

COURT OF APPEALS
of the
STATE OF NEW YORK



2012
ANNUAL REPORT
of the
CLERK OF THE COURT

2012

**ANNUAL REPORT OF THE
CLERK OF THE COURT
TO THE
JUDGES OF THE COURT OF APPEALS
OF THE STATE OF NEW YORK**

**Andrew W. Klein
Clerk of the Court
Court of Appeals**

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*State of New York
Court of Appeals*



*Jonathan Lippman
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March 2013

More than ever, I am grateful for the special privilege and opportunity I have been given to be the Chief Judge of the New York State Court of Appeals.

The cases before the Court come to us as just a few hundred of the more than four million matters annually heard in the Unified Court System. They most often involve complex issues that are of statewide importance or that have caused disagreement among our intermediate appellate courts. The Judges of the Court of Appeals consistently resolve these cases promptly and with great scholarship and legal acumen. New Yorkers can be proud of the Judges of the Court, who represent the diverse populace of our great State.

We are committed to maintaining the high standards set by our predecessors. We are proud of the storied history of the Court and the great Judges who have served the people of our State for over 165 years. I would take this opportunity to pay tribute to our two colleagues who have just left the Court. Theodore T. Jones, Jr. and Carmen Beauchamp Ciparick. Judge Jones, who unexpectedly passed away in November, was passionate in his pursuit of equal justice for all and a champion of diversity in the courts – we will miss him. Judge Ciparick, the first Hispanic to sit on the Court, retired at the end of 2012. She served for 19 years, during which she left an indelible mark on the jurisprudence of the Court. We celebrate their achievements.

I must also mention that the Judges of the Court of Appeals are so fortunate to be supported by our unparalleled nonjudicial staff – the Clerk's office, central staff attorneys and supervisors, security officers and Court attendants. These highly competent, dedicated professionals care so deeply about this institution and the quality of its work product. They all take visible pride in the high quality of service they provide to the public and the bar, and the Court's reputation is rooted firmly in their professionalism.

The Court looks forward to the coming year as we continue to serve the public and dedicate ourselves to meeting the challenges that lie ahead for the finest high court in the country.

Jonathan Lippman

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Introduction

When 2012 began, the Court knew that the year was going to end on a sad note, with a significant loss for the Court: the retirement of Senior Associate Judge Carmen Beauchamp Ciparick. What the Court did not know, and could not possibly expect, was that during this year the Court would lose another beloved Judge. On November 6, 2012, the Court was faced with the untimely passing of Judge Theodore T. Jones, Jr. These two wonderful people will be sorely missed at the Court of Appeals.

This year, however, enjoyed positives as well. In honor of Judge Ciparick, the Court once again took "the show" on the road and held court for one week on Judge Ciparick's home turf, New York City. The Appellate Division, First Department, was incredibly gracious in allowing the Court of Appeals to share the First Department's majestic courtroom during the week of October 8 to October 12, 2012. It was a wonderful experience for the Court and, hopefully, for the downstate bar.

In 2012, the Court tackled many difficult and important issues of law. Many of these are addressed in section III of this report, "2012: Year in Review." Additionally, in 2012, as in 2011, the Court employed its rule-making powers and addressed significant issues with respect to attorney admission and regulation. After consultation with law school administrators and review of American Bar Association Standards for Approval of Law Schools, the Court of Appeals amended section 520.3 of the Rules for the Admission of Attorneys and Counselors at Law regarding the study of law at an approved law school in the United States. In an effort to better prepare law school graduates for the practice of law, the Court amended section 520.3 to allow students to complete up to 30 credits in clinics, field placement programs or externships. Additionally, recognizing the ever-increasing role of technology in legal education, the Court amended section 520.3 to permit up to 12 credit hours of distance education courses to count toward the number of credits required for graduation. Other changes were made to provide students greater flexibility in completing their programs of study.

In September 2012, the Court again amended the Rules for the Admission of Attorneys and Counselors at Law, by adding section 520.16. This section provides that applicants admitted to the New York State bar on or after January 1, 2015 must complete at least 50 hours of qualifying pro bono service prior to filing an application for admission. When adding this section, the Court acknowledged the contribution of pro bono work by the practicing bar and the pro bono opportunities offered students by law schools nationwide, but believed that more needed to be done to help the thousands of litigants who could not afford legal representation to pursue basic rights involving housing, family and other essential matters. This new section of the Rules will hopefully provide meaningful experiences for law students; develop a broad range of useful pro bono opportunities, appropriate for law students, to help address the urgent legal services needs of the poor in this time of diminished resources; and instill in aspiring lawyers a career-long commitment to public service.

Already sensitive to the public's need for pro bono representation, in November 2012, the Court of Appeals reached out to assist the residents of New York that were most affected by Hurricane Sandy. The Court declared a major disaster pursuant to section 520.11 (d) of the Rules for the Admission of Attorneys and Counselors at Law. It determined that an emergency that affected the justice system existed and that certain New York residents impacted by the storm could benefit from the provision of pro bono services by attorneys from outside New York. Accordingly, pursuant to the Court's Major Disaster Rule (22 NYCRR 520.11 [d]), attorneys authorized to practice law in another United States jurisdiction were enabled by the Court of Appeals to provide pro bono legal services to affected New Yorkers on a temporary basis.

Turning to Court operating procedures, in 2012 the Court began providing transcripts of the oral arguments of appeals. The transcripts of oral arguments are available on the Court's website approximately one week after argument, and are permanently archived on the website. Also, last year's annual report made reference to the Court moving further ahead with respect to digital filing at the Court of Appeals. The Court's staff spent a great deal of time in 2012 formulating a program which will not only allow for digital uploads of Court filings on appeals to this Court, but which will also enable the bar and the public at large to have access to such filings. This program, to be known as Court-PASS, will launch in 2013.

The 2012 Annual Report is divided into four parts. The first section is a narrative, statistical and graphic overview of matters filed with and decided by the Court during the year. The second describes various functions of the Clerk's Office and summarizes administrative accomplishments in 2012. The third section highlights selected decisions of 2012. The fourth part consists of appendices with detailed statistics and other information.

I. The Work of the Court

The Court of Appeals is composed of its Chief Judge and six Associate Judges, each appointed by the Governor to a 14-year term. Similar to the Supreme Court of the United States and other state courts of last resort, the primary role of the New York Court of Appeals is to unify, clarify and pronounce the law of its jurisdiction for the benefit of the community at large. Reflecting the Court's historical purpose, the State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right. Thus, the Court hears most appeals by its own permission, or certiorari, granted upon civil motion or criminal leave application. Appeals by permission typically present novel and difficult questions of law having statewide importance. Often these appeals involve issues in which the holdings of the lower courts of the state conflict. The correction of error by courts below remains a legitimate, if less frequent, basis for this Court's decision to grant review. By State Constitution and statute, the Appellate Division also can grant leave to appeal to the Court of Appeals in civil cases, and individual Justices of that court can grant leave to appeal to the Court of Appeals in most criminal cases.

In addition to appellate jurisdiction, the State Constitution vests the Court of Appeals with power to answer questions of New York law certified to it by a federal appellate court or another state's court of last resort. Also, the Court of Appeals is the exclusive forum for review of determinations by the State Commission on Judicial Conduct.

The Judges of the Court collectively decide all appeals, certified questions, proceedings to review determinations of the State Commission on Judicial Conduct, and motions. Individually, the Judges decide applications for leave to appeal in criminal cases and emergency show cause orders. For most appeals, the Judges receive written and oral argument and set forth the reasons for their decisions in written opinions and memoranda.

The Court sits in Albany throughout the year, usually for two-week sessions. During these sessions, the Court meets each morning in conference to discuss the appeals argued the afternoon before, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters. Afternoons are devoted to hearing oral argument, and evenings to preparing for the following day.

Between Albany sessions, the Judges return to their home chambers throughout the state, where they continue their work of studying briefs, writing opinions and preparing for the next Albany session. During these home chambers sessions, each Judge annually decides hundreds of requests for permission to appeal in criminal cases, prepares reports on motions for the full Court's consideration and determination, and fulfills many other judicial and professional responsibilities.

Each year, with the Appellate Division Departments, the Court of Appeals publishes a timetable for appellate review of primary election-related matters. In August of each year, the

Court holds a special session to consider expedited appeals and motions for leave to appeal in cases concerning the September primaries. The Court reviews primary election motions and appeals on the Appellate Division record and briefs, and hears oral argument of motions for leave to appeal. When the Court determines an appeal lies as of right or grants a motion for leave to appeal, oral argument of the election appeal is usually scheduled for the same day. Primary election appeals are decided quickly, often the day after oral argument is heard.

In 2012, the Court and its Judges disposed of 3,666 matters, including 240 appeals, 1,330 motions and 2,096 criminal leave applications. A detailed analysis of the Court's work follows.

A. Appeals Management

1. Screening Procedures

The jurisdiction of the Court is narrowly defined by the State Constitution and applicable statutes. After filing a notice of appeal or receiving an order granting leave to appeal to this Court, an appellant must file an original and one copy of a preliminary appeal statement in accordance with Rule 500.9. Pursuant to Rule 500.10, the Clerk examines all preliminary appeal statements filed for issues related to subject matter jurisdiction. This review usually occurs the day a preliminary appeal statement is filed. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issue identified. After the parties respond to the Clerk's inquiry, the matter is referred to the Central Legal Research Staff to prepare a report on jurisdiction for review and disposition by the full Court.

Of the 154 notices of appeal received by the Court in 2012, 71 were subject to Rule 500.10 inquiries. Of those, all but 23 were dismissed sua sponte or on motion, withdrawn, or transferred to the Appellate Division. Five inquiries were pending at year's end. The Rule 500.10 sua sponte dismissal (SSD) screening process is valuable to the Court, the bar and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

2. Normal Course Appeals

The Court determines most appeals "in the normal course," meaning after full briefing and oral argument by the parties. In these cases, copies of the briefs and record are circulated to each member of the Court well in advance of the argument date. Each Judge becomes conversant with the issues in the cases, using oral argument to address any questions or concerns prompted by the briefs. At the end of each afternoon of argument, each appeal argued or submitted that day is assigned by random draw to one member of the Court for reporting to the full Court at the next morning's conference.

In conference, the Judges are seated clockwise in seniority order around the conference table. When a majority of the Court agrees with the reporting Judge's proposed disposition, the reporting Judge becomes responsible for preparing the Court's writing in the case. If the majority of the Court disagrees with the recommended disposition of the appeal, the first Judge taking the majority position who is seated to the right of the reporting Judge assumes responsibility for the proposed writing, thus maintaining randomness in the distribution of all writings for the Court. Draft writings are circulated to all Judges during the Court's subsequent intersession and, after further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next session of the Court.

3. Alternative Track Appeals

The Court also employs the alternative track of sua sponte merits (SSM) review of appeals pursuant to Rule 500.11. Through this SSM procedure, the Court decides a number of appeals on letter submissions without oral argument, saving the litigants and the Court the time and expense of full briefing and oral argument; for this reason, the parties may request SSM review. A case may be placed on SSM track if it involves narrow issues of law or issues decided by a recent appeal, or for other reasons listed in the rule. As with normal-coursed appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes and are conferenced and determined by the entire Court.

Of the 340 appeals filed in 2012, 46 (13.5%) were initially selected to receive SSM consideration, a decrease from the percentage initially selected in 2011 (17.5%). Thirty-three were civil matters and 13 were criminal matters. Eleven appeals initially selected to receive SSM consideration in 2012 were directed to full briefing and oral argument. Of the 240 appeals decided in 2012, 36 (15%) were decided upon SSM review (15.3% were so decided in 2011; 24.9% were so decided in 2010). Twenty-five were civil matters and 11 were criminal matters.

Of the 46 appeals filed in 2012 and initially selected to receive SSM consideration, 22 were taken from orders or judgments of the Appellate Division, First Department. Seven of those 22 were appeals as of right based on a double dissent below, 12 were leave grants of the Appellate Division or a Justice of that court, and three were by leave of this Court or a Judge of this Court.

4. Promptness in Deciding Appeals

In 2012, litigants and the public continued to benefit from the Court's remarkable tradition of prompt calendaring, hearing and disposition of appeals. The average time from argument or submission to disposition of an appeal decided in the normal course was 40 days; for all appeals, the average time from argument or submission to disposition was 39 days. The average period from filing a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately 11 months. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately five months.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release to the public of a decision in a normal-coursed appeal decided in 2012 (including SSM appeals tracked to normal course) was 368 days. For all appeals, including those decided pursuant to the Rule 500.11 SSM procedure, those dismissed pursuant to Rule 500.10 SSD inquiries, and those dismissed pursuant to Rule 500.16 (a) for failure to perfect, the average was 291 days. Thus, by every measure, in 2012 the Court maintained its long tradition of exceptional currency in calendaring and deciding appeals.

B. The Court's 2012 Docket

1. Filings

Three hundred forty (340) notices of appeal and orders granting leave to appeal were filed in 2012 (331 were filed in 2011). Two hundred thirty-five (235) filings were civil matters (compared to 244 in 2011), and 105 were criminal matters (compared to 87 in 2011). The Appellate Division departments issued 45 of the orders granting leave to appeal filed in 2012 (35 were civil, 10 were criminal). Of these, the First Department issued 27 (21 civil and 6 criminal).

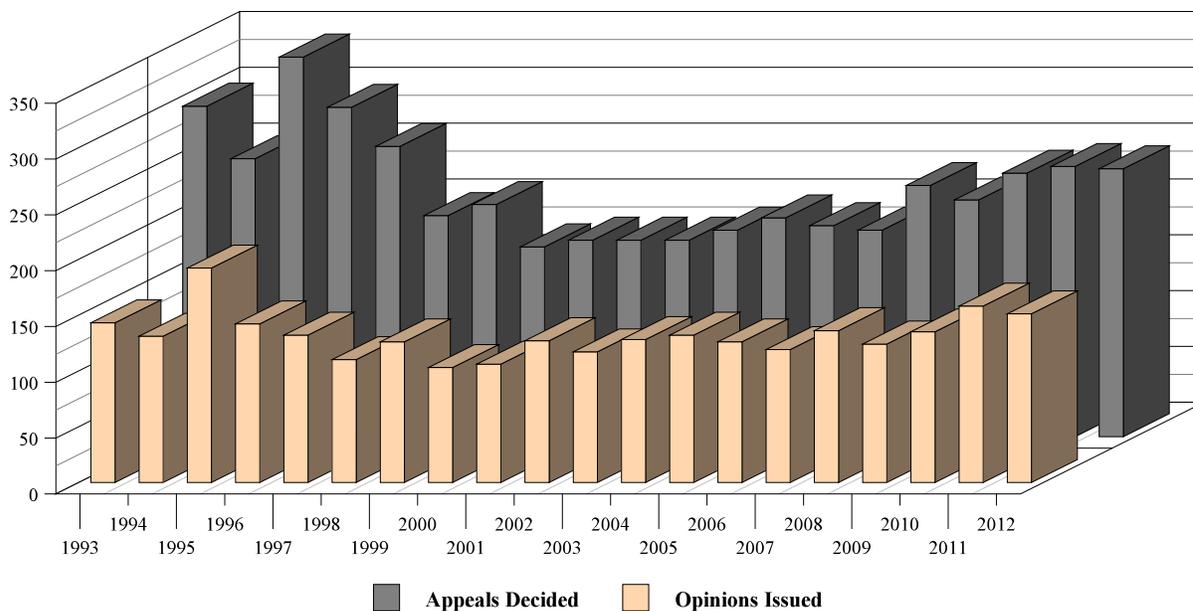
Motion filings decreased slightly in 2012. During the year, 1,296 motion numbers were used, a decrease from the 1,375 motion numbers used in 2011. Criminal leave applications also decreased slightly in 2012. Two thousand fourteen (2,014) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 176 fewer than in 2011. On average, each Judge was assigned 287 such applications during the year.

2. Dispositions

(a) Appeals and Writings

In 2012, the Court decided 240 appeals (149 civil and 91 criminal, compared to 130 civil and 112 criminal in 2011). Of these appeals, 102 were decided unanimously. The Court issued 146 signed opinions, 5 per curiam opinions, 73 dissenting opinions, 10 concurring opinions, 71 memoranda and 20 decision list entries (one of which was a dissenting entry and one of which was a concurring entry). The chart on the next page tracks appeals decided and full opinions (signed and per curiam) issued over the past 20 years.

Appeals Decided and Opinions Issued 1993-2012

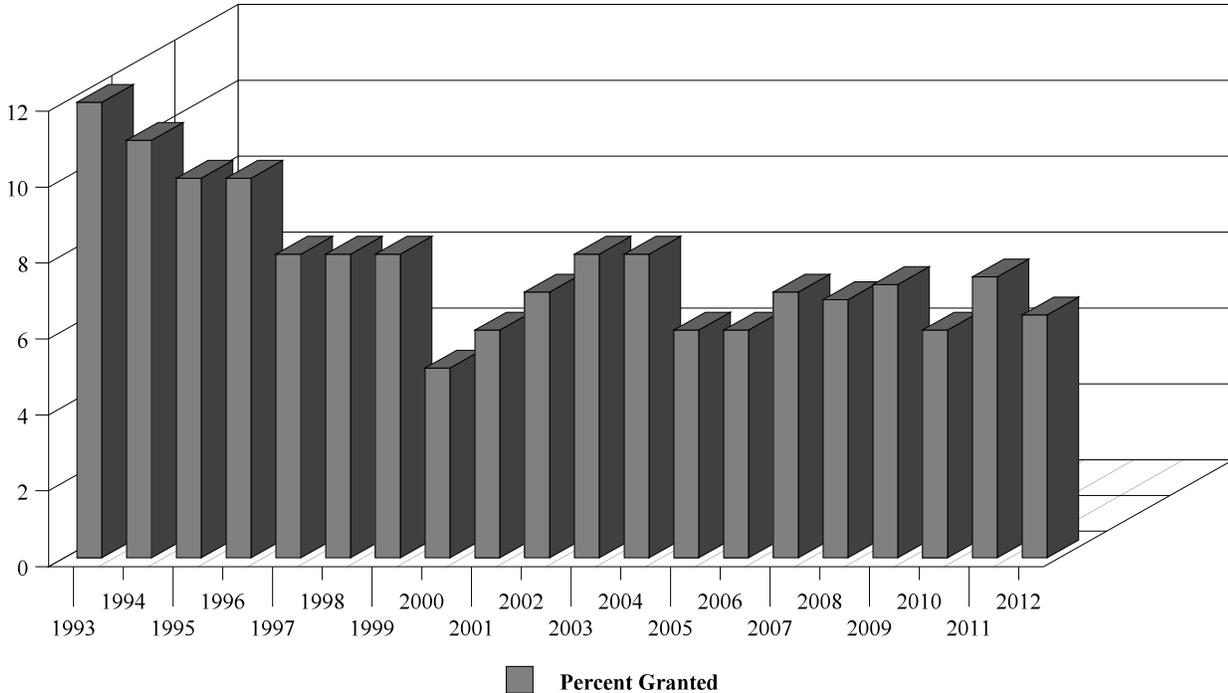


(b) Motions

The Court decided 1,330 motions in 2012 -- 25 less than in 2011. Each motion was decided upon submitted papers and an individual Judge's written report, reviewed and voted upon by the full Court. The average period of time from return date to disposition for civil motions for leave to appeal was 60 days, while the average period of time from return date to disposition for all motions was 54 days.

The Court decided 999 motions for leave to appeal in civil cases during the year -- 108 fewer than in 2011. Of these, the Court granted 6.4% (down from 7.4% in 2011), denied 73.4% (down from 74.3% in 2011) and dismissed 20.2% for jurisdictional defects (up from 18.3% in 2011). The chart on the next page shows the percentage of civil motions for leave to appeal granted over the past 20 years.

**Motions for Leave to Appeal Granted by Year
1993-2012**

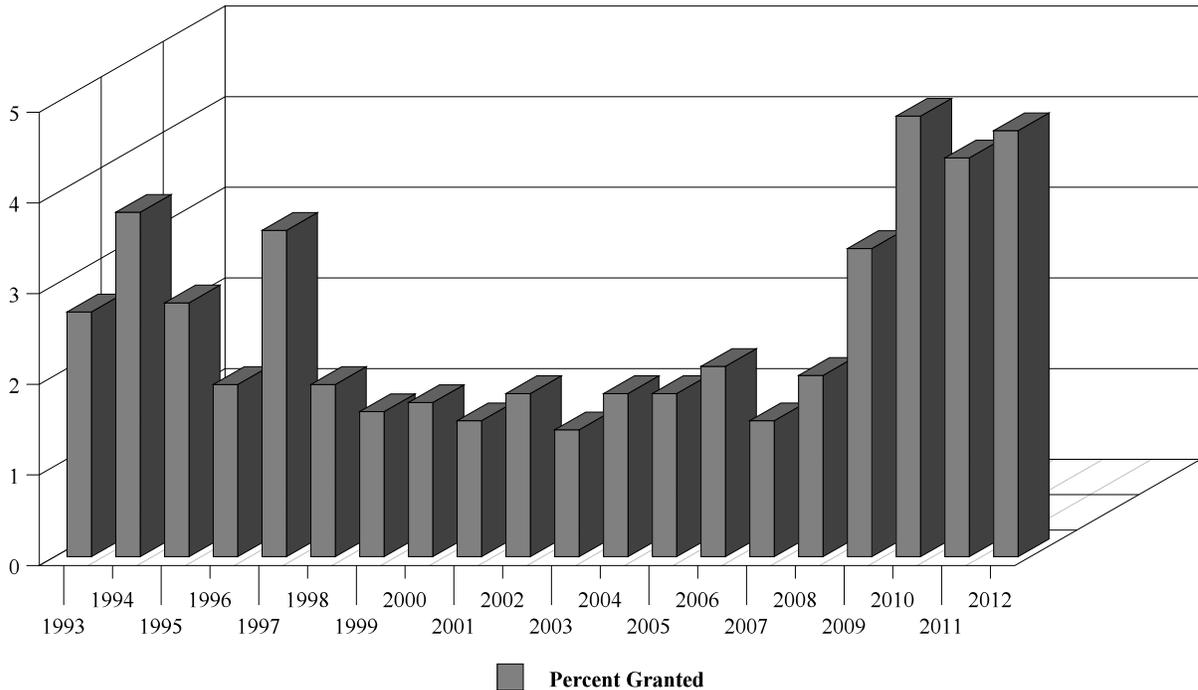


Sixty-four motions for leave to appeal were granted in 2012. The Court's leave grants covered a wide range of subjects. The Court granted leave to address a variety of civil service issues, ranging from the presumption that a disability was caused by service at the World Trade Center following the September 11, 2001 terrorist attack to termination of employment with a school district based on alleged noncompliance with the district's residency requirement. In other areas, the Court granted leave to address the discipline of an attorney based on the attorney's liability for the criminal acts of a law firm employee; whether a volunteer fire department was the functional equivalent of a municipal corporation for purposes of the prevailing wage law requirements; the scope of a hospital's duty to detain an intoxicated person who arrived voluntarily at the hospital but departed before being discharged; and the decertification of an Empire Zone business enterprise. The Court also granted leave in several cases involving prisons and prisoners, with issues including a prisoner's admittance to a nursery program after she gave birth to a child in prison; a prisoner's voluntary hunger strike and a court order to force feed and provide other medical treatment to the prisoner; and an incarcerated father's request for visitation with his child at the father's place of incarceration. Other examples of leave grants include a Freedom of Information Law proceeding involving a request for transcripts of interviews regarding communist party membership; the priority of an unrecorded building loan contract and mechanic's liens in the mortgage foreclosure context; and whether a public employee's pension fund is exempt from the Son of Sam law.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 99 of the 2,096 applications for leave to appeal in criminal cases decided in 2012 -- up slightly, on a percentage basis, from the grant of 91 of the 2,089 applications made in 2011. One hundred forty-seven (147) applications were dismissed for lack of jurisdiction, and six were withdrawn. Ten of the 50 applications filed by the People were granted. Two of the 150 applications for leave to appeal from intermediate appellate court orders determining applications for writs of error coram nobis were granted. The chart below reflects the percentage of applications for leave to appeal granted in criminal cases over the past 20 years.

**Criminal Leave Applications Granted by Year
1993-2012**



Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court during home chambers sessions. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments. In 2012, on average, 87 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

(d) Review of Determinations of the State Commission on Judicial Conduct

By constitution and statute, the Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this state with a crime punishable as a felony. In 2012, the Court reviewed one determination of the State Commission on Judicial Conduct, accepting the recommended sanction (removal). Pursuant to Judiciary Law § 44 (8), the Court suspended two judges with pay, and continued the suspension with pay of one judge.

(e) Certifications Pursuant to Section 500.27 of the Rules

Section 500.27 of the Court's Rules of Practice provides that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals or a court of last resort of any other state that determinative questions of New York law are involved in a case pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court. After a court certifies a question to this Court pursuant to section 500.27, the matter is referred to an individual Judge, who circulates a written report for the entire Court analyzing whether the certification should be accepted. When the Court of Appeals accepts a certified question, the matter is treated similarly to an appeal. Although the certified question may be determined pursuant to the Court's alternative "sua sponte merits" procedure (see section 500.11), the preferred method of handling is full briefing and oral argument on an expedited schedule. In 2012, the period from receipt of initial certification papers to the Court's order accepting or rejecting review was 38 days. The average period from acceptance of a certification to disposition was 7.7 months.

One case involving a question certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2011. In 2012, upon reconsideration, after learning that the appellant did not wish to pursue the appeal, the Court declined the certification of a question in that case. Also in 2012, the Court accepted four new cases involving questions certified by the United States Court of Appeals for the Second Circuit. Three of those cases remained pending at the end of 2012.

C. Court Rules

In 2012, the Court amended its Rules for the Admission of Attorneys and Counselors at Law (22 NYCRR Part 520) in two significant respects. Section 520.3, regarding the study of law, was amended to allow for more practice-oriented credits, to recognize the increasing role of technology in legal education and, generally, to give students greater flexibility in their programs of study. The Court also added section 520.16 of the Rules to place a greater emphasis on pro bono service.

II. Administrative Functions and Accomplishments

A. Court of Appeals Hall

Court of Appeals Hall has been the Court's home for over 95 years. This classic Greek Revival building, originally known as State Hall, formally opened in 1842 with offices for the Chancellor, the Register of Chancery and the State Supreme Court. On January 8, 1917, the Court of Appeals moved across the park, from the State Capitol, into the newly refurbished building at 20 Eagle Street. The Court's beloved Richardson Courtroom was reassembled in an extension to State Hall built to accommodate both the courtroom and the Court's library and conference room. Major renovations in 1958-1959 and 2002-2004 -- the latter including two additions to the building faithful to its Greek Revival design -- produced the architectural treasure the Court inhabits today.

The Building Manager and the Deputy Building Superintendent oversee all services and operations performed by the Court's maintenance staff and by outside contractors at Court of Appeals Hall.

B. Case Management

The expressions of gratitude I regularly receive from litigants and the Bar attest to the expertise and professionalism of the Clerk's Office staff. Counsel and self-represented litigants will find a wealth of Court of Appeals practice aids on the Court's website (<http://www.courts.state.ny.us/ctapps>). Additionally, Clerk's Office staff respond -- in person, by telephone and in writing -- to inquiries and requests for information from attorneys, litigants, the public, academicians and court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. Members of the Clerk's Office staff also regularly participate in, and consult on, programs and publications designed to educate the bar about Court of Appeals practice.

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Prisoner Applications Clerk, several secretaries, court attendants and clerical aides perform the myriad tasks involved in appellate case management. Their responsibilities include receiving and reviewing all papers, filing and distributing to the proper recipients all materials received, scheduling and noticing oral arguments, compiling and reporting statistical information about the Court's work, assisting the Court during conference and preparing the Court's decisions for release to the public. In every case, multiple controls ensure that the Court's actual determinations are accurately reported in the written decisions and orders released to the public. The Court's document reproduction unit prepares the Court's decisions for release to the public and handles most of the Court's internal document

reproduction needs. Security attendants screen all mail. Court attendants deliver mail in-house and maintain the Court's records room, tracking and distributing all briefs, records, exhibits and original court files. During the Court's sessions, the court attendants also assist the Judges in the courtroom and in conference.

C. Public Information

The Public Information Office distributes the Court's decisions to the media upon release and answers inquiries from reporters about the work of the Court. For each session, the office prepares descriptive summaries of cases scheduled to be argued before the Court. The summaries are posted on the Court's website and are available in print at Court of Appeals Hall.

The Public Information Office also provides information concerning the work and history of New York's highest court to all segments of the public -- from school children to members of the bar. Throughout the year, the Public Information Officer and other members of the Clerk's staff conduct tours of the historic courtroom for visitors. The Public Information Office maintains a list of subscribers to the Court's "hard copy" slip opinion service and handles requests from the public for individual slip opinions.

Under an agreement with Albany Law School's Government Law Center and Capital District public television station WMHT, the Public Information Office supervises the video recording of all oral arguments before the Court and of special events conducted by the Chief Judge or the Court. The recordings are preserved for legal, educational and historical research in an archive at the Government Law Center, and copies are available for purchase by the public. The recordings may be ordered from the Law Center at (518) 445-3287.

The Court's comprehensive website (<http://www.courts.state.ny.us/ctapps>) posts information about the Court, its Judges, history, summaries of pending cases and other news, as well as Court of Appeals decisions for the past six months. The latest decisions are posted at the time of their official release. During Court sessions, the website offers live webcasts of all oral arguments heard by the Judges. Since January 2010, these webcasts have been preserved in a permanent archive on the website to allow users to view the arguments at their convenience. Transcripts of oral arguments are also now available on the website, and are archived there as well.

The website provides helpful information about the Court's practice -- including its rules, civil and criminal jurisdictional outlines, session calendars, undecided lists of argued appeals and civil motions, and a form for use by pro se litigants -- and it provides links to other judiciary-related websites. The text and webcast of the Chief Judge's most recent State of the Judiciary address are posted on the home page, and the text of prior addresses can be reached through the "Annual Releases and Events" link. Archived webcasts of Law Day Celebrations and prior Annual Reports are also available through that link.

D. Office for Professional Matters

The Court Attorney for Professional Matters manages the Office for Professional Matters. A court analyst provides administrative support for the office.

The Court Attorney drafts reports to the Court on matters relating to (1) attorney admission and disciplinary cases; (2) petitions seeking waiver of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law, and the Rules for the Licensing of Legal Consultants; (3) proposed rule changes ultimately decided by the Court; and (4) other matters regarding the admission and regulation of attorneys in New York.

The Court's Office for Professional Matters responds to written and telephone inquiries related to the Court's admission rules, reviews submissions from U.S. law schools seeking approval of law courses as satisfying the requirements of the Court's admission rules, and prepares certificates of admission upon request. The office also maintains an internal database that includes archived records on waiver petitions dating back to 1949 and filed Certificates of Commencement of Clerkship dating back to 1935.

In April 2012, the Court amended section 520.3 of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law (22 NYCRR 520.3). The amendment substantially modified the requirements regarding the study of law at ABA-approved law schools. Additionally, in September 2012, the Court added section 520.16 to the Rules, requiring applicants admitted to the New York State bar on or after January 1, 2015 to complete at least 50 hours of pro bono service prior to filing an application for admission. The requirement, effective January 1, 2013, does not apply to admission-on-motion candidates.

On November 14, 2012, as a result of Hurricane Sandy, the Court for the first time invoked the Major Disaster Rule (22 NYCRR 520.11 [d]), allowing attorneys authorized to practice law in another United States jurisdiction to provide pro bono legal services on a temporary basis to certain New Yorkers impacted by the storm.

E. Central Legal Research Staff

Under the supervision of the individual Judges and the Clerk of the Court, the Central Legal Research Staff prepares draft reports on motions (predominately civil motions for leave to appeal), requests to answer certified questions, and selected appeals for the full Court's review and deliberation. From December Decision Days 2011 through December Decision Days 2012, Central Staff completed 937 motion reports, 64 SSD reports, 22 SSM reports and 2 reports regarding certified questions. Throughout 2012, Central Staff remained current in its work.

Staff attorneys also write and revise research materials for use by the Judges' chambers and Clerk's Office staff, and perform other research tasks as requested. In 2012, the Senior

Deputy Chief Court Attorney updated the Court's internal and external jurisdictional outlines. Staff members also began work updating certain sections of frequently encountered areas of law for the Court's use.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed in 2012 were graduates of Albany, Boston University, the State University of New York at Buffalo, Cardozo, Fordham University, New York University, St. John's University, Syracuse University and Vermont law schools. Staff attorneys hired for work beginning in 2013 will represent law schools from Albany, City University of New York at Queens, the University of Maryland, Pace University and Syracuse University.

F. Library

The Chief Legal Reference Attorney provides legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk's Office staff. During 2012, commercial and in-house databases continued to be pivotal in the provision of legal and non-legal information. The Court subscribes to the major commercial legal research databases, and the New York State Library gateway provides the Court with access to a wide range of academic and news databases.

The Court of Appeals Library staff continued to expand in-house databases that provide full-text access to the Court's internal reports. The hyperlinked intranet databases that contain important legislative documents, including the Governor's Bill Jackets, were also expanded. Throughout 2012, the library staff worked on various aspects of the database to be known as Court-PASS, an important public information and research tool developed by the Court.

The Chief Legal Reference Attorney continued to be a member of the Court's Continuing Legal Education (CLE) Committee, and she presented CLE-certified programs to Judges' law clerks and staff attorneys on constitutional, statutory and regulatory intent.

As Secretary of the Board of Trustees of *The Historical Society of the New York Courts*, the Chief Legal Reference Attorney continued to be involved in the work of the Society. Throughout 2012, she developed content for the Society's new website (<http://www.courts.state.ny.us/history>) that focuses on New York's rich legal history. As in past years, she devised the themes and resources for the Society's New York State community college essay competition, the winners of which are honored at the Law Day ceremony in Court of Appeals Hall.

G. Continuing Legal Education Committee

The Continuing Legal Education (CLE) Committee was established in 1999 to coordinate professional training for Court of Appeals, Law Reporting Bureau, and Board of Law Examiners attorneys. The Committee is currently chaired by the Senior Deputy Chief Court Attorney. Other members include the Deputy Clerk of the Court, the Chief Court Attorney, the Chief Legal Reference Attorney, two Judges' law clerks, and two attorneys from the Law Reporting Bureau. A Central Legal Research Staff secretary manages CLE records and coordinates crediting and certification processes with the New York State Judicial Institute (JI). Specifically, the secretary maintains three databases to track CLE classes offered by the Court, the attorneys eligible to attend classes, and the number of credits each attorney has earned at Court-sponsored programs. In addition, she prepares the paperwork necessary to comply with the rules of the JI and the CLE Board and provides general support to the Committee.

During 2012, the CLE Committee provided 10 programs for Court of Appeals attorneys -- including new staff training and orientation -- totaling 16.5 credit hours. Law Reporting Bureau and Board of Law Examiners attorneys participated in many of the offered programs. Attorneys also attended classes offered by the Appellate Division, Third Department; Albany Law School; and the New York State Bar Association. These programs accounted for over 20 additional credit hours. Several experienced/non-transitional attorneys viewed recorded programs from the JI and other sources at their desktops.

H. Management and Operations

The Director of Management and Operations, aided by two assistants, is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting, employee time and leave management, payroll document preparation, voucher processing, benefit program administration and annual budget request development. A supplies manager is responsible for distributing supplies, comparison shopping and purchasing office supplies and equipment.

I. Budget and Finance

The Director of Management and Operations is responsible for initial preparation, administration, implementation and monitoring of the Court's annual budget. The proposed annual budget is reviewed by the Clerk and Deputy Clerk before submission to the Judges of the Court for their approval.

1. Expenditures

The work of the Court and its ancillary agencies was performed within the 2012-2013 fiscal year adjusted budget appropriation of \$14,755,987, which included all judicial and nonjudicial staff salaries (personal services costs) and all other cost factors (nonpersonal services costs), including in-house maintenance of Court of Appeals Hall.

2. Budget Requests

The total request for fiscal year 2013-2014 for the Court and its ancillary agencies is \$14,751,698, a decrease of \$4,289 (-0.03%) from the current year adjusted appropriation. The 2013-2014 personal services request of \$12.9 million reflects an increase of \$20,275 (0.2%) over the current year adjusted appropriation. This includes funding for all judicial positions and all filled nonjudicial positions. Funding is also included for the payment of increments, longevity bonuses, uniform allowance and location pay, as required by law, for all eligible employees. The net increase in these funding requirements is partially offset by attrition savings and by reappropriation of the funding for the statutorily mandated judicial salary increase effective April 1, 2013. The 2013-2014 nonpersonal services request of \$1.9 million reflects a decrease of \$24,564 (-1.3%) from current year funding. The decrease is attributable to cost saving measures for legal reference and online services, miscellaneous supplies, and expenditure-based adjustments in utilities and telecommunications.

Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2013-2014 illustrates the Court's diligent attempt to perform its functions and those of its ancillary agencies economically and efficiently. The Court will continue to maximize opportunities for savings to limit increases in future budget requests.

3. Revenues

In calendar year 2012, the Court reported filing fees for civil appeals totaling \$37,480 and filing fees for motions totaling \$32,560. The funds were reported to the State Treasury, Office of the State Comptroller and Office of Court Administration pursuant to the Court Facilities Legislation (L 1987, ch 825). Additional revenues were realized through the slip opinion distribution service (\$2,400) and miscellaneous collections (\$5,401.26). For calendar year 2012, revenue collections totaled \$77,841.26.

J. Computer Operations

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Principal LAN Administrator, assisted by a LAN Administrator and a PC Analyst. These operations include all software and hardware used by

the Court, and a statewide network connecting six remote Judges' chambers with Court of Appeals Hall.

The Department maintains a hands-on help desk to assist employees with hardware and software issues as they arise. Training on software and hardware is provided as needed, either within the courthouse or via outside agencies, depending on the situation. Maintenance calls to the help desk are estimated at approximately 2,500 for the year. The Department also arranged simulcast presentations and teleconferences throughout the year to bring meetings and Continuing Legal Education (CLE) information from all over the state to Court employees in Albany.

The Department is responsible for the upkeep of two websites: an intranet website available to Court employees only and the Court's internet site located at <http://www.courts.state.ny.us/ctapps>. Over 700,000 visits to the website were recorded in 2012, averaging approximately 1,900 visits per day. In 2012, the Department also helped to develop the Court-PASS application, the public access and search system website (<http://www.courts.state.ny.us/ctapps/courtpass>) dedicated to providing both the bar and the public more transparent access to the Court's docket and filings, which will be launched in 2013.

K. Security Services

The Court Security Unit provides for the safety, security, and protection of the judicial staff, Court personnel, and the public who visit the Court.

The Chief Security Attendant supervises the Court Security Unit, which consists of Senior Security Attendants and Court Building Guards. The Attendants are sworn New York State Court Officers and have peace officer status. One Court Officer is a certified Emergency Medical Technician and two are General Topics Instructors.

The Security Unit conducts a variety of security functions, including security screening for the visiting public. Other functions include judicial escorts, security patrols, video monitoring, and providing a security presence in the courtroom when the Court is in session. In 2012, 35 vouchers were generated for items held at the screening post, including three firearms. Mail and package screening of items received by the Court identified 11 items that were deemed inappropriate communications. The Security Unit also made video monitoring enhancements at Court of Appeals Hall.

The members of the Security Unit completed several mandatory training programs during 2012, including firearms, pepper spray, first aid, CPR, automated external defibrillator (AED), and baton re-certification. Several Court Officers received additional training as members of the Court's Special Response Team. In the event of an emergency, members of the Special Response Team can be re-deployed to any court facility in the state. Officers also received Advanced

Tactical Firearms training. Finally, first aid/CPR/AED training was also made available for all of the Court's staff, including staff at the Law Reporting Bureau and the State Board of Law Examiners.

L. Personnel

The following personnel changes occurred during 2012:

APPOINTMENTS:

Jeng, Mindy - appointed as Law Clerk to Chief Judge, April 2012.

Gerber, Matthew - appointed as Security Attendant, September 2012.

Minutello, Kathleen - appointed as Senior Custodial Aide, September 2012.

Smith, Jessica Barrie - appointed as Law Clerk to Chief Judge, August 2012.

Waisnor, Jonathan - appointed as Law Clerk to Court of Appeals Judge, December 2012.

Walthall, Claiborne - appointed as Law Clerk to Court of Appeals Judge, August 2012.

Weber, Sarah - appointed as Law Clerk to Court of Appeals Judge, August 2012.

PROMOTIONS:

Bova, Matthew J. - promoted to Senior Law Clerk to Court of Appeals Judge, December 2012.

Cooper, Jenna - promoted to Senior Law Clerk to Court of Appeals Judge, August 2012.

Dewar, Keith - promoted to Senior Law Clerk to Court of Appeals Judge, January 2012.

HoSang-Brown, Yanique - promoted to Senior Court Analyst, July 2012.

Kim, Jay - promoted to Principal Law Clerk to Court of Appeals Judge, August 2012.

Irby, Sandra - promoted to Senior Principal Law Clerk to Court of Appeals Judge, August 2012.

Perry, Joseph - promoted to Principal Law Clerk to Court of Appeals Judge, January 2012.

Riordan, Elizabeth - promoted to Senior Law Clerk to Court of Appeals Judge, August 2012.

Siffert, David - promoted to Senior Law Clerk to Court of Appeals Judge, August 2012.

RESIGNATIONS AND RETIREMENTS:

Branch, Jr., Clifton R. - Senior Principal Law Clerk to Court of Appeals Judge, resigned December 2012.

Burry, Benjamin - Senior Law Clerk to Court of Appeals Judge, resigned July 2012.

Coleman, Lillian - Principal Custodial Aide, retired August 2012.

Dalsen, William - Senior Law Clerk to Court of Appeals Judge, resigned August 2012.

Dewar, Keith - Senior Law Clerk to Court of Appeals Judge, resigned December 2012.

Hancock, Dora N. - Secretary to Court of Appeals Judge, resigned December 2012.

Ohiorhenuan, Zara - Law Clerk to Chief Judge, resigned August 2012.

Perry, Joseph - Principal Law Clerk to Court of Appeals Judge, resigned December 2012.

Riordan, Elizabeth - Senior Law Clerk to Court of Appeals Judge, resigned December 2012.

Siffert, David - Senior Law Clerk to Court of Appeals Judge, resigned December 2012.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Anya Ferris Endsley was appointed Court Attorney in July 2012. Chelsea Cerutti, Steven Cunningham, Nicole Ettlinger, Dominique Saint-Fort and Diana Schaffner were appointed Court Attorneys in August 2012.

PROMOTIONS:

Erin Kandel, Meredith Lee-Clark, Brian Lusignan, Greg Mann, Noel Mendez, and Matthew Schrantz were promoted to Senior Court Attorneys in August 2012.

COMPLETION OF CLERKSHIPS:

Senior Court Attorney Anne Redcross completed her Central Staff clerkship in February 2012, Mark R. Butscha completed his Central Staff clerkship in June 2012, and Vitaliy Volpov completed his Central Staff clerkship and clerkship with the Honorable Victoria A. Graffeo in December 2012. Senior Court Attorneys Miles H. Plant, George T. Stiefel, and Serena J. White completed their Central Staff clerkships in August 2012.

ACKNOWLEDGMENT

As are all tasks at the Court of Appeals, the production of the Annual Report is a team effort. Each year, members of the Clerk's staff contribute numerical data, narrative reports, and editing and proofreading services. I thank each of them, and mention especially Richard Reed, who edited the Report, and Andrea Ignazio and Bryan Lawrence, who prepared the detailed appendices. I also thank the many members of the Clerk's staff who otherwise contributed to the Report, particularly Cynthia Byrne, James Costello, Heather Davis, Margery Corbin Eddy, Brian Emigh, Hope Engel, Rachael MacVean, Cynthia McCormick, Paul McGrath, Inez Tierney, Marissa Mason and Margaret Wood.

Serving the public through the judicial branch is a privilege and a profound responsibility. I commend the entire staff for providing exemplary service to the Judges of the Court, the bar and the public throughout the year. A complete list of the Court's nonjudicial staff appears in Appendix 11.

A number of staff left the Court's employ in 2012. I particularly wish to thank Lillian Coleman, who retired from the position of Principal Custodial Aide after eight years of dedicated service to the Court. And I wish to welcome to the Court Kathleen Minutello, who is Lillian's successor, and welcome back to the Court Matthew Gerber, a senior court officer, who has returned to the Court after a several year hiatus.

Finally, I acknowledge the countless individuals in the Office of Court Administration and throughout the Unified Court System who, year in and year out, provide expert assistance and timely information to the Court of Appeals, its Judges and staff. This year I would like to particularly thank Laura Weigley for her assistance in the publication of this report.

III. 2012: Year in Review

This section -- a summary of Court of Appeals decisions handed down in 2012 -- reflects the range of constitutional, statutory, regulatory, and common law issues reaching the Court each year.

ADMINISTRATIVE LAW

Matter of Bitchatchi v Board of Trustees of the N.Y. City Police Dept. Pension Fund, Art. II; Matter of Maldonado v Kelly; Matter of Macri v Kelly (20 NY3d 268)

After the World Trade Center tragedy, a statute was enacted for the benefit of first responders to the site of the tragedy. The new provision -- Administrative Code of the City of NY § 13-252.1 -- established a presumption in favor of eligible claimants by requiring the pension fund to carry the initial burden of proving that a claimant's medical condition was not caused by the hazards at the World Trade Center site.

The issue that confronted the Court in these three appeals was whether, in denying petitioners' requests for accidental disability retirement (ADR) or line-of-duty benefits, the Board of Trustees of the pension funds had offered competent evidence to rebut the statutory presumption of entitlement. The Court concluded that in all three cases the Board did not overcome the statutory presumption in favor of the petitioners' claims for ADR or line-of-duty enhanced benefits.

ATTORNEY and CLIENT

Dombrowski v Bulson (19 NY3d 347)

Plaintiff commenced this legal malpractice action against his former criminal defense attorney, seeking nonpecuniary damages for loss of liberty while he was incarcerated following a wrongful criminal conviction. While recognizing that the harm most likely to be suffered by a criminal defendant would be nonpecuniary in nature, the Court adhered to the rule that a plaintiff in a legal malpractice action is limited to recovering only pecuniary damages.

People v Colville (20 NY3d 20)

Contrary to defense counsel's request and repeated statements that, in his professional judgment, lesser-included offenses should be submitted to the jury, the judge did not do so

because defendant objected. Consistent with the trend nationwide, the Court held that the decision whether to seek a jury charge on lesser-included offenses is a matter of strategy and tactics which ultimately rests with defense counsel, not a fundamental decision reserved to the defendant. The Court concluded that the trial judge's error, which deprived defendant of the expert judgment of counsel to which the Sixth Amendment entitled him, was not harmless beyond a reasonable doubt.

ATTORNEY DISCIPLINE

Matter of Galasso (19 NY3d 688)

In this attorney disciplinary proceeding, respondent was charged with professional misconduct in connection with his inadequate supervision of a firm employee and the resulting misappropriation of client funds. The Court held that even though respondent's conduct was not venal and his employee had acted pursuant to an elaborate fraudulent scheme, respondent's actions in yielding an unacceptable level of control over firm accounts coupled with inadequate oversight created the opportunity for the defalcation. The Court, however, rejected the sustained charge of failure to cooperate with the grievance committee, where respondent had actively participated in the disciplinary process.

CIVIL PROCEDURE

Swezey v Merrill Lynch, Pierce, Fenner & Smith, Inc. (19 NY3d 543)

The question posed was whether the invocation of the doctrine of sovereign immunity by the Republic of the Philippines required the dismissal of this CPLR 5225 turnover proceeding. The Court determined that the Republic of the Philippines was a necessary party and, therefore, the Court undertook a review of the factors relevant to the analysis of whether an action may proceed in the absence of a necessary party who is not subject to the jurisdiction of the court. The Court concluded that the Republic's declaration of sovereign immunity, under the facts of this case, was entitled to recognition, particularly since the Philippine courts had already issued declarations of ownership. In the interest of international comity, the Court dismissed the proceeding.

CIVIL SERVICE

Matter of Rosenblum v New York City Conflicts of Interest Bd. (18 NY3d 422)

A tenured assistant principal in New York City's public school system allegedly approached the principal of another public school to request favorable treatment for his son, a teacher who was at risk of being fired for misconduct. The Conflicts of Interest Board of the City of New York, which enforces the City's Conflicts of Interest Law (COIL), informed the assistant principal of its initial determination that there was probable cause to believe that this encounter violated COIL. In accordance with that law, the Board referred the matter to the agency employing the assistant principal, the City's Department of Education (DOE), which elected not to pursue disciplinary action against him under Education Law §§ 3020 and 3020-a. The Court decided that the Board was authorized to seek a fine against the assistant principal under COIL notwithstanding DOE's decision to forbear discipline. In support of this conclusion, the Court interpreted "discipline" within the meaning of sections 3020 and 3020-a to encompass only job-related penalties that may be imposed upon a tenured pedagogue by the employer -- i.e., a local school board or, in the case of the City, DOE.

Matter of Baker v Poughkeepsie City School Dist. (18 NY3d 714)

In this CPLR article 78 proceeding, the issue before the Court was whether persons who have testified in a Civil Service Law § 75 disciplinary hearing are required to disqualify themselves from subsequently acting upon any of the charges relating to that hearing. The Court explained, where a witness testifies in support of or to negate charges levied against an individual in a disciplinary hearing, "disqualifying himself or herself from reviewing the recommendations of the hearing officer and rendering a final determination is appropriate."

CONFLICT OF LAWS

IRB-Brasil Resseguros, S.A. v Inepar Invs., S.A. (20 NY3d 310)

The Court held that when parties without New York contacts choose New York law to govern their contracts pursuant to General Obligations Law § 5-1401 (1), they are not required to expressly exclude New York conflict-of-laws principles in their choice-of-law provision in order to avail themselves of New York substantive law.

CONSTITUTIONAL LAW

Cohen v Cuomo (19 NY3d 196)

This was a special proceeding commenced to challenge the constitutionality of the method used by the Legislature to determine the appropriate number of State Senate seats. The Legislature used two different methods of calculating the proper "ratio" for particular counties and ultimately expanded the size of the State Senate from 62 to 63 seats. Since both of the methods employed had previously been found constitutional and the Legislature is entitled to a certain amount of discretion in readjusting the size of the Senate, the Court determined that petitioners had failed to meet their burden of demonstrating that the Legislature's actions were unconstitutional.

CONTRACTS

Pesa v Yoma Dev. Group, Inc. (18 NY3d 527)

In a typical contract case, a plaintiff must prove that the defendant's breach of contract caused damages. Here the Court considered whether this general rule also requires the buyer, in a lawsuit for breach of a contract to sell real estate, to prove that the buyer was "ready, willing, and able" to purchase the property. The Court held that a buyer had to make such a showing because if the buyer could not purchase the property, the seller's breach caused no harm. The Court further held that the buyer bears the burden of proving ability to perform because buyers possess "evidence of their own intentions and resources."

Abacus Fed. Sav. Bank v ADT Sec. Servs., Inc. (18 NY3d 675)

The Court observed that while parties are free to enter into contracts that absolve one party from its own negligence, it is New York's public policy that a party cannot insulate itself from damages caused by grossly negligent conduct. Here, plaintiff Abacus Federal Savings Bank (Abacus) alleged that defendants ADT Security Services and Diebold Incorporated (Diebold) had knowledge for weeks, if not months, before a burglary of Abacus's premises that their equipment had been malfunctioning and that their security systems had been generating a series of flaws and false alarms. The Court concluded that these allegations, if true, constituted gross negligence. The Court, however, dismissed the complaint as to Diebold because the waiver-of-subrogation clause contained in its contract with Abacus acted as a total defense to the claims asserted by Abacus.

COURTS -- JURISDICTION

Siegmund Strauss, Inc. v East 149th Realty Corp. (20 NY3d 37)

Plaintiff sought a judgment declaring that it was the lawful tenant of certain commercial property as a result of a corporate merger agreement with defendants. During the action Supreme Court issued a non-final order dismissing those claims, which defendants did not appeal. The court also issued a non-final order denying defendants' motion for leave to amend their answer. The Appellate Division affirmed the final judgment for plaintiff, holding that the appeal from the judgment did not bring up for review the prior Supreme Court orders because, in its view, those prior orders did not "necessarily affect" the judgment. The Court ruled that the prior Supreme Court order dismissing defendants' counterclaim and third-party claims, which was decided pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, "necessarily removed that legal issue from the case . . . [because] there was no further opportunity during the litigation to raise the question," and for that reason the order "necessarily affected the final judgment."

CRIMINAL LAW

People v Cass (18 NY3d 553)

In this appeal, which presented the first opportunity for the Court to address the use of Molineux evidence in the context of an extreme emotional disturbance defense, the Court held that the trial court properly admitted evidence of a prior uncharged murder to rebut defendant's extreme emotional disturbance defense concerning the murder for which he was on trial. The Court noted that because defendant's state of mind was the main question the jury was required to resolve, the jury necessarily had to be permitted to decide whether defendant's similar acts, which directly bear on the question of premeditated intent, rebutted his claim that he was acting under an extreme emotional disturbance with respect to the instant homicide.

People ex rel. McManus v Horn (18 NY3d 660)

This case required the Court to decide whether a judge may designate just one form of bail. Petitioner brought a CPLR article 70 proceeding for a writ of habeas corpus, contending that CPL 520.10 (2) prohibits a judge from setting only one form of bail. The Court concluded that the statute requires that a defendant be provided with at least two alternative choices for bail.

People v Pagan (19 NY3d 368)

The question before the Court was whether a defendant can appeal from an order modifying the conditions of a sentence of probation. The Court emphasized that no appeals lie in criminal cases unless specifically provided for by statute, and the Court's analysis revealed that no provision in article 450 of the Criminal Procedure Law authorized an appeal of this nature. Hence, a challenge of this type needs to be pursued in a CPLR article 78 proceeding.

People v Khan (18 NY3d 535)

In this appeal, the Court for the first time determined the nature of proof required for a conviction under the recently enacted health care fraud statute (Penal Law art 177 *et seq.*). Affirming the Appellate Division, the Court held that defendant's convictions for health care fraud in the fourth degree and grand larceny in the third degree were supported by legally sufficient evidence. Viewing the evidence in the light most favorable to the People, the Court held that the jury could rationally conclude that pills dispensed by defendant to the undercover officer were different from the drugs listed on the prescriptions presented by the officer to defendant, and that defendant knowingly and willfully provided materially false information to Medicaid, as to at least the dispensed pills, thereby wrongfully receiving more than \$3,000.

People v Kent (19 NY3d 290)

The mere viewing of child pornography on the internet, absent other proof, was legally insufficient to establish the elements of possession or procurement of child pornography within the meaning of article 263 of the Penal Law. In so holding, the Court considered the evidentiary significance of "cache files," temporary internet files automatically created and stored on a hard drive. The Court concluded that where no evidence shows that a defendant was aware of the presence of the cache files, such files cannot underlie a prosecution for the possession or procurement of child pornography. Such cache files, however, can serve as evidence of the mens rea of both crimes.

People v Yusuf (19 NY3d 314)

Defendant argued that Penal Law § 70.70 (4) does not authorize an enhanced sentencing range for a second felony drug offender whose alleged prior violent felony conviction occurred outside New York State. After analysis of the relevant statutory provisions, considered as a whole and in light of the policy purposes to be served by the Drug Law Reform Act of 2004, the Court held that a prior violent foreign felony conviction subjects a second felony drug offender to the harsher sentencing range of Penal Law § 70.70 (4).

People v Leonard (19 NY3d 323)

The Penal Law provides that "[a] person is guilty of kidnapping in the second degree when he abducts another person" (Penal Law § 135.20). In this case, the question was whether a custodial parent could be found guilty of kidnapping his infant daughter where he held her at knife-point in a standoff with the police. The critical issue was whether the defendant had "restricted the child's movements 'unlawfully,' 'without consent,' and 'with knowledge that the restriction was unlawful'"; each of these elements had to be established in order to find that the defendant restrained the victim (see Penal Law § 135.00 [1]) and thus abducted her (see Penal Law § 135.00 [2]). Relying on decisions from other jurisdictions, the Court held that "kidnapping by a custodial parent of his own child is not a legal impossibility," and concluded that the defendant could not restrain his child in the manner he did here or consent to such restraint, where his actions were "so obviously and unjustifiably dangerous or harmful to the child as to be inconsistent with the idea of lawful custody."

People v Wright (19 NY3d 359)

Penal Law § 70.25 (2) provides that a court must impose concurrent sentences "for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other." Here a jury convicted defendant of murder in the first degree and criminal possession of a weapon in the second degree, under a theory that defendant pulled out a loaded gun and shot two victims to death. The Court concluded that because the offense of possessing a gun with unlawful intent was only completed upon defendant's commission of the ensuing substantive crime of shooting the victims, consecutive sentencing was prohibited.

People v Reid (19 NY3d 382)

The Court held that a defendant can "open the door" to the admission of testimony that would otherwise violate his Confrontation Clause rights. The Court reasoned that if evidence barred under the Confrontation Clause were inadmissible irrespective of a defendant's actions at trial, then the defendant could attempt to delude a jury by selectively revealing portions of a testimonial statement that are potentially helpful to the defense, while concealing from the jury details that would place the parts introduced in a less favorable context. Here the Court ruled that the defendant, accused of murder, opened the door to the admission of testimony about what a nontestifying eyewitness had said concerning the murder, in that this testimony was reasonably necessary to correct misleading questioning and argument by the defense.

People v Gause (19 NY3d 390)

The issue here was whether defendant's second trial for intentional murder twice placed defendant in jeopardy for the same offense. Defendant was initially tried for, inter alia, intentional murder in the second degree and depraved indifference murder in the second degree. The jury convicted defendant of count two, depraved indifference murder. Additionally, as instructed, the jury did not indicate its resolution of count one since it found defendant guilty of one of the two counts. The Appellate Division reversed the judgment of conviction on the ground that the evidence was legally insufficient to support the conviction of depraved indifference murder, dismissed count two of the indictment and ordered a new trial on the intentional murder charge. This Court reversed the Appellate Division and held that double jeopardy barred the People from reprosecuting defendant for intentional murder. The Court reasoned, "[b]ecause the first jury had before it counts of depraved indifference murder and intentional murder -- inconsistent counts -- and it reached a guilty verdict on one, that determination necessarily acquitted defendant of the other crime."

People v Plunkett (19 NY3d 400)

Ultimately at issue on this appeal was whether the HIV-positive defendant could be prosecuted for aggravated assault on the theory that his saliva, introduced into his victim's body by means of biting, was a dangerous instrument within the meaning of New York's Penal Law. In the course of reaching this issue, it was necessary to address whether defendant's plea foreclosed his appellate challenge to his conviction. The Court held that it did not, explaining that defendant could not by means of his plea establish his guilt of a non-existent crime.

People v Western Express Intl., Inc. (19 NY3d 652)

At issue on this appeal was the viability of a prosecution for enterprise corruption under New York State's Organized Crime Control Act (OCCA) (Penal Law § 460.00 *et seq.*), a provision similar to but expressly narrower in its targeting than the federal Racketeer Influenced and Corrupt Organizations Act (RICO) (18 USC § 1961 *et seq.*). The proof before the grand jury was that buyers and sellers made use of a publicly accessible internet website to perform transactions facilitative of trafficking in stolen credit card information. The pivotal question was whether there had been evidence presented from which the grand jury could have reasonably concluded that this transactional pattern was purposefully related to the workings of a distinct criminal entity, as the OCCA requires. This Court held that the evidence did not support the necessary inference.

People v Cajigas (19 NY3d 697)

The Court held that the mens rea element of burglary may be satisfied by a defendant's intent to commit an act that violates an order of protection prohibiting the act, even though that act otherwise would not be illegal.

People v Maracle (19 NY3d 925)

Defendant pleaded guilty to the full indictment consisting of one count of grand larceny in the second degree and four counts of forgery in the second degree, with the promise of a probation sentence provided she paid restitution in the sum of \$32,000 by the time of sentencing. When she was unable to do so, the court sentenced defendant to the maximum term on each count of the indictment. The Appellate Division held that defendant's waiver of her right to appeal included a waiver of her right to challenge the severity of the sentence. This Court reversed and held that although defendant waived her right to appeal her conviction she did not waive the right to appeal the harshness of her sentence, and remitted the matter to the Appellate Division so it could, in its discretion, exercise its interest of justice jurisdiction relative to defendant's sentence.

People v Meckwood (20 NY3d 69)

Recognizing that youthful offender status cannot be used as a predicate conviction, defendant argued for a retroactive application of New York's youthful offender status to his predicate felony, a foreign felony conviction that occurred when he was 18 years old. The Court held that defendant was properly adjudicated a second violent felony offender. "[M]ere speculation that defendant might have been accorded youthful offender treatment had the predicate offense been committed in New York, where such treatment was not and could not have been accorded by the jurisdiction in which the crime was actually committed, cannot preclude the use of such a conviction as a predicate felony."

People v Solomon (20 NY3d 91)

Before defendant's trial, defense counsel informed the court that she represented an important prosecution witness (a police officer who secured defendant's confession) in an "unrelated civil matter." Defense counsel also said that she had disclosed this representation to defendant, that defendant "respected" the nature of counsel's representation of the officer, and that defendant "agreed to waive any conflict in that regard." The judge asked defendant if he wished to proceed with his current counsel but never informed defendant about the potential problems that could arise from his attorney's concurrent representation of a prosecution witness. This Court held that the trial court erred by failing to inform defendant about the potential

consequences of the conflict. This failure required reversal of the conviction, because defense counsel had a duty to cross-examine the officer vigorously and that duty may have been compromised because of her concurrent representation of the officer.

People v Walker (20 NY3d 122)

When the police arrest a driver, they can impound the vehicle to protect it from vandalism and prevent the obstruction of traffic. Here the Court considered whether an officer must, when arresting a driver, pursue alternatives to impoundment, such as permitting a passenger to drive the car away. The Court held that the officer acted reasonably in rejecting this option because no one told the officer that the passenger could drive the car away. Also, because the driver was not the registered owner of the vehicle, it would have been difficult for the arresting officer to determine whether the passenger was authorized to drive the car.

People v Morales (20 NY3d 240)

Defendant was convicted of three crimes of terrorism under Penal Law § 420.25 premised on first-degree manslaughter, attempted second-degree murder and second-degree weapon possession. The question on appeal was whether defendant perpetrated these crimes with the "intent to intimidate or coerce a civilian population," a prerequisite for a terrorism conviction. The Court reversed the terrorism convictions as legally insufficient, holding that the underlying crimes, which occurred in the context of gang-on-gang street violence, did not rise to the level of terrorist activities.

People v Garcia (20 NY3d 317)

The Court held that, without founded suspicion of criminality, a police officer may not ask the occupants of a lawfully stopped vehicle whether they possess any weapons. In so holding, the Court observed that the graduated framework set forth in People v De Bour (40 NY2d 210 [1976]) and People v Hollman (79 NY2d 181 [1992]) for evaluating the constitutionality of police-initiated encounters with private citizens applies to traffic stops. However, the Court acknowledged that under federal law, during the course of a lawful traffic stop a police officer can require all occupants to exit the vehicle, observing that this minimal intrusion merely places automobile occupants in the same position as pedestrians vis-à-vis police officers.

CRIMINAL PROCEDURE LAW

People v Elmer; People v Cooper (19 NY3d 501)

These cases presented the issue of whether an appeal lies from an oral order issued by a criminal court that disposes of a pre-trial matter. This Court held that an appeal of an "order" pursuant to an authorizing statute does lie from an oral order of a criminal court, observing "that the term 'order' encompasses both oral and written orders because the Legislature has expressly provided for a 'written order' when specifically required."

EDUCATION LAW

Board of Educ. of Garrison Union Free School Dist. v. Greek Archdiocese Inst. of St. Basil (18 NY3d 355)

The Court held that a school district is not obligated to provide a tuition-free education to children living in a child care institution located within district boundaries who are determined to be nonresidents of the school district. While Education Law article 81 entitles every school-age child residing in a child care institution "to receive a free and appropriate education in the least restrictive environment for that child," that statute must be read in conjunction with Education Law § 3202, which provides that the school district of a child's residence is financially responsible for the cost of educating a child.

FREEDOM OF INFORMATION LAW

Matter of Leshner v Hynes (19 NY3d 57)

Citing Public Officers Law § 87 (2) (e) (i), which allows an agency to deny access under the Freedom of Information Law (FOIL) to "records or portions thereof that . . . are compiled for law enforcement purposes and which, if disclosed, would . . . interfere with law enforcement investigations or judicial proceedings," the district attorney denied a request for extradition-related documents concerning an individual indicted for sexual abuse involving young boys. Following the analysis of the United States Supreme Court in National Labor Relations Bd. v Robbins Tire & Rubber Co. (437 US 214 [1978]), which interpreted an analogous law enforcement exemption in the federal Freedom of Information Act, the Court concluded that the district attorney sustained his burden to justify withholding the requested

documents by identifying the generic kinds of documents in the criminal case file for which the exemption was claimed and the generic risks posed by disclosure of these categories of documents.

Matter of Harbatkin v New York City Dept. of Records and Info. Servs. (19 NY3d 373)

In the mid-twentieth century, the New York City Board of Education (the Board) investigated a large number of teachers and other employees whom it suspected of being affiliated with the Communist Party. The Board promised the employees confidentiality and asked them to name others in the party. In this CPLR article 78 proceeding, petitioner, an historian of the period, sought disclosure of the unredacted interview transcripts under the Freedom of Information Law (FOIL). In determining whether disclosure was required under FOIL, the Court drew a distinction between the people named in the interviews and the interviewees themselves. With respect to the first group, it held that disclosure would not be an "unwarranted invasion of personal privacy" because the label "Communist" carries much less potential for embarrassment today than it did in the mid-twentieth century, and much less "emotional power." However, the Court held that the names of the people interviewed could not be disclosed, as the Board had promised the interviewees confidentiality.

GENERAL BUSINESS LAW

East Midtown Plaza Hous. Co., Inc. v Cuomo (20 NY3d 161)

The Court was asked to decide two issues in this case: first, whether the provisions of the Martin Act pertain to the privatization of Mitchell-Lama cooperative housing projects; and second, whether the votes cast on the issue of East Midtown's withdrawal from the Mitchell-Lama program were to be counted on a per-apartment or per-share basis. After examining the purpose of the disclosures mandated by the Martin Act and related federal case law, the Court concluded that the revised privatization plan would result in substantial changes in the nature of the shareholders' interests comparable to the "offer or sale of securities" necessary for oversight under the Martin Act. The Attorney General was therefore authorized to demand the filing of an offering statement. Based on the language used in the relevant statutes and the certificate of incorporation, the Court further determined that any vote by East Midtown to withdraw from Mitchell-Lama required application of a one-vote-per-apartment methodology. East Midtown therefore remained subject to the Mitchell-Lama Law.

GIFTS

Mirvish v Mott (18 NY3d 510)

A gallery owner bought an interest in a monumental sculpture, "The Cry," executed by famous 20th-century sculptor Jacques Lipchitz, from a friend of decedent, Lipchitz's widow. The friend claimed that decedent had given him the sculpture as a gift; he produced a photograph of the artwork, with a notation on the back, handwritten and signed by decedent, which conveyed the sculpture to him. The Court concluded that decedent's intent to make a present transfer of the sculpture was clear on the face of the gift instrument, and that the Dead Man's Statute did not prevent reliance on the presumption of delivery created by the friend's possession of this conveyance after decedent's death. Further, even if the statute of limitations had lapsed on the gallery owner's replevin and conversion claims, the estate could not secure possession because the executor had agreed, in settlement of a related lawsuit, that the Surrogate would determine the rightful owner on the merits.

HUMAN RIGHTS LAW

Matter of North Syracuse Cent. School Dist. v New York State Div. of Human Rights; Matter of Ithaca City School Dist. v New York State Div. of Human Rights (19 NY3d 481)

In these companion cases involving discrimination complaints against two school districts, the Court held that a public school district is not an "education corporation or association" for purposes of Executive Law § 296 (4). The Court held, as a result, that the New York State Division of Human Rights lacked jurisdiction to investigate complaints lodged by students against the public school districts.

LABOR and EMPLOYMENT

Dahar v Holland Ladder & Mfg. Co. (18 NY3d 521)

Plaintiff was injured when he fell off a ladder while cleaning a steel "wall module" in a metal factory. The module was eventually going to be fastened into a wall and used to support pipes. Plaintiff sued the owners of the factory where the accident occurred as well as the purchaser of the wall module, claiming that, in "cleaning" the wall module, which was a "structure," he was engaged in protected activity under Labor Law § 240 (1). The Court

disagreed. Although plaintiff was "cleaning," and although the wall module was technically a "structure" under this Court's broad definition of the term, the Court held that his injury was not of the kind Labor Law § 240 (1) was designed to protect. While acknowledging that the statute has been extended beyond the construction context, the Court found no evidence that it was intended to compensate workers who are hurt while cleaning an object during the manufacturing process.

Sullivan v Harnisch (19 NY3d 259)

The general rule in New York is that there is no common law cause of action for the wrongful discharge of an at-will employee. In Weider v Skala (80 NY2d 628 [1992]), the Court carved out a narrow exception to this rule, holding that a lawyer who claimed to have been fired for insisting that his firm report professional misconduct in accordance with the governing disciplinary rules had a damages claim against the firm. In this case, a hedge fund executive, whose many hats included Executive Vice President, Treasurer, Secretary, and Chief Compliance Officer of his employer, relied on Weider in claiming that he was wrongfully discharged after he accused the Company's Chief Executive Officer and President of misconduct. The Court concluded the present case was distinguishable and held that the claim should be dismissed. The Court pointed out that, unlike lawyers, the plaintiff was not "associated with other compliance officers in a firm where all were subject to self-regulation as members of a common profession." In addition, because plaintiff had various other titles in addition to compliance officer, it could not be said that regulatory compliance "was at the very core and, indeed, the only purpose" of his employment.

LIMITATION OF ACTIONS

Kahn v New York City Dept. of Educ. (18 NY3d 457)

A social worker employed by the City of New York's Department of Education (DOE) brought a CPLR article 78 proceeding to challenge the termination of her probationary employment. Relying on Matter of Frasier v Board of Educ. of City School Dist. of City of N.Y. (71 NY2d 763 [1988]), the Court held that DOE's decision to discontinue the social worker's employment was "final and binding" when made, not after reconsideration. As a result, the social worker's lawsuit, brought more than four months after her employment at DOE ended, was time-barred by CPLR 217 (1).

MATRIMONIAL LAW

Simkin v Blank (19 NY3d 46)

The parties in this action were divorced in 2006 and their judgment of divorce incorporated their settlement agreement. More than two years after the finalization of the divorce, the husband brought an action seeking reformation of the settlement agreement on the basis of mutual mistake. That cause of action involved one of the husband's brokerage accounts that had been maintained by Bernard L. Madoff Investment Securities, and had lost considerable value. Husband contended that the parties' intention was to equally divide the Madoff account, and in light of its decreased worth and the previous fraudulent valuation by Madoff, he sought the return of \$2.7 million from wife's distributive award as her alleged share of the Madoff account proceeds. This Court dismissed husband's complaint, explaining that in order for mutual mistake to support a reformation claim, the mutual mistake must exist at the time the contract is entered into and the mistake must affect the fundamental purpose of the contract.

MENTAL HYGIENE LAW

Matter of the State of New York v Shannon S. (20 NY3d 99)

The primary issue was whether a diagnosis that respondent Shannon S. suffered from paraphilia not otherwise specified (paraphilia NOS) was legally sufficient to sustain his adjudication as a dangerous sex offender requiring civil confinement under article 10 of the Mental Hygiene Law. The Court held that the diagnosis of paraphilia NOS met minimal due process standards and any disagreement concerning its viability as a predicate condition presented an issue of fact subject to resolution by the factfinder.

Matter of State of New York v Myron P. (20 NY3d 206)

The question presented in this case was whether, in a proceeding pursuant to Mental Hygiene Law article 10, respondent was entitled to a jury trial on the determination of confinement. Respondent contended that the State violated his rights under the Equal Protection Clause of the Federal and State Constitutions because the State affords individuals subject to Mental Hygiene Law article 9 the right to have a jury determine the issue of confinement, while article 10 does not. The Court concluded that article 10 respondents cannot be classified as a subset of article 9 respondents, because they are a different category of individuals in terms of the nature of their mental disabilities, their treatment needs, and the public safety concerns they present. Thus, it was appropriate for the Legislature to treat them differently.

MONOPOLIES -- DONNELLY ACT

Global Reins. Corp. -- U.S. Branch v Equitas Ltd. (18 NY3d 722)

The subject of this appeal was an antitrust action brought under New York's Donnelly Act, alleging that plaintiff reinsurer had sustained economic injuries in New York by reason of an anticompetitive London, England-based conspiracy involving the concentration of retrocessionary claims handling functions by Lloyd's of London retrocessionaires in defendant Equitas Ltd. In determining that the action would not lie, this Court reasoned that the extra-territorial reach of the Donnelly Act could not exceed that of its federal progenitor, the Sherman Antitrust Act, without occasioning state actions subversive of the federal prerogative to formulate and implement international trade policy.

MUNICIPAL CORPORATIONS

Matter of D'Angelo v Scoppetta (19 NY3d 663)

The Court considered whether a letter from the Assistant Commissioner of the New York City Fire Department (the Department) to petitioner firefighter advising him that he violated the Department's Code of Conduct and Equal Employment Opportunity (EEO) Policy may be made part of petitioner's permanent EEO file without affording him an opportunity for a hearing pursuant to section 15-113 of the Administrative Code of the City of New York. The Court rejected the Department's argument that the letter was merely a critical evaluation and concluded that the letter constituted a formal reprimand. As such, petitioner was first entitled to a hearing before such letter could be placed in his file.

NAVIGATION LAW

Metz v State of New York (20 NY3d 175)

Claimants -- those who were injured and the representatives of those who died when the Ethan Allen, a public vessel, capsized on Lake George -- commenced this action seeking to recover against the State. Under the Navigation Law, the State is responsible for regulating public vessels and, specifically, for providing a certificate of inspection indicating that the vessel is in all respects safe, including specifying the number of passengers that can be safely transported. State inspectors had consistently certified the Ethan Allen at a passenger capacity

of 48 persons, which allegedly was much higher than that at which the vessel could safely be operated. However, since the statutory scheme did not create a special duty of care owed by the State to particular individuals, there was no private right of action and therefore no liability on the State's part.

PARENT and CHILD

Matter of Hailey ZZ. (Ricky ZZ.) (19 NY3d 422)

The Court determined that the record supported Family Court's decision to adjudicate Hailey ZZ. to be permanently neglected and to terminate father's parental rights pursuant to Social Services Law § 384-b. Resolving a split among the Departments of the Appellate Division, the Court held that the Legislature did not sanction judicial imposition of post-termination contact with a child where parental rights were terminated after a contested proceeding, as opposed to a voluntary surrender. Accordingly, Family Court properly declined father's request to include post-termination visitation in the dispositional order.

PERSONAL JURISDICTION

Licci v Lebanese Can. Bank, SAL (2012 NY Slip Op 07854)

Plaintiffs in this case are several dozen United States, Canadian and Israeli citizens who were injured, or whose family members were injured, in rocket attacks launched by a terrorist organization during the Second Lebanon War. The plaintiffs alleged personal jurisdiction over the defendant foreign bank under New York's long-arm statute (CPLR 302 [a] [1]), claiming that the bank used its correspondent account with a New York financial institution to transfer funds to enable the terrorist attacks. The Court concluded that the first prong of the jurisdictional test under CPLR 302 (a) (1) (transacting business within the State) may be satisfied by a defendant's purposeful use of a correspondent bank account in New York, even if no other New York contacts exist. The Court further held that the second prong (the claim arises out of the transaction) requires, in light of all the circumstances, an articulable nexus or substantial relationship between the business transaction and the claim made. Where at least one element of the cause of action arises from the correspondent banking relationship, the business transaction and the claim are sufficiently related to support personal jurisdiction under the statute.

REAL PROPERTY

Eastside Exhibition Corp. v 210 E. 86th St. Corp. (18 NY3d 617)

A minimal and inconsequential retaking of space that has been leased to a commercial tenant does not constitute an actual partial eviction relieving the tenant from an obligation to pay rent, where the interference by the landlord is small and has no demonstrable effect on the tenant's use and enjoyment of the space. Total rent abatement was unwarranted here, where the landlord's taking, which amounted to less than one-tenth of one percent of the leased space, was *de minimis* and had no measurable effect on the tenant's use of the leased space.

Corsello v Verizon N.Y., Inc. (18 NY3d 777)

Transportation Corporations Law § 27 entitles telephone companies to "erect, construct and maintain" fixtures or equipment "through or over any other land, subject to the right of the owners thereof to full compensation for the same." Plaintiffs claimed Verizon affixed terminal boxes to their building without payment or informing them of their statutory right to compensation. Plaintiffs alleged inverse condemnation, trespass, unjust enrichment, and deceptive trade practices in violation of General Business Law § 349. Plaintiffs' unjust enrichment claim was dismissed as duplicative of the other claims. The Court held plaintiffs could recover on an inverse condemnation claim by showing a "continuous and permanent occupation." The Court also concluded that Real Property Law § 261, which bars lapse of time defenses when a telephone company attaches wires or cables to private property, precluded Verizon from raising a statute of limitations defense to an inverse condemnation claim. Finally, Supreme Court's denial of class certification was not an abuse of discretion because there were issues of fact specific to plaintiffs' building and not common or typical to the claims of the class as a whole, such as whether the owners gave Verizon permission to attach cables.

Chazon, LLC v Maugenest (19 NY3d 410)

Loft apartments generally do not possess the residential certificate of occupancy required by Multiple Dwelling Law § 301 (1). Multiple Dwelling Law § 302 (1) prohibits landlords from commencing an action to recover unpaid rent or eject a tenant from any dwelling that does not conform to section 301 (1). In 1982 the Legislature enacted Multiple Dwelling Law article 7-C, known as the Loft Law, which allows landlords to bring an action to collect unpaid rent or evict non-paying tenants. Defendant in this case was a tenant in a non-complying loft apartment who had not paid rent since 2003. She sought a reversal of the Appellate Division's order granting her landlord possession of her apartment, on the grounds that such an action was barred by section 302 (1). The Court recognized that section 302 (1) barred landlords from collecting unpaid rent or bringing ejectment actions if their lofts did not comply with the Loft Law.

Knapp v Hughes (19 NY3d 672)

In this case, the Court had to decide whether a conveyance of land along a pond included the land under the pond, to the center of the water, or whether the land under the pond had been reserved to the grantors. The deeds at issue conveyed land "along the waters [sic] edge" of the pond and "along the edge" of the pond; they did not expressly convey the land under the water, nor did they expressly reserve it. The Court reaffirmed the rule that a deed that does not expressly exclude underwater lands "must be read as conveying such land, to the center of the pond."

SEPARATION OF POWERS

Matter of Soares v Herrick (20 NY3d 139)

Respondent Albany County Court Judge exceeded his statutory authority under County Law § 701 when he disqualified petitioner District Attorney of Albany County from prosecuting a case against certain defendants. Notwithstanding the civil case commenced in federal court by the criminal defendants against petitioner and his staff, there was no record support for the conclusion that the criminal defendants suffered actual prejudice or any risk thereof in connection with petitioner's prosecution of the criminal case against them.

SOCIAL SERVICES

Zheng v City of New York (19 NY3d 556)

The Advantage New York rental assistance program, created by the City of New York to help homeless single adults and families achieve independent living, was funded in equal parts by the City, State and Federal governments. When State and Federal financial support ended on April 1, 2011, the City discontinued the program. The Court held that there was record support for Supreme Court's factual finding, affirmed by the Appellate Division, that the City did not enter into enforceable contracts with the tenants or their landlords under the Advantage program, a voluntary government program the City was free to terminate.

STATUTORY INTERPRETATION

Matter of New York County Lawyers' Assn. v Bloomberg (19 NY3d 712)

The Court held that the City of New York's 2010 plan for indigent defense, which permits representation by both institutional providers and private attorneys in cases in which a conflict of interest precludes representation by the initial provider, constitutes a valid combination plan within the meaning of article 18-B of the County Law. In so holding, the Court concluded that the City's ability to assign conflict cases to institutional providers pursuant to County Law § 722 is not contingent on the consent of the county bar associations.

TAXATION

Matter of 677 New Loudon Corp. v State of N.Y. Tax Appeals Trib. (19 NY3d 1058)

Petitioner, the operator of Nite Moves, an adult "juice bar" in Latham, New York, brought a CPLR article 78 proceeding challenging the State of New York Tax Appeals Tribunal's determination that the admission charges and private dance performance fees it collects from patrons are subject to state sales and use tax. The Court agreed with the Tribunal that petitioner failed to meet its burden that it was entitled to the exclusion for "dramatic or musical arts performances" under the Tax Law.

Hudson Val. Fed. Credit Union v New York State Dept. of Taxation & Fin. (20 NY3d 1)

The issue posed in this case was whether mortgage loans issued by federal credit unions are subject to New York's mortgage recording tax. Hudson Valley Federal Credit Union urged an interpretation of a federal statute -- 12 USC § 1768 -- to mean that federal credit unions are excluded from the payment of all state taxes, including a state mortgage recording tax. After examining the structure of similar federal statutes affecting the payment of state taxes and related United States Supreme Court precedent, along with the purpose and legislative history of the federal law, the Court concluded that federal credit unions are not exempt from the payment of mortgage recording taxes.

TORTS

Toledo v Iglesia Ni Christo (18 NY3d 363)

The Court reaffirmed the longstanding rule that in New York damages on a wrongful death cause of action are due on the date of death of the plaintiff's decedent. Accordingly, an award of damages should include preverdict interest calculated from the date of death. The proper method for calculating such preverdict interest is to discount the verdict to the date of liability, i.e., the date of death, and award statutory interest on the amount from the date of death to the date of judgment. That the difference between the discount rate and the statutory interest rate provides a benefit to plaintiff is an issue for the Legislature and not one for judicial determination.

Yenem Corp. v 281 Broadway Holdings (18 NY3d 481)

The issue was whether former section 27-1031 (b) (1) of the Administrative Code of the City of New York imposes absolute liability on defendants whose excavation work caused damage to adjoining property. In holding that it does, the Court considered the origin of former section 27-1031 (b) (1) and concluded that its language and purpose were virtually identical to those of its state law predecessors. As such, section 27-1031 (b) was entitled to statutory treatment in tort cases, making violation of the code provision negligence per se.

Oddo Asset Mgt. v Barclays Bank PLC (19 NY3d 584)

The Court held that the mezzanine noteholders of two "SIV-Lites" (a type of structured investment vehicle) were not owed a fiduciary duty by the collateral managers of the SIV-Lites. Though the mezzanine notes had some equity-like features, they paid a fixed rate of return and were equivalent to a form of debt. The Court recognized that there is no fiduciary obligation in a contractual arm's length relationship between a debtor and a note-holding creditor, as a debtor and creditor have no special relationship of confidence and trust. The Court also determined that since there was no underlying breach of contract, plaintiff's tortious interference claim against defendant bank failed.

Baba-Ali v State of New York (19 NY3d 627)

Claimant Baba-Ali commenced a civil suit pursuant to section 8-b of the Court of Claims Act to recover damages for wrongful conviction and imprisonment. The State sought the action's dismissal upon the ground that plaintiff's conviction had been reversed by the Appellate Division for ineffective assistance of counsel and a violation of the prosecutor's disclosure obligation --

neither of which is available as a predicate for maintaining a section 8-b Court of Claims Act action. This Court noted, however, that the Appellate Division had also premised its reversal on the actionable ground that the conviction had been procured by fraud and that that was conclusive upon the threshold issue of whether the reversal could support a suit for damages pursuant to Court of Claims Act § 8-b.

Custodi v Town of Amherst (20 NY3d 83)

The Court determined that the doctrine of primary assumption of the risk did not preclude the plaintiff from pursuing her negligence claim against the landowner defendants. Plaintiff was injured when she fell while rollerblading across defendants' driveway. Defendants moved for summary judgment, primarily arguing that plaintiff assumed the risk of injury by engaging in recreational rollerblading. The Court clarified that with the abolition of contributory negligence (through the enactment of CPLR 1411), the assumption of the risk doctrine survived only with respect to the scope of duty owed to a participant engaged in a qualified sport activity. And, as the Court discussed in Trupia v Lake George Cent. School Dist. (14 NY3d 392 [2010]), the application of the doctrine has been restricted to athletic and recreative activities that were sponsored or supported by the defendant, or to activities occurring at designated athletic or recreational venues.

WORKERS' COMPENSATION

Matter of Bissell v Town of Amherst (18 NY3d 697)

In this Workers' Compensation § 29 (1) proceeding, the Court held that future medical benefits that a compensation carrier has been relieved of paying due to a claimant's successful prosecution of a third-party action are "so speculative that it would be improper to estimate and to assess litigation costs against that benefit to the carrier." The Court concluded that in such a circumstance, the carrier need only pay its equitable share of the attorneys' fees and costs incurred by the claimant once the claimant incurs and pays each medical expense.

Matter of Zamora v New York Neurologic Assoc. (19 NY3d 186)

The Court held that the Workers' Compensation Board need not infer, from a finding that claimant withdrew from her employment due to an accident at her work place, that her post-accident loss of wages is attributable to physical limitations caused by the accident. The Board may, but need not, conclude that a claimant cannot find a suitable job because of her disability. In this case, the Board found that claimant had not made a reasonable search for work

consistent with her physical restrictions, but the Appellate Division reversed that determination. This Court in turn reversed, holding that the claimant has the burden of proving loss of wages attributable to her disability, and concluding that there was substantial evidence to support the Board's finding.

IV. Appendices

APPENDICES

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APPENDIX 1

JUDGES OF THE COURT OF APPEALS

Hon. Jonathan Lippman
Chief Judge of the Court of Appeals

Hon. Carmen Beauchamp Ciparick
Senior Associate Judge of the Court of Appeals

Hon. Victoria A. Graffeo
Associate Judge of the Court of Appeals

Hon. Susan Phillips Read
Associate Judge of the Court of Appeals

Hon. Robert S. Smith
Associate Judge of the Court of Appeals

Hon. Eugene F. Pigott, Jr.
Associate Judge of the Court of Appeals

Hon. Theodore T. Jones
Associate Judge of the Court of Appeals
(Deceased November 6, 2012)

APPENDIX 2

CLERK'S OFFICE TELEPHONE NUMBERS

Court of Appeals Switchboard: (518) 455-7700

**Questions Concerning Motions:
Heather Davis, Esq. (518) 455-7705**

**Questions Concerning Criminal Leave Applications:
Cynthia D. Byrne (518) 455-7784**

**Questions Concerning Civil and Criminal Appeals:
Susan S. Dautel, Esq. (518) 455-7701
James A. Costello, Esq. (518) 455-7702**

**Questions Concerning Attorney Admission and Discipline:
Margaret Nyland Wood, Esq. (518) 455-7760**

**General Information and Courthouse Tours:
Gary Spencer, Public Information Officer
(518) 455-7711**

**Court of Appeals internet website
<http://www.courts.state.ny.us/ctapps/>**

APPENDIX 11

NONJUDICIAL STAFF

Asiello, John P. - Consultation Clerk

Austin, Louis C. - Senior Court Building Guard

Bleshman, Joseph M. - Counsel to the Chief Judge

Bohannon, Lisa - Senior Court Analyst

Bova, Matthew J. - Senior Law Clerk to Judge Smith

Bowman, Jennifer L. - Senior Court Building Guard

Branch, Jr., Clifton R. - Senior Principal Law Clerk to Judge Jones (resigned December 2012)

Brizzie, Gary J. - Principal Custodial Aide

Burry, Benjamin - Senior Law Clerk to Judge Read (resigned July 2012)

Butscha, Mark R. - Senior Court Attorney (resigned June 2012)

Byrne, Cynthia D. - Criminal Leave Applications Clerk

Carro, Christine - Secretary to Judge Ciparick (resigned December 2012)

Cerutti, Chelsea A. - Court Attorney

Cleary, Lisa M. - Principal Stenographer

Coleman, Lillian M. - Principal Custodial Aide (retired August 2012)

Cooper, Jenna B. - Senior Law Clerk to Judge Smith

Costello, James A. - Assistant Deputy Clerk

Couser, Lisa A. - Clerical Assistant

Appendix 11 (Continued)

Cross, Robert J. - Senior Court Building Guard

Culligan, David O. - Clerical Assistant

Cunningham, Steven M. - Court Attorney

Dalsen, William - Senior Law Clerk to Judge Read (resigned August 2012)

Dautel, Susan S. - Assistant Deputy Clerk

Davis, Heather A. - Chief Motion Clerk

Dewar, Keith A.J. - Senior Law Clerk to Judge Ciparick (resigned December 2012)

Donnelly, William E. - Assistant Building Superintendent I

Dragonette, John M. - Senior Court Building Guard

Drury, Lisa A. - Senior Principal Law Clerk to Judge Read

Duncan, Priscilla - Secretary to Judge Read

Dunn, Matthew R. - Senior Principal Law Clerk to Judge Graffeo

Eddy, Margery Corbin - Senior Deputy Chief Court Attorney

Emigh, Brian J. - Building Manager

Endsley, Anya Ferris - Court Attorney

Engel, Hope B. - Assistant Consultation Clerk

Ettlinger, Nicole J. - Court Attorney

Fix-Mossman, Lori E. - Principal Stenographer

Fludd, Christopher - Senior Court Building Guard

Fortugno, John J. - Senior Security Attendant

Appendix 11 (Continued)

Garcia, Heather A. - Senior Security Attendant

Gerber, Matthew - Security Attendant

Gilbert, Marianne - Principal Stenographer

Grogan, Bruce D. - Senior Principal Law Clerk to Judge Pigott

Haas, Tammy L. - Principal Assistant Building Superintendent

Hancock, Dora N. - Secretary to Judge Jones (resigned December 2012)

Hartnagle, Mary C. - Senior Custodial Aide

Heaney, Denise C. - Senior Security Attendant

Herrington, June A. - Principal Stenographer

Holman, Cynthia M. - Stenographer

Hosang-Brown, Yanique - Senior Court Analyst

Ignazio, Andrea R. - Principal Stenographer

Irby, Sandra H. - Senior Principal Law Clerk to Judge Jones

Irwin, Nancy J. - Principal Stenographer

Kaiser, Warren - PC Analyst

Kandel, Erin P. - Senior Court Attorney

Kane, Suzanne M. - Principal Stenographer

Kearns, Ronald J. - HVAC Assistant Building Superintendent

Kim, Jay - Principal Law Clerk to Judge Jones

Klein, Andrew W. - Clerk of the Court

Appendix 11 (Continued)

Kong, Yongjun - Principal Custodial Aide
Lawrence, Bryan D. - Principal Local Area Network Administrator
LeCours, Lisa A. - Senior Principal Law Clerk to Judge Graffeo
Lee-Clark, Meredith G. - Senior Court Attorney
Lusignan, Brian M. - Senior Court Attorney
Lyon, Gordon W. - Senior Principal Law Clerk to Judge Pigott
MacVean, Rachael M. - Principal Court Attorney
Mann, Greg E. - Senior Court Attorney
Mason, Marissa K. - Clerical Assistant
Mayo, Michael J. - Deputy Building Superintendent
McCormick, Cynthia A. - Director of Management and Operations
McGrath, Paul J. - Chief Court Attorney
Mendez, Noel - Senior Court Attorney
Minutello, Kathleen - Senior Custodial Aide
Moore, Travis R. - Senior Security Attendant
Muller, Joseph J. - Senior Security Attendant
Mulyca, Jonathan A. - Clerical Assistant
Murray, Elizabeth F. - Chief Legal Reference Attorney
Nina, Eddie A. - Senior Security Attendant
O'Friel, Jennifer A. - Executive Assistant to Chief Judge Lippman

Appendix 11 (Continued)

Ohiorhenuan, Zara - Law Clerk to Chief Judge Lippman (resigned August 2012)
Pasquarelli, Angela M. - Senior Services Aide
Pepper, Francis W. - Principal Custodial Aide
Perry, Joseph C. - Principal Law Clerk to Judge Ciparick (resigned December 2012)
Plant, Miles H. - Senior Court Attorney (resigned August 2012)
Redcross, Anne T. - Senior Court Attorney (resigned February 2012)
Reed, Richard A. - Deputy Clerk of the Court
Riordan, Elizabeth M. - Law Clerk to Judge Ciparick (resigned December 2012)
Rudykoff, Nathaniel T. - Senior Principal Law Clerk to Chief Judge Lippman
Saint-Fort, Dominique F. - Court Attorney
Schaffner, Diana E. - Court Attorney
Schrantz, Matthew J. - Senior Court Attorney
Sherwin, Stephen P. - Senior Principal Law Clerk to Judge Graffeo
Siffert, David A. - Senior Law Clerk to Judge Smith (resigned December 2012)
Smith, Jessica Barrie - Law Clerk to Chief Judge Lippman
Somerville, Robert - Senior Court Building Guard
Spencer, Gary H. - Public Information Officer
Spiewak, Keith J. - Local Area Network Administrator
Stiefel, George T. - Senior Court Attorney (resigned August 2012)
Stromecki, Kristie L. - Senior Principal Law Clerk to Judge Pigott

Appendix 11 (Continued)

Tierney, Inez M. - Principal Court Analyst

Turon, Kristin L. - Stenographer

VanDeloo, James F. - Senior Assistant Building Superintendent

Volpov, Vitaliy - Senior Court Attorney (resigned December 2012)

Waddell, Maureen A. - Secretary to Judge Pigott

Waisnor, Jonathan D. - Law Clerk to Judge Smith

Waithe, Nelvon H. - Senior Court Building Guard

Walthall, Claiborne - Law Clerk to Judge Read

Warechak, Andrew R. - Principal Custodial Aide

Wasserbach, Debra C. - Secretary to Judge Graffeo

Weber, Sarah - Law Clerk to Judge Read

Welch, Joseph H. - Senior Clerical Assistant

White, Serena J. - Senior Court Attorney (resigned August 2012)

Wodzinski, Esther T. - Secretary to Judge Smith

Wood, Margaret N. - Principal Prisoner Applications Attorney; Court Attorney for Professional Matters

Yalamas, George C. - Chief Security Attendant