are also readily available online, but the courts tend to provide very few opinions on their own individual sites, referring researchers instead to PACER.<sup>27</sup>

#### b. Google Scholar

Google Scholar is an increasingly popular and credible source for accessing both state and federal judicial opinions.<sup>28</sup> While a standard Google search for

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23. Bloomberg Law now offers comprehensive coverage of documents available on PACER, and both Lexis Advance and WestlawNext offer at least modest coverage of court filings.

24. The website is [www.nycourts.gov/ctapps/decisions.htm](http://www.nycourts.gov/ctapps/decisions.htm).

25. The website is [www.courts.state.ny.us/reporter](http://www.courts.state.ny.us/reporter).

26. The website is [www.courts.state.ny.us/decisions/index.shtml](http://www.courts.state.ny.us/decisions/index.shtml).

27. See the website of the US District Court for the Southern District of New York for an example, [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov). Clicking on "Cases" shows that the court's site provides some rulings of interest, litigation related to September 11, and a link to PACER.

28. The website is [www.scholar.google.com](http://www.scholar.google.com).

a case citation will provide documents and websites where that citation appears, a Google Scholar search will retrieve the judicial opinion itself. With a case citation in hand, you need only paste it into the search bar and choose “Case Law” to retrieve the case. Google Scholar supplies the text of the opinion and all of the relevant identifying information for the case provided by the court, including the parties, deciding court, docket number, and date of decision. Google Scholar does not provide headnotes. Citations to other cases that can also be accessed via Google Scholar are hyperlinked in the opinion. While Google Scholar does not provide the same type of foldering options available on the commercial databases, the opinion can easily be saved as a PDF file.

Google Scholar does not provide all of the editorial enhancements you expect to find when using commercial research databases. However, it has begun to develop some research aids that can be particularly valuable. Once you have retrieved an opinion, the link “How Cited” appears on the top left of the screen.<sup>29</sup> Clicking this link retrieves a list of the documents in which your case has been cited, along with an indication of the amount of discussion each of those documents has about your case. You may also choose to create an alert for the case, which will notify you by e-mail if the opinion is cited by other documents in the future. While this service is not a replacement for updating and validating your case, Google Scholar continues to improve its comprehensiveness and accuracy. As an efficiency tool, Google Scholar provides a way to retrieve judicial opinions along with some initial information about the places and ways the opinion has been cited without expending significant monetary resources.

#### 4. Print

Accessing case law in print remains a quick and easy way to review judicial opinions, assuming that the reporters containing the cases are available in your immediate vicinity. When conducting research in a law library with an extensive collection of print reporters, pulling a volume from the shelf remains an excellent option for taking a brief look at an opinion to determine whether or not to read it in its entirety. Using the *Singh v. Goord* citation above, you need only find the *Federal Supplement, Second Series*, locate volume 520, and turn to page 487. Because this case was published in a West Publishing reporter, you will see the editorial aids that may be familiar to you from WestlawNext.

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29. See Chapter 8, Part III.E for a more thorough discussion of how to use How Cited.

## B. Finding and Retrieving Cases Referenced in Other Sources

### 1. From Secondary Sources

As discussed in the first three chapters of this book, secondary sources are often the most efficient and effective materials in which to begin a research project. Some of the key functions of secondary sources are to summarize, explain, and advance arguments regarding the law itself. Any reference to case law in a secondary source should provide both discussion of and a citation to the case. When using secondary sources in commercial databases, getting to the referenced opinions is typically as simple as clicking a hyperlink to retrieve the case. When consulting secondary sources in print, taking good notes about the case law referenced in relevant discussions is important so that the case law can later be accessed in one of the ways discussed previously in this chapter.

### 2. From Other Cases

Another common method to locate a relevant case is to find a citation in another judicial opinion. When reading case law, always bear in mind that at least some parts of the opinion you are reading are the product of *stare decisis*. Thus, a court will base portions of its holdings on existing case law, citing to the relevant cases. Those cited cases should be added to your research if they involve a point of law that is relevant to your question. However, finding case citations in the text of judicial opinions is not the only way to use case law to find additional relevant cases. The rest of this section explores the “one good case” approach, in which a savvy researcher uses a single relevant case to find additional judicial opinions on point by employing the editorial features of commercial databases and some print publications.

#### *a. The One Good Case Approach Using WestlawNext*

The foundations of this approach to finding relevant case law come from John West, the creator of the National Reporter System and the West Publishing Digest System.<sup>30</sup> In the late 1800s, West developed the idea that not only should judicial opinions be collected in reporters that can be retrieved by any attorney with access to the books but also the opinions themselves should be locatable

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30. See Thomas A. Woxland, “Forever Associated with the Practice of Law”: *The Early Years of the West Publishing Company*, 5 Leg. Ref. Svcs. Q. 115 (1985), for a discussion of the early years of American legal publishing and West’s contributions to researching judicial opinions.

based on the subject matter involved.<sup>31</sup> Because the cases in reporters were published chronologically, researchers needed a companion service, the digest, to identify the available cases related to topics of interest to their research.<sup>32</sup> While this system still exists in the print medium (and will be discussed later in this chapter), the editorial enhancements that West used to help researchers find cases are still as vital today as they have ever been.

Headnotes hold the keys to the one good case approach when researching on WestlawNext. As mentioned in Part II of this chapter, each headnote summarizes a point of law in the judicial opinion. Each point of law is assigned a topic in the West Publishing Digest System and a key number within that topic. The topic and the key number convey the particular point of law treated, and like a physical address, they must be used together to be useful. Given the address 123 Flower Street, you will not find the right house unless you have both the house number and the street name. You may also think of the process of assigning topics and key numbers as analogous to tagging a photo in social media. West Publishing editors essentially assign subject-specific shorthand to a particular point of law to help others easily find the same point of law in other cases.

Consult headnote number 2 from the *People v. Lewis* case in Figure 4-2. When using WestlawNext, you need only click on the link “310k153” to find other cases that deal with legal issues related to hair, grooming, and clothing of prisoners. The topic Prisoners is represented online by the number 310. The k reminds you that the number following it is a key number, here 153.<sup>33</sup> When you click on this topic and key number, you will see a list of cases that also involve at least one point of law related to hair, grooming, and clothing of prisoners. The cases will all be from the same jurisdiction as the case you began with. By using a relevant headnote in one good case on WestlawNext, you can quickly and easily retrieve a list of related judicial decisions.

The genius of the topic and key number system is that it is completely portable. The topic and key number represent the same point of law whether

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31. *Id.* at 116–20.

32. *Id.* at 120.

33. Note that there is a parenthetical after the topic and key number indicating that it was formerly 310k4(14). Because the law changes over time, any system that describes the subject matter of the law must necessarily be flexible. On occasion, topics and key numbers are reorganized to better suit the current state of the law. In this example, the topic 310 is still Prisoners. However, the subject matter once covered under key number 4(14) is now covered under key number 153.

it appears in a case in Oregon, in New York, or in the US Supreme Court. Thus, if you find one good case from another jurisdiction, you need only click on the topic and key number of the relevant headnote and then change your jurisdiction in the results page to yield cases from your jurisdiction involving the same legal issue.

To take advantage of both the portability of the topic and key number system and the alert services in WestlawNext, you may choose to set up an alert using the topic and key number you identified in *People v. Lewis*. By using the Create Alert feature within the Alerts section of WestlawNext, you could choose to receive an e-mail anytime a case is added to the system that deals with a specified point of law. For example, you might set up an alert that would include all federal cases that have the topic Prisoners and key number 153 assigned to at least one point of law. In our prisoner grooming example, setting up such an alert would notify you of a new United States Supreme Court case, *Holt v. Hobbs*, 135 S.Ct. 853, a prisoner grooming and religious freedom case decided in January of 2015. This case was decided while this new edition of *New York Legal Research* was being drafted!

**b. The One Good Case Approach Using Lexis Advance**

Lexis Advance employs a similar indexing system but without topics and key numbers as shorthand. LexisNexis editors create headnotes for each of the points of law discussed in a case. The headnotes are also numbered, and each references a particular portion of the opinion from which the headnote was drawn. Consider Figure 4-3.

**Figure 4-3. Example of a Headnote as Displayed on Lexis Advance**

Constitutional Law > ... > [Fundamental Freedoms](#) ▾ > [Judicial & Legislative Restraints](#) ▾  
 > [Overbreadth & Vagueness of Legislation](#) ▾

Criminal Law & Procedure > [Postconviction Proceedings](#) ▾ > [Imprisonment](#) ▾

**HN2** A regulation challenged on the ground that it impinges on First Amendment rights will be upheld if, giving due deference to the discretion and expertise of prison authorities, the regulation furthers substantial governmental interests of security, order or rehabilitation, and its encroachment on First Amendment freedoms is no greater than necessary to protect the interest involved. [Shepardize - Narrow by this Headnote](#)

Source: Copyright 2014 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LexisNexis, Lexis, Lexis Advance and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used with the permission of LexisNexis.

Here, headnote number 2 (HN2), drawn from the *People v. Lewis* case on Lexis Advance, identifies a point of law related to the First Amendment. To see other cases that discuss this point of law, simply click on the last concept in the topical trail(s) provided for the headnote. You may select the link “Imprisonment,” or you may select “Overbreadth & Vagueness of Legislation.” The LexisNexis editors have determined that each is descriptive of the point of law summarized in headnote number 2. Selecting either of these concepts reveals three options. The first is “Get Documents,” which delivers a list of other cases that discuss the same legal issue as your headnote. You can then narrow the list by jurisdiction. With the second option, “Create an Alert,” you can direct Lexis Advance to update you in the future if other cases related to this subject are published, which is discussed more fully in Chapter 2. The third option, “View in Topic Index,” reveals how this point of law is situated topically in Lexis’s complete subject outline of the law. In essence, this option provides some context for the point of law and allows you to navigate to other points in the Topic Index that may be broader or narrower than what has been assigned to the headnote. Each of the three options facilitates using one good case to find other cases on point.

## C. Online Search Strategies

When you have neither a relevant secondary source nor one good case on point, you should employ the most efficient and effective strategies possible to search for judicial opinions. While each of the free and commercial databases has unique features that may suggest strategic ways to use it, some strategies common to almost all searches in an online database will increase your efficiency and the likelihood that you will find the existing cases on point.<sup>34</sup>

### 1. Choose the Right Database

The first step in efficient case law research is to think critically about where to begin your search. A search run at the top level of a commercial database will almost always yield far too many results to be useful. Additionally, depending on the payment plan you have for the database, failure to narrow your

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34. Remember when conducting judicial opinion research that there is a possibility that no case law addresses the specific research question at hand. You may have a case of first impression, or you may be dealing with an issue addressed exclusively through statutory or regulatory law.

search at the outset may result in unnecessary charges. Begin by selecting a slice of the database that is likely to include all the possible cases of interest without including too many cases outside the scope of your research. When searching for New York cases, consider whether the subject matter might be addressed in state court, federal court, or both. You are likely to find cases addressing primarily state law issues, such as child custody or probate, by searching for cases from New York state courts. You might be more likely to find cases addressing federal constitutional issues, such as that in our hypothetical of the prisoner who has been told to cut his hair and beard, in federal courts. When in doubt, choose to search in state cases for your jurisdiction and include federal cases arising from that jurisdiction as well.

Rather than searching only in a particular jurisdiction, consider selecting a topical or practice area database in one of the commercial resources. In WestlawNext, you might review “Practice Areas” and choose to search in criminal law resources for judicial opinions. In Lexis Advance, you might choose to browse the available topics and search in constitutional law under the subheading “Bill of Rights” for cases related to the hypothetical. In Bloomberg Law, you might review the choices in “Practice Center” for relevant topics as well.<sup>35</sup> Each service includes different resources in its topical databases, so be particularly attentive to the content of a topical database prior to conducting your search.

## 2. Natural Language versus Boolean or Advanced Search

Natural language searching is ubiquitous in online research. Popularized by Google and driven by algorithms that return relevant results with minimal effort in crafting a sophisticated search query, this type of search has become the default option on all of the major commercial legal research systems. In the past, Boolean operators were essential for accessing relevant case law, as they provided detailed instructions for the search system about the necessary words and phrases and their proximity to one another in any results. Because all results were the products of the strictures of the query, researchers were required to think critically about alternative ways of expressing ideas. Should the system look for drink, drank, and drunk or any of the three words? Might a document be more likely to be relevant if the required search terms were close together in the opinion rather than far apart? The more carefully these questions were considered and answered, the more likely a researcher would retrieve relevant results.

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35. As of the date of writing, Bloomberg Law does not have a Practice Center devoted to criminal or constitutional law.

To be sure, Boolean operators are still available in the major commercial databases and can be used in queries from the search bar at the top of each screen. However, they are typically referenced only on advanced search screens. These search screens, accessed on Lexis Advance and WestlawNext by selecting “Advanced Search” and on Bloomberg Law by selecting “Search Operators,” allow the researcher to think in a guided way about the information that must appear in any search results for them to be useful. Those who have been conducting online research for many years have learned to harness the power of these search tools and may feel more comfortable using Boolean operators in lieu of natural language searching.

Given the significant differences between the two methods, when should you choose natural language or advanced searching? While there is no hard-and-fast rule, every savvy researcher should consider the following. Consider how narrow you wish your results to be. If it is critical that they fall within a particular date range, that they exclude certain words or concepts, or that certain words and phrases be in close proximity to one another, then advanced searching is an excellent way to specify those parameters. Alternatively, natural language searching is often useful at the beginning of a research project when you are searching for an initial selection of relevant cases to review. You might use a natural language search to find an excellent case, then use the “one good case” approach described above to expand your case law research. Regardless of the method you select, the most important aspects of researching judicial opinions continue to be thoughtfulness, thoroughness, and attention to detail.

### 3. Searching within Results

Understanding how to refine your results is essential to researching judicial opinions efficiently. Both the major commercial services and some free systems, such as Google Scholar, offer options to refine, limit, or search within the results of an initial search.

Suppose you conduct a natural language search for cases related to our hypothetical about the prisoner who is required to shave his beard and cut his hair. After running a search, you might want to narrow your results to those cases in New York state courts or in the Second Circuit. Additionally, you might wish to search within those results for the word “religious,” since the hypothetical involves grooming standards based on religious beliefs. This kind of fine-tuning systematically narrows broad searches to a group of documents that precisely meets your needs, saving you the time of reading cases outside the scope of those most likely to be useful. There may be an additional benefit of using this



method in commercial research services, depending on the type of subscription plan you have purchased. Some vendors have transactional plans in which they charge for each new search but allow you to refine or search within a group of results at no extra charge.

## D. Finding and Retrieving Cases in Print

While today's researchers are less likely than those of decades past to conduct case law research in print materials, there may still be moments when print resources are more readily available than their online counterparts. Thus, no savvy researcher's skill set is complete without at least some understanding of the basics of finding relevant case law in print. As noted already in this chapter, the foundations of publishing and topical indexing of judicial opinions lie in the West Publishing reporters and West Digest System, and the digest system is accessible both on WestlawNext and in print volumes.

The print digest most often used for researching New York law is *West's New York Digest, 4th*. It includes headnotes from cases arising in both state and federal courts in New York from 1978 to the current date. Earlier series of this digest index earlier cases. The headnotes in the digest volumes are organized by topic and key number, just as they are in individual cases published by West Publishing. However, the secret to using the digest system in print lies in first identifying both the topic and the key number or numbers that are relevant to the issues at hand. Only with a topic and a key number can you identify a case related to a specific subject in print.

When starting a brand new search for judicial opinions, you must first identify an appropriate digest topic. There are a number of approaches to this essential step, but the most common is to consult the Descriptive-Word Index (DWI). These volumes, usually found at the end of the print digest set, function much like any other keyword index for a print resource. Search the DWI for some terms or phrases that are relevant to your issue. In our prisoner grooming example, you might search for the words "prisons" or "prisoner." Figure 4-4 shows a page from the *New York Digest's* DWI volume that includes the entries for the term "prisons." Each entry on this page is followed by the word "Prisons" in bold, then an image of a key and a number. "Prisons" in bold indicates a digest topic to consult when searching for case law on these issues. The key numbers represent individual points of law in the larger topic of prisons. Legal issues related to religious practices regarding hair, facial hair, and grooming in prisons are in key number 153.

Once you have identified a useful topic and key number in the DWI, locate the digest volume in the set that includes the topic Prisons and find the headnotes listed under key number 153. You will see headnotes from cases related to the issue at hand in hierarchical and chronological order, beginning with the most recent federal cases and continuing to New York State cases. You will see *People v. Lewis* listed with other cases from the Court of Appeals of New York. Along with each headnote in the digest volume is the citation to the case from which the headnote was drawn. You now have a case citation in hand and can pull the opinion from the appropriate print reporter.

**Figure 4-4. Excerpt from the Descriptive-Word Index in *West's New York Digest, 4th***

48C N Y D 4th-57

**PRISONS**

**References are to Digest Topic and Key Numbers**

**PRISONS — Cont'd**

RELIGIOUS practices,

Generally, **Prisons** 152

Ablution, **Prisons** 155

Ceremonies, **Prisons** 155

Cleansing, **Prisons** 155

Clergy, **Prisons** 152, 155

Clothing, **Prisons** 153

Crowns, wearing of, **Prisons** 153

Diet, **Prisons** 154

Facial Hair, **Prisons** 153

Food, **Prisons** 154

Freedom of Religion. *See heading RELIGION, FREEDOM OF, PRISONS and pretrial detention*

Grooming, **Prisons** 153

Hair, **Prisons** 153

Hygiene, **Prisons** 153

Source: *West's New York Digest, 4th*. Reprinted with permission of Thomson Reuters.

## E. Unpublished Opinions

Many court opinions are not published in reporters. The reason a case is not reported varies by court and by case. Although unreported cases generally carry no precedential value, attorneys often review relevant unpublished opinions to gain insight as to how the same court may decide a particular issue.<sup>36</sup> Occasionally, attorneys may even cite to unpublished opinions in a brief because of the persuasive reasoning of the opinion. Unpublished opinions from New York courts are in the major commercial research services, but inclusion of unpublished opinions varies by service and by court. Selected unpublished opinions can also be accessed in the *New York Law Journal* or on the New York Official Reports: Decisions website.<sup>37</sup>

## F. Updating and Validating Cases

The process of researching judicial opinions is not complete without updating and validating each of the cases on which you rely. Due to the ever-changing nature of the law, particularly the common law, validating your research is the only way to assure that your arguments are bolstered by authorities that continue to be good law. The term “good law” simply expresses the notion that a case has not been reversed, overruled, or otherwise called into question by subsequent judicial opinions or later enactment of a statute or promulgation of a rule. Updating and validating case law is accomplished through citators, and this process is explored in detail in Chapter 8.

# IV. Reading and Analyzing Cases

While finding case law is detailed and sometimes time-consuming, it is only one part of researching judicial opinions. After locating relevant case law, you must read it, understand it, and analyze its potential relevance to the problem at hand. This is often challenging work. It is not unusual for a lawyer to spend hours reading (and rereading) cases, especially in unfamiliar areas of law. This

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36. Note that Federal Rule of Appellate Procedure 32.1 prohibits courts from restricting the citation of unpublished opinions issued on or after January 1, 2007. See Fed. Rules of App. Proc. 32.1, [www.law.cornell.edu/rules/frap/rule\\_32.1](http://www.law.cornell.edu/rules/frap/rule_32.1). For a more detailed discussion of unpublished opinions, see Amy E. Sloan, *Basic Legal Research* 96–99 (5th ed. 2012).

37. The website is [www.nycourts.gov/reporter/Decisions.htm](http://www.nycourts.gov/reporter/Decisions.htm).

reading might be complemented by references to a law dictionary to understand the terms used. The following strategies should make reading and analyzing cases more effective.

### **A. Reading Cases Effectively**

Review the synopsis quickly to determine whether the case seems to be on point. If so, skim the headnotes to find the particular portion of the case that is relevant. Remember that one case may discuss several issues of law, only one or two of which may interest you. Go to the portion of the case identified by the relevant headnote, and decide whether it is important for your project. If so, skim the entire case to get a feeling for what happened and why, focusing on the portion of the case identified by the relevant headnote.

After determining that a case is relevant, read the case slowly and carefully. Skip the parts that are obviously not pertinent to your problem. At the end of each paragraph or page, consider what you have read. If you cannot summarize it, try reading the material again.

Read the case again and take notes. The notes may be a formal “case brief,” or they may be scribbles that only you can understand. Regardless of the form, the process of taking notes will help you parse, identify, and comprehend the essential concepts of the case. When preparing to write a legal document, the notes will help you outline your analysis. Note that skimming text online or highlighting key text is often insufficient to achieve thorough comprehension of a judicial opinion.

### **B. Analyzing the Substance of Cases**

If a case concerns the same legally significant facts as your client’s situation and the court applies law on point for your problem, then the case is relevant and should be considered carefully as you analyze your problem. Legally significant facts are those that affect the court’s decision. The determination of which facts are legally significant depends on the case. If the defendant in a copyright dispute owns a rare breed of dog, that is unlikely to be legally significant. However, that same fact may be critical in a personal injury case in which a dog matching the description of the defendant’s dog bites a child.

Rarely will research reveal a case with facts that are exactly the same as your client’s situation. Rather, several cases may involve facts that are similar to your client’s situation but not exactly the same. Your job is to determine whether

the facts are similar enough for a court to apply the law the same way and reach the same outcome. If the court reached a decision that would be favorable to your client, you will highlight the similarities. If, on the other hand, the court reached an unfavorable decision from your client's perspective, you may argue that the case is distinguishable from yours based on its facts or that the court's reasoning was faulty. Note that you have an ethical duty to ensure that the court knows about a case directly on point, even if the outcome of that case is adverse to your client's situation.

It is also unlikely that one case will address all aspects of your client's situation. Most legal claims have several elements or factors. "Elements" are required subparts of a claim, while "factors" are important aspects but are not required for a claim to succeed. If a court decides that one element is not met, the court might not discuss others. In a different case, the court might decide that two factors are so overwhelming that others have no impact on the outcome. In these circumstances, you would have to find other cases that analyze the other elements or factors.

After determining that a case is relevant to some portion of your analysis, you must decide how heavily it will weigh in your analysis. Two important points need to be considered here. One is the concept of stare decisis, the other is the difference between the holding of the case and dicta in that case.

"Stare decisis" means "to stand by things decided."<sup>38</sup> This concept means that courts must follow prior opinions, ensuring consistency in the application of the law. Stare decisis, however, is limited to the courts in one jurisdiction. The lower courts in New York must follow the decisions of the New York Court of Appeals but not those of the courts of any other state.<sup>39</sup> The concept of stare decisis also refers to a court with respect to its own opinions. The Court of Appeals thus should follow its own earlier cases in deciding new matters. If a court decides not to continue following its earlier cases, it is usually due to changes in social norms, shifts in the court's judges, or changes in statutory law.

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38. Bryan A. Garner, ed., *Black's Law Dictionary* 1626 (10th ed. 2014).

39. Cases of the Appellate Division are also binding on trial courts. If neither the Court of Appeals nor a particular department of the Appellate Division has spoken on an issue, trial courts in that department must follow the precedents set by other departments until the Court of Appeals or that department announces a rule. *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663, 664–65, 476 N.Y.S.2d 918, 919–20 (1984).

Under *stare decisis*, courts are required to follow the holding of prior cases. The “holding” is the court’s ultimate decision on the matter of law at issue in the case. Other statements or observations included in the opinion are not binding; they are referred to as “dicta.” For example, a court may decline to rule on the merits of a case noting a lack of jurisdiction, but then go on to make a remark about the merits of the case in its decision. The court’s statement about the merits was not the basis of the court’s decision. Thus, the remark is dicta and is not binding on future courts, though it may be cited as persuasive authority.

After finding a number of relevant cases, you must synthesize them to state and explain the legal rule. Sometimes a court states the rule fully, but if the court does not, piece together the information from the relevant cases. Then use the analysis and facts of various cases to explain the law. Decide how the rule applies to the client’s facts, and determine your conclusion. Note that this method of synthesis is much more than merely summarizing the various cases. Legal analysis texts in Appendix B in this book explain synthesis in detail.

Appendix 4-A. Case Excerpt from Official Reporter  
*People v. Lewis*, 68 N.Y.2d 923 (N.Y. 1986)

MEMORANDA

923

DER, TITONE and HANCOCK, JR., concur; Judge SIMONS taking no part.

Order affirmed in a memorandum.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff, v ALFREDO LEWIS, Defendant.

ALFREDO LEWIS, Respondent, v COMMISSIONER OF DEPARTMENT OF CORRECTIONAL SERVICES OF THE STATE OF NEW YORK, Appellant.

Argued October 6, 1986; decided November 11, 1986

SUMMARY

APPEAL, on constitutional grounds, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered December 16, 1985, which unanimously affirmed a judgment of the Supreme Court (Sol R. Dunkin, J.), entered in Queens County, declaring, *inter alia*, that the initial haircut requirement of the State Department of Correctional Services was unconstitutional as applied to plaintiff Alfredo Lewis, and that Lewis may retain his dreadlocks in accordance with his religious beliefs.

*Lewis v Commissioner of Dept. of Correctional Servs.*, 115 AD2d 597, affirmed.

HEADNOTE

Prisons and Prisoners — Freedom of Worship — Initial Haircut

Plaintiff, an avowed Rastafarian who has not cut his hair, which he wears in dreadlocks, for over 20 years owing to his sincere religious beliefs, shall not have to comply with a directive of the State Department of Correctional Services mandating that all newly received inmates have a haircut for reasons of health and sanitation as well as to permit the taking of initial identification photographs, where there has been an affirmed finding that the identification photographs could be successfully taken if plaintiff simply pulls his hair back; moreover, following the initial haircut, there is no restriction on the length of an inmate's hair. Inasmuch as the Department's legitimate penological interests can be readily satisfied without any interference with plaintiff's beliefs, the Department's directive, as applied to plaintiff, needlessly infringes on those beliefs.

APPEARANCES OF COUNSEL

*Robert Abrams*, Attorney-General (*Esther Furman*, *O. Peter Sherwood* and *Howard L. Zwickel* of counsel), for appellant.

*Alan E. Kudisch* for respondent.



Appendix 4-A. Case Excerpt from Official Reporter  
*People v. Lewis*, 68 N.Y.2d 923 (N.Y. 1986), *continued*

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*Arnold S. Cohen and Caesar D. Cirigliano for Legal Aid Society and another, amici curiae.*

*Janet Packard, Michael Raskin, Robert Selcov, Stephen M. Latimer and David C. Leven for Prisoners' Legal Services of New York, amicus curiae.*

OPINION OF THE COURT

MEMORANDUM.

The order of the Appellate Division should be affirmed.

Plaintiff, a convicted felon, challenges as a violation of his First Amendment rights the application to him of defendant's directive requiring that male prisoners receive an initial haircut. Plaintiff is an avowed Rastafarian, wears his hair in dreadlocks, and has not cut his hair for 20 or more years. It is undisputed that he is sincere in his beliefs, that they are of religious nature, and that a haircut would impinge on those beliefs. The challenged directive provides that males received as new commitments have an initial haircut and shave for reasons of health and sanitation as well as to permit the taking of the initial identification photographs; following the initial haircut, there is no restriction on the length of an inmate's hair. On this appeal, defendant urges only that the initial haircut is essential to prison security in that photographs taken at that time facilitate quick identification of inmates and escapees.\*

A prisoner retains First Amendment rights "not inconsistent with his status as a prisoner or with legitimate penological objectives of the corrections system." (*Pell v Procunier*, 417 US 817, 822.) A regulation challenged on the ground that it impinges on First Amendment rights will be upheld if—giving due deference to the discretion and expertise of prison authorities—the regulation furthers substantial governmental interests of security, order or rehabilitation, and its encroachment on First Amendment freedoms is no greater than necessary to protect the interest involved (*Wali v Coughlin*, 754 F2d 1015, 1029; *Phillips v Coughlin*, 586 F Supp 1281, 1283).

Plaintiff urges that the regulation must be stricken because it does not constitute the "least intrusive means" of satisfying

\* The following issues are not reached on this appeal. First, no State constitutional argument is properly presented. Second, plaintiff has agreed to comply with the shave requirement. Third, we do not consider whether Rastafarianism is a religion entitled to First Amendment protection. (See, *Overton v Department of Correctional Servs.*, 131 Misc 2d 295.)



Appendix 4-A. Case Excerpt from Official Reporter  
*People v. Lewis*, 68 N.Y.2d 923 (N.Y. 1986), *continued*

## MEMORANDA

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defendant's administrative concern; defendant contends that the regulation should be upheld because it does not represent an "exaggerated response" to his legitimate penological interests. Both lower courts found that, as to plaintiff, the asserted objective of the regulation in issue could be fully achieved simply by pulling his hair back when the initial identification photographs are taken. This affirmed finding is supported by the testimony of a deputy commissioner in the Department of Correctional Services; and a sufficient showing was not made here of administrative burden. In this instance, therefore, defendant's interest can be readily satisfied without any interference with plaintiff's beliefs. Thus, whichever test is adopted, on this record the regulation as applied to plaintiff needlessly infringes on his beliefs, and cannot stand.

Chief Judge WACHTLER and Judges MEYER, SIMONS, KAYE, ALEXANDER, TITONE and HANCOCK, JR., concur.

Order affirmed, without costs, in a memorandum.

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In the Matter of the Arbitration between ITOMAN (U.S.A.),  
 INC., Respondent, and DAEWOO CORPORATION, Appellant.

Submitted October 7, 1986; decided November 11, 1986

## SUMMARY

APPEAL, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered December 3, 1985, which unanimously affirmed an order and judgment (one paper) of the Supreme Court at Special Term (Robert E. White, J.), entered in New York County, *inter alia*, granting the motion of petitioner Itoman (U.S.A.), Inc. to compel respondent Daewoo Corporation to proceed to arbitration before the General Arbitration Council of the Textile Industry in the City of New York, and denying the cross motion of respondent for an order directing the arbitration to take place in South Korea under the Rules of the Korean Commercial Arbitration Association.

*Matter of Itoman (U.S.A.), Inc. v Daewoo Corp.*, 115 AD2d 1023, reversed.

## HEADNOTE

## Arbitration — Agreement to Arbitrate — Place of Arbitration

In a proceeding to compel arbitration of a commercial controversy, an order of the Appellate Division, which affirmed an order and judgment