Court of Appeals
of the State of New York

Annual Report of the
Clerk of the Court

2010

2010

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

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Andrew W. Klein
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C O N T E N T S

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Court of Appeals

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March 2, 2011

2010 was my third year on the Court and my first opportunity to write the Foreword for the Annual Report.

This has been an extraordinary year -- a year which saw the election of a new governor and a realignment of the State Senate. The year was dominated, however, by the continuing effects of an economic downturn of world-wide proportion which has affected every citizen of the state.

Despite the economic and political turmoil, the Court never failed in its obligation to resolve the most important legal issues of the day and, in doing so, set an example for the judiciary as well as the other branches of government. Our ability to function, however, was not without hardship. Many of our key employees took advantage of an early retirement offer made to reduce the operating budget in coming years. The venerable Stuart M. Cohen, Clerk of the Court for many years, opted to retire. Fortunately for us, Andrew W. Klein, the Consultation Clerk with institutional knowledge and experience equal to that of his predecessor, was available and willing to accept the position. Similarly, the retirement of Chief Mark Stevens meant the loss of our extremely capable and experienced chief of security. I know that the Chief Judge and my colleagues join me in welcoming the new Chief Security Attendant, George Yalamas, and Clerk of the Court, Andrew Klein. Their combined background and experience will ensure a seamless transition and provide the continued leadership necessary for the Court to continue its tradition of quality jurisprudence.

Furthermore, despite absorbing these significant personnel changes and working with a reduced budget, we have been able to consider and resolve an increased number of cases while maintaining our commitment to programs which insure the reliable delivery of legal assistance to the most vulnerable of our citizens. The commitment of Chief Judge Jonathan Lippman to insuring legal representation to the indigent in both criminal and civil matters as well as his support of the Task Force on Wrongful Convictions and Commission on Sentence Reform represent courageous initiatives in this era of fiscal uncertainty.

While the scope of our effort is aptly detailed in this annual report, the passion and dedication of the Chief Judge, my judicial colleagues and our wonderful support staff has been remarkable. I am sure I represent the sentiments of all as I applaud the accomplishments of this year and look forward to the challenges of 2011.

Hon. Theodore T. Jones

2010

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

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Introduction

This year involved significant personnel changes at the Court of Appeals. Numerous employees with a collective total of over 100 years of service to the Court retired in 2010. Included in this group is my predecessor, Stuart M. Cohen, who became Clerk in 1996 and served brilliantly in that role for 14 years. I think it particularly appropriate at this time to quote Stuart's remarks from the 2005 annual report: "Our retired colleagues exemplified the core mission of the Court of Appeals staff: to support the Judges in their work and to serve litigants, counsel and members of the public with the utmost courtesy, skill and efficiency."

While 2010 proved to be a sad time for the Court, with the departure of valued coworkers, it was also an exciting time as new faces joined the Court staff. Moreover, employees who held particular positions in the Court for years were promoted and brought fresh perspectives to their new roles. The Court's staff all look forward to serving the Judges of the Court, the Bar and the public in the upcoming year with excellence.

The Court experienced one other significant change in 2010. Effective December 8, 2010, the Court amended its Rules of Practice to provide for the submission of briefs and records in digital format. This is the first step that the Court has taken towards digital filing, and the Court hopes to continue moving forward electronically in the future.

The 2010 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 2010. The third section highlights selected decisions of 2010. 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 mo-

tions 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 2010, the Court and its Judges disposed of 3,907 matters, including 236 appeals, 1,384 motions and 2,220 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 132 notices of appeal received by the Court in 2010, 86 were subject to Rule 500.10 inquiries. Of those, all but 19 were dismissed sua sponte or on motion, withdrawn, or transferred to the Appellate Division. Fifteen 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 home chambers session and, after further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next Albany 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 nonreviewable issues 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 380 appeals filed in 2010, 67 (18%) were initially selected to receive SSM consideration, a slight decrease from the percentage initially selected in 2009 (20%). Thirty-three were civil matters and 34 were criminal matters. Fifteen appeals initially selected to receive SSM consideration in 2010 were directed to full briefing and oral argument. Of the 236 appeals decided in 2010, 59 (24.9%) were decided upon SSM review (11.8% were so decided in 2009; 13.7% were so decided in 2008). Thirty-one were civil matters and 28 were criminal matters.

Of the 67 appeals filed in 2010 and initially selected to receive SSM consideration, 42 were taken from orders or judgments of the Appellate Division, First Department. Six of these were appeals as of right based on a double dissent below, 25 were leave grants of the Appellate Division or a Justice of that court, and 11 were by leave of this Court or a Judge of this Court.

4. Promptness in Deciding Appeals

In 2010, 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 38 days; for all appeals, the average time from argument or submission to disposition was 33 days. The average period from filing a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately nine months. The average period from readiness (all papers served and filed) to calendaring for oral argument was approximately four 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 2010 (including SSM appeals tracked to normal course) was 317 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 229 days. Thus, by every measure, in 2010 the Court maintained its long tradition of exceptional currency in calendaring and deciding appeals.

B. The Court's 2010 Docket

1. Filings

Three hundred eighty (380) notices of appeal and orders granting leave to appeal were filed in 2010 (328 were filed in 2009). Two hundred sixty (260) filings were civil matters (compared to 226 in 2009), and 120 were criminal matters (compared to 102 in 2009). The Appellate Division Departments issued 88 of the orders granting leave to appeal filed in 2010 (56 were civil, 32 were criminal). Of these, the First Department issued 55 (35 civil and 20 criminal).

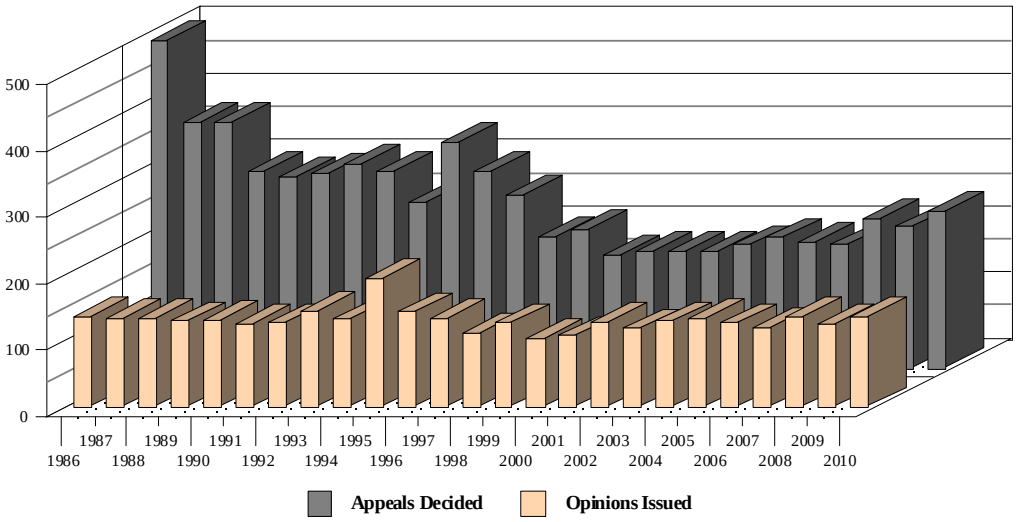
Motion filings decreased slightly in 2010. During the year, 1,380 motion numbers were used, a decrease of 1.2% from the 1,397 motion numbers used in 2009. Criminal leave applications also decreased in 2010. Two thousand two hundred seven (2,207) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 140 fewer than in 2009, a decrease of 6%. On average, each Judge was assigned 315 such applications during the year.

2. Dispositions

(a) Appeals and Writings

In 2010, the Court decided 236 appeals (137 civil and 99 criminal, compared to 146 civil and 66 criminal in 2009). Of these appeals, 159 were decided unanimously. The Court issued 133 signed opinions, 2 per curiam opinions, 74 dissenting opinions, 18 concurring opinions, 72 memoranda and 29 decision list entries (one of which was a dissenting entry). The chart on the next page tracks appeals decided and full opinions (signed and per curiam) issued since Laws of 1985, chapter 300 narrowed the available predicates for appeals as of right and expanded the civil certiorari jurisdiction of the Court.

Appeals Decided and Opinions Issued
1986-2010

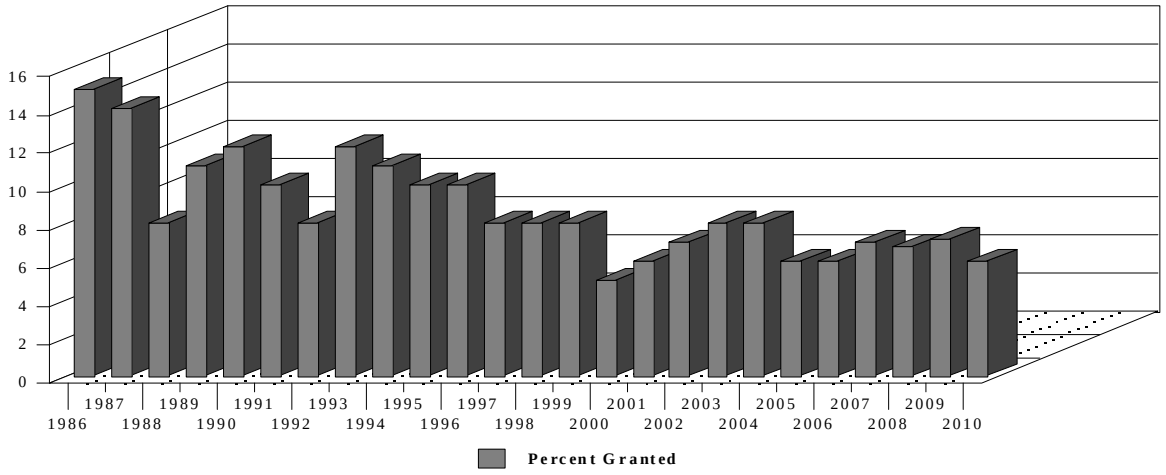


(b) Motions

The Court decided 1,384 motions in 2010 --14 more than in 2009. 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 61 days, while the average period of time from return date to disposition for all motions was 52 days.

The Court decided 1,045 motions for leave to appeal in civil cases during the year -- 25 fewer than in 2009. Of these, the Court granted 6% (down from 7.2% in 2009), denied 72.5% (down from 74.2% in 2009) and dismissed for jurisdictional defects 21.5% (up from 18.6% in 2009). The chart below shows the percentage of civil motions for leave to appeal granted since the expansion of the Court's certiorari jurisdiction in 1986.

Motions for Leave to Appeal Granted by Year
1986-2010



Sixty-three motions for leave to appeal were granted in 2010. The Court's leave grants covered a wide range of subjects, including the condition precedent to a suit against the Port Authority contained in Unconsolidated Laws § 7107; the authority of the New York City Rent Guidelines Board to create a new classification of housing accommodations; the best evidence rule; long-arm jurisdiction in a defamation case; regulation of the New York City taxicab industry; the renewal option clause in a commercial lease; allegations of fraud to set aside a deed; the Public Service Commission's rate setting; the applicable statute of limitations for a breach of fiduciary duty cause of action by a school district against one of its board members; the validity of hazardous waste regulations; the employee protection provisions contained in New York City Administrative Code § 6-115.1; and a claim for defamation and unfair competition by disparagement based on comments posted on a web site.

The Court granted leave to address whether the government function immunity doctrine applies to shield the Port Authority of New York and New Jersey's discretionary counter-terrorism decisions from tort liability arising from the 1993 World Trade Center bombing. The Court also granted leave to address whether a Federal Motor Vehicle Safety Standard preempts a common law claim that a bus manufacturer negligently failed to install passenger seatbelts. In other personal injury matters, the Court granted leave to address a snow removal contractor's duty to third parties; a witness's hearsay statement in a Dram Shop action; whether a person's failure to follow medical advice was a superseding cause of injury in a medical malpractice action; and the proper methodology in awarding postverdict interest on wrongful death damages.

In the Family Court context, the Court granted leave in juvenile delinquency proceedings to address whether the consent by the juvenile's sister to the police officers' search of the family home dissipated the taint of the police officers' earlier illegal entry, and whether abscondment from a nonsecure detention facility by a person adjudicated to be a juvenile delinquent constitutes escape in the second degree. The Court also granted leave to address whether a father was improperly denied his right to represent himself at a fact-finding hearing, and whether a father's sex crimes against children, sex offender status and lack of treatment, insight into, or remorse for his crimes may prove, by a preponderance of the evidence, that the father and mother neglected their children.

The Court granted leave in several sex offender civil confinement cases to address whether a detained person was denied his due process right to a fair trial and whether another detained person was a "detained sex offender" when, at the time the proceeding was initiated, he was serving a sentence for a nonsexual unrelated offense that ran consecutively to his prior completed sentence for a sexual offense. The Court also granted leave to address a claim for unjust conviction and imprisonment, and whether certain HIPAA exceptions permit a physician, in a Mental Hygiene Law § 9.60 proceeding, to obtain an individual's medical records without authorization or a court order.

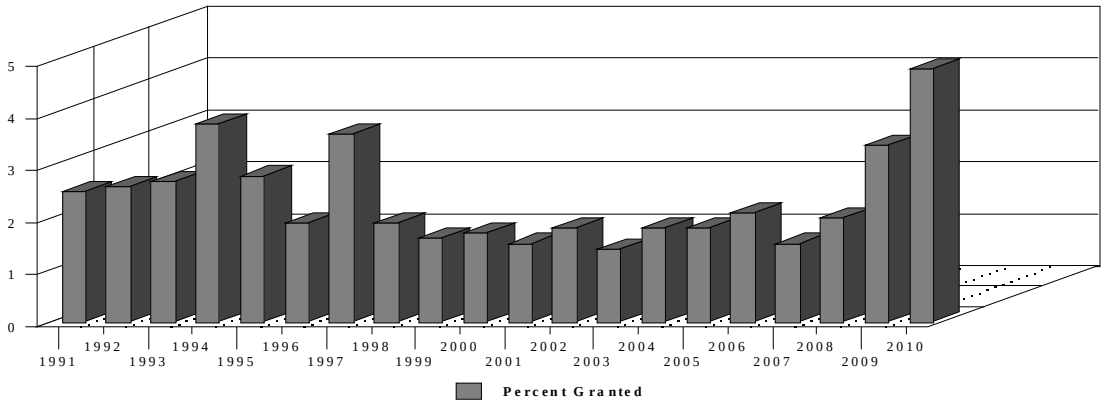
In consumer protection matters, the Court granted leave to address an action by the Attorney General alleging that an insurance broker violated Executive Law § 63 by holding itself out to potential insureds as working in the consumers' best interest while steering those same individuals to insurers that maximized the broker's profit regardless of the consumers' best interest. In civil service matters, the Court granted leave to address whether, under Public Authorities Law § 3858(2)(c), promotional salary step increases were suspended and did not accrue during a wage freeze period. The Court also granted leave to address whether the procedural safeguards of Civil Service Law § 72 apply to employees who are prevented from returning to work from voluntary sick leave, and whether an injury caused by a third party's assault may be deemed "accidental" for purposes of accidental disability retirement benefits.

The Court granted leave in several proceedings to address the 2007 amendments to the Workers' Compensation Law that require employers to deposit the present value of uncapped permanent partial disability awards into the Aggregate Trust Fund. The Court also granted leave in several arbitration proceedings to address a "no lay-off" clause in a collective bargaining agreement, exhaustion of the limits of liability clause in an automobile insurance policy, and an arbitrator's and party-opponent's failure to disclose the arbitrator's alleged conflict of interest.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 108 of the 2,220 applications for leave to appeal in criminal cases decided in 2010 -- up from 81 in 2009. One hundred seventy-four applications were dismissed for lack of jurisdiction, and ten were withdrawn. Sixteen of 59 applications filed by the People 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
1991-2010



Laws of 2002, chapter 498 amended the criminal jurisdiction of the Court of Appeals to allow appeals by permission from intermediate appellate court orders determining applications for writs of error coram nobis. In 2010, 223 applications for leave to appeal from such orders were assigned to Judges of the Court, up from 202 in 2009. Two such applications were granted.

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 2010, on average, 71 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 2010, the Court did not review any determinations of the State Commission on Judicial Conduct. Pursuant to Judiciary Law § 44 (7), the Court ordered the removal of one judge in accordance with the findings of the Commission, after the judge failed to request a review of the Commission's determination. Pursuant to Judiciary Law § 44 (8), the Court terminated the suspension with pay of one judge.

(e) Rule 500.27 Certifications and the State-Federal Judicial Council

In 1985, to promote comity and judicial efficiency among court systems, New York voters passed an amendment to the State Constitution granting the New York Court of Appeals discretionary jurisdiction to review certified questions from certain federal courts and other courts of last resort (NY Const, art VI, § 3 [b] [9]). Thereafter, this Court promulgated Rule 500.17, providing 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. The Annual Report for 1998 contains a detailed discussion of the history of Rule 500.17 certifications to this Court. In September 2005, the rule was recodified as Rule 500.27.

After a court certifies a question to this Court pursuant to Rule 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 in the normal course, by full briefing and oral argument, or pursuant to

the Court's alternative procedure (*see* Rule 500.11), the preferred method of handling is full briefing and oral argument on an expedited schedule. In 2010, the average period from receipt of initial certification papers to the Court's order accepting or rejecting review was 32 days. The average period from acceptance of a certification to disposition was 7.4 months.

Two cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2009. In 2010, the Court answered the questions certified in those cases. After the United States Court of Appeals for the Second Circuit withdrew its certification of one of the two cases, the questions certified in that case were marked withdrawn. Also in 2010, the Court accepted eight new cases involving questions certified by the United States Court of Appeals for the Second Circuit and one new case involving a question certified by the Supreme Court of Delaware. The questions certified in one of those cases were marked withdrawn pursuant to an order of the United States Court of Appeals for the Second Circuit. Four cases were decided during the year and four remained pending at the end of 2010.

C. Court Rules

Part 500 of the Rules of the Court of Appeals was amended, effective December 8, 2010, to reduce from 25 to 20 the number of paper copies of records, appendices and briefs for normal course appeals and certified question reviews; to require parties to file on disk digital versions of each paper filing; and to subject appeals to be considered under section 500.11 of the rules to a similar digital filing requirement.

II. Administrative Functions and Accomplishments

A. Court of Appeals Hall

Court of Appeals Hall has been the Court’s home for over 90 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 web site (http://www.courts.state.ny.us/ctapps/). The Clerk's Office has published a "Guide for Counsel in Cases to be Argued before the New York State Court of Appeals," available in hard copy and on the Court's web site. 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 Albany 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 web site and are available in print at Court of Appeals Hall. The Office arranges for live television coverage of oral arguments at the Court.

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 schoolchildren 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 recording of all oral arguments before the Court and of special events conducted by the Chief Judge or the Court. The tapes 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 web site (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 several months worth of Court of Appeals decisions. The latest decisions are posted at the time of their official release. During Court sessions, the web site offers live webcasts of all oral arguments heard by the Judges. Beginning in January 2010, these webcasts have been preserved in a permanent archive on the web site to allow users to view the arguments at their convenience.

The web site provides helpful information about the Court's practice -- including its rules, civil and criminal jurisdictional outlines, session calendars, and a form for use by pro se litigants -- and it provides links to other judiciary-related web sites. It also has FAQ (Frequently Asked Questions) sections for appeals, civil motions, criminal leave applications, and other topics. The text and webcast of the Chief Judge's most recent State of the Judiciary address are posted on the web site under the Annual Releases and Events link. Prior Annual Reports and Law Day Celebrations also are available through that link. Over 796,000 visits to the web site were recorded in 2010, averaging approximately 2,180 visits per day.

Launched in 2002 and chartered by the State of New York, the Historical Society of the Courts of the State of New York also performs a public information service. The Society fosters scholarly understanding and public appreciation of the history of the New York State courts, and collects and preserves artifacts of the State’s judicial history. The Society’s web site address is http://www.courts.state.ny.us/history; there is a link to the Society on the Court’s web site.

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 preliminary 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, and (3) proposed rule changes ultimately decided by the Court.

The Court's Office for Professional Matters responds to written and telephone inquiries related to the Court's admission rules, reviews submissions from American 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.

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 (predominantly 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 2009 through December Decision Days 2010, Central Staff completed 1,029 motion reports, 76 SSD reports, 36 SSM reports and seven reports regarding certified questions. Throughout 2010, Central Staff remained current in its work.

Staff attorneys also write and revise research materials for use by the Judges' chambers and Clerk's staff, and perform other research tasks as requested. In 2010, the Senior Deputy Chief Court Attorney updated the Court's internal jurisdictional outline.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed in 2010 were graduates of Albany, the State University of New York at Buffalo, Cornell University, Pace University, the City University of New York at Queens, St. John's University, Touro and the University of Wisconsin law schools. Staff attorneys hired for work beginning in 2011 will represent law schools from Boston University, the State University of New York at Buffalo, Cardozo, St. John's University, Syracuse University and Vermont.

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 2010, commercial and in-house databases played an ever-increasing role in the provision of legal and non-legal information. The Court has subscriptions to the major legal research databases, the New York State Library gateway provides access to academic and news databases, and the Court of Appeals Library continues to expand in-house databases. The ISYS databases that provide full-text access to the Court's internal reports now contain approximately 40,000 documents, and the hyperlinked intranet databases include Bill Jackets and legislative documents frequently used by the Court.

The Chief Legal Reference Attorney is a member of the Court's CLE Committee and provides programs on Constitutional, Statutory and Regulatory Intent and also on the wide array of legal and non-legal research databases. These programs are CLE certified, and are updated and offered to Judges' Law Clerks and staff attorneys annually.

In 2010, the Chief Legal Reference Attorney continued as Secretary of the Board of Trustees of The Historical Society of the Courts of the State of New York. Among the several ongoing projects with which she is involved on behalf of the Society is the annual law-related essay competition for New York Community College students. The prize winners 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 one of the Court's attorneys, Margery Corbin Eddy. 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 2010, the CLE Committee provided 10 programs for Court of Appeals attorneys -- including new staff training and orientation -- totaling 18 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 New York Supreme Court, Appellate Division, Third Department; Albany Law School; and the New York State Bar Association. Several experienced/non-transitional attorneys viewed recorded programs from the JI and other sources at their desktops. In addition, many attorneys at the Court of Appeals, the Law Reporting Bureau, and the Board of Law Examiners took advantage of the JI's "Extended-Length Broadcasts," offering blocks of transitional credit for attorneys attending live simulcasts at various approved locations throughout the state.

H. Management and Operations

The Director, Court of Appeals Management and Operations, aided by two secretarial 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 Court of Appeals 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 all its ancillary agencies was performed within the 2010-2011 fiscal year budget appropriation of $16,145,965, 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 2011-2012 for the Court and its ancillary agencies is $15,652,618, a decrease of $493,347 (-3.1%) over the current year adjusted appropriation. The 2011-2012 personal services request of $12,827,784 reflects a decrease of $271,100 (-2.1%) over the current year's appropriation, which provides funding for all authorized judicial and nonjudicial positions. The 2011-2012 nonpersonal services request of $2,824,834 reflects a decrease of $222,247 (-7.3%) over the current year adjusted appropriation. The funding request for nonjudicial positions reflects the projected impact of a stringent vacancy control program, along with funding for increments, general salary increases and longevity bonuses for eligible nonjudical employees.

Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2011-2012 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 2010, the Court reported filing fees for civil appeals totaling $34,020. Also, the Court reported filing fees for motions totaling $32,108. 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 ($900) and miscellaneous collections ($2,286.66). For calendar year 2010, revenue collections totaled $69,315.02.

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 2500 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 also responsible for the upkeep of two web sites: an intranet web site available to Court employees only, and the Court's internet site located at http://www.courts.state.ny.us/ctapps/. The Court of Appeals internet site offers immediate access to the Court's latest decisions of appeals and motions, and other pertinent information such as the Court's Rules of Practice and its calendar. Over 796,000 visits to the web site were recorded in 2010, averaging approximately 2,180 visits per day.

In 2010, the Court successfully replaced all desktop workstations used by Court staff in accordance with Office of Court Administration guidelines and specifications. The old equipment was recycled to other locations within the Unified Court System.

K. Security Services

The Court Security Unit is comprised of the Chief Security Attendant, Deputy Chief Security Attendant, six Senior Court Security Attendants, and eight Senior Court Building Guards. The Chief, Deputy Chief and Court Security Attendants are sworn court officers and have peace officer status throughout New York State. The officers provide security at Court of Appeals Hall by screening all persons who come to the Court, as well as all mail and packages received. Regular patrols of the area in and around the courthouse are conducted to ensure the safety and security of the Judges, staff and visitors.

The Court's building guards are present and maintain a watchful eye over the Court, its employees and the many visitors to the Court 24 hours a day, seven days a week. Additionally, the officers provided security escorts, when necessary, to the Judges of the Court throughout the state. Building guards conduct tours of the Courtroom for members of the public visiting Court of Appeals Hall.

The members of the Security Unit completed several training programs during 2010, including the mandatory firearms, pepper spray, and baton training attended by all the Court Security Attendants.

L. Personnel

The following personnel changes occurred during 2010:

APPOINTMENTS:

Burry, Benjamin - employed as Law Clerk to Court of Appeals Judge, August 2010.

Couser, Lisa A. - employed as Clerical Assistant, Court of Appeals, October 2010.

Culligan, David O. - employed as Clerical Assistant, Court of Appeals, October 2010.

Dalsen, William - employed as Law Clerk to Court of Appeals Judge, August 2010.

Holman, Cynthia M. - employed as Stenographer, Court of Appeals, April 2010.

Hosang-Brown, Yanique - employed as Court Analyst, March 2010.

Kim, Jay - employed as Law Clerk to Court of Appeals Judge, August 2010.

McDaniel, Monica C. - employed as Law Clerk to Chief Judge, May 2010.

Perry, Joseph C. - employed as Law Clerk to Court of Appeals Judge, January 2010.

Roberta, Lauren - employed as Law Clerk to Court of Appeals Judge, August 2010.

Turon, Kristin L. - employed as Stenographer, Court of Appeals, November 2010.

Wood, Margaret N. - appointed as Principal Prisoner Applications Attorney, Court of Appeals, February 2010.

Yalamas, George C. - appointed as Chief Security Attendant, Court of Appeals, November 2010.

PROMOTIONS:

Asiello, John P. - promoted to Acting Consultation Clerk, Court of Appeals, November 2010.

Branch, Clifton - promoted to Senior Principal Law Clerk to Court of Appeals Judge, January 2010.

Danner, Scott - promoted to Senior Law Clerk to Court of Appeals Judge, August 2010.

Engel, Hope B. - promoted to Acting Assistant Consultation Clerk, Court of Appeals, November 2010.

Kane, Suzanne - promoted to Principal Stenographer, Court of Appeals, June 2010.

Klein, Andrew W. - promoted to Acting Clerk of the Court, November 2010.

Kornreich, Mollie - promoted to Senior Law Clerk to Court of Appeals Judge, September 2010.

McCormick, Cynthia A. - promoted to Director, Court of Appeals Management and Operations, July 2010.

Michaels, Alexander - promoted to Senior Law Clerk to Court of Appeals Judge, August 2010.

Moxley, D. Cameron - promoted to Senior Law Clerk to Chief Judge, March 2010.

Stromecki, Kristie - promoted to Senior Principal Law Clerk to Court of Appeals Judge, September 2010.

RESIGNATIONS AND RETIREMENTS:

Ali, Vivian - Principal Stenographer, Court of Appeals, retired November 2010.

Ata, David W. - Senior Law Clerk to Court of Appeals Judge, resigned August 2010.

Calacone, Stephen - Clerical Research Aide, Court of Appeals, retired November 2010.

Cohen, Stuart M. - Clerk of the Court of Appeals, retired November 2010.

RESIGNATIONS AND RETIREMENTS (cont'd):

Conley, Paul F. - Senior Clerical Assistant, Court of Appeals, retired November 2010.

Fitzpatrick, William J. - Assistant Printer, Court of Appeals, retired November 2010.

Galvin, Martin - Senior Law Clerk to Court of Appeals Judge, resigned February 2010.

Paglia, Daisy - Principal Law Clerk to Court of Appeals Judge, resigned August 2010.

Stevens, Mark P. - Chief Security Attendant, Court of Appeals, retired November 2010.

Stowell, Allison - Law Clerk to Court of Appeals Judge, resigned June 2010.

Taylor, Janice - Senior Principal Law Clerk to Court of Appeals Judge, retired August 2010.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Mark R. Butscha, Miles H. Plant, Anne T. Redcross, George T. Stiefel III, Vitaliy Volpov and Serena J. White were appointed Court Attorneys in 2010.

PROMOTIONS:

Sardar M. Asadullah, Andria L. Bentley, Jane H. Lee, Allyson B. Levine, Christopher A. Liberati-Conant and Henry M. Mascia were promoted to Senior Court Attorneys in August 2010.

COMPLETION OF CLERKSHIPS:

Senior Court Attorneys Katherine G. Breitenbach, John Althouse Cohen, Mark G. Mitchell, Robert S. Rosborough, IV, Molly J. Timko and Anne E. Wilson completed their Central Staff clerkships in either July or August 2010.

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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 Andrea Ignazio and Bryan Lawrence, who prepared the detailed appendices; Lisa Bohannon, who designed the cover and took the photograph; and Richard Reed, who edited the Report. I also thank the many members of the Clerk's staff who proofed the Report, particularly James Costello, Heather Davis, Margery Corbin Eddy, Paul McGrath, Inez Tierney and Margaret Wood. Finally, I thank Brian Emigh, who oversaw production.

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 Clerk's Office, Building Maintenance and Judges' staffs appears in Appendix 11.

A number of staff left the Court's employ in 2010. I particularly thank Stuart Cohen, who retired from the position of Chief Clerk of the Court of Appeals after over 27 years of dedicated and talented service to the Court in that position and others, including Deputy Chief Clerk, Senior Law Clerk to Chief Judge Sol Wachtler, and Senior Law Clerk to Judge Jacob D. Fuchsberg; also, Mark P. Stevens, who retired from the position of Chief Security Attendant, Court of Appeals, after over four years of service to the Court in that position; William J. Fitzpatrick, who retired from the position of Assistant Printer after serving the Court in various positions beginning in 1963; Vivian Ali, who retired from the position of Principal Stenographer after over 13 years of service to the Court in that position and others; Paul F. Conley, who retired from the position of Senior Clerical Assistant, Court of Appeals, after 25 years of service to the Court in that position and others; and Stephen Calacone, who retired from the position of Clerical Research Aide, Court of Appeals, after 21 years of service to the Court in that position and others.

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 its staff.

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III. 2010: Year in Review

This section -- a summary of Court of Appeals decisions handed down in 2010 -- reflects the range of constitutional, statutory, regulatory, and common-law issues reaching the Court each year.

ADMINISTRATIVE LAW

Matter of Kaur v New York State Urban Dev. Corp. (15 NY3d 235)

The Court held that respondent New York State Urban Development Corporation's exercise of its power of eminent domain to acquire petitioners' property for the development of a new Columbia University campus was supported by a sufficient public use, benefit or purpose. Applying Matter of Goldstein v New York State Urban Dev. Corp. (13 NY3d 511 [2009]), the Court concluded that Empire State Development Corporation's (ESDC) findings of blight, and its determination that the condemnation of petitioners' property qualified as a "land use improvement project," were rationally based and entitled to deference. The Court observed that ESDC considered a number of factors including the physical, economic, engineering, and environmental conditions in determining that the proposed project site was blighted. The Court noted ESDC's extensive documentation of its findings provided support in the record for ESDC's determination of blight. The Court also held that ESDC's alternative finding that the proposed development qualified as a "civic project" was rational. The Court noted that Columbia University's proposed expansion would promote education -- an enumerated civic purpose under the UDC Act -- and academic research while providing public benefits to the local community. The Court observed that the advancement of higher education is the quintessential example of a "civic purpose."

Matter of Wooley v New York State Dept. of Correctional Servs. (15 NY3d 275)

An inmate in the custody of the Department of Correctional Services (DOCS) commenced an action to compel DOCS to provide him with certain medical treatment for hepatitis C. The specific treatment he requested, although supported by several physicians, constituted an off-label usage of a particular medication and was unproven in long-term medical studies. Because of those factors, the Court concluded that the denial of the particular medical treatment requested by the inmate was neither arbitrary and capricious, nor constituted cruel and unusual punishment in violation of the Federal Eighth Amendment.

Matter of Dickinson v Daines (15 NY3d 571)

The petitioner was denied Medicaid eligibility by the County Department of Social Services and sought fair hearing review by the State Department of Health. An initial decision -- issued after the 90-day regulatory deadline for fair hearing determinations -- was in her favor, and the County sought reconsideration. Following reconsideration, the initial determination was reversed in an amended decision and the County's denial of eligibility reinstated. Petitioner brought a CPLR article 78 proceeding, arguing that the Department of Health was without jurisdiction to issue the amended decision more than 90 days after the deadline for action on fair hearing requests; she did not claim that she was, in fact, eligible for Medicaid. Petitioner prevailed in Supreme Court, but the Appellate Division reversed

and dismissed the petition. The Court of Appeals affirmed. It held that the passage of the Department of Health's self-imposed deadline for action on fair hearing requests did not deprive it of jurisdiction to act on those requests, reasoning that the "mandatory" interpretation of that deadline proposed by petitioner would nullify both the initial and amended decisions in her case and generally defeat the purpose of fair hearing review.

ARBITRATION

Matter of New York City Tr. Auth. v Transport Workers Union of Am., Local 100 (14 NY3d 119)

This appeal required the Court to determine whether an arbitrator exceeded his power when he modified the penalty the New York City Transit Authority sought to impose in connection with allegations that an employee assaulted a member of the public on a subway platform. Under the applicable collective bargaining agreement, the arbitrator was first to determine whether an assault occurred. If an assault occurred, the arbitrator was to uphold the Transit Authority's penalty unless the arbitrator determined, in light of past precedent and the employee's record, that an exception should be made, at which point the arbitrator was entitled to exercise his or her discretion in framing the penalty. The arbitrator here concluded that an assault did occur, but, in light of past precedent and the employee's record, he also concluded that an exception should be made. Exercising the discretion he was empowered with under the exception, the arbitrator modified the penalty the Transit Authority sought to impose. The Court determined that the arbitrator did not exceed his authority because whether the exception giving the arbitrator discretion to modify the penalty applied was the very question submitted to arbitration.

Matter of Brady v Williams Capital Group, L.P. (14 NY3d 459)

In this article 78 proceeding, the issue before the Court was whether petitioner, a registered salesperson of fixed income securities who was terminated from her position by respondent, met her burden of demonstrating that an arbitration agreement's provision for the equal sharing of arbitration fees and costs precluded her from pursuing her statutory rights in the arbitral forum. Rejecting a majority of Appellate Division decisions, the Court ruled that for purposes of determining the respective obligations of the parties to pay the fees and costs of the arbitration of petitioner's employment discrimination claim, the provision in the parties' arbitration agreement requiring the parties to share equally the fees and costs of the arbitrator, rather than the AAA's conflicting "employer-pays" rule, controlled. The Court then ruled that the lower courts erred as a matter of law in reaching their respective conclusions regarding the enforceability of the "equal share" provision, and that because neither lower court took into account all of the criteria necessary to resolve the "financial ability" question, the matter should be remitted to Supreme Court for a hearing on the issue.

Matter of Falzone (New York Cent. Mut. Fire Ins. Co.) (15 NY3d 530)

The question before the Court was whether the supplementary uninsured/ underinsured motorist (SUM) arbitrator exceeded the scope of his authority by not giving preclusive effect to a prior arbitration award involving the same parties and accident. Rely-

ing on settled principles that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power, and that courts generally may not disturb the arbitrator's decision, even where an arbitrator has made an error of law or fact, or misapplied the substantive law in the area of the contract, this Court held that petitioner's claim -- that the SUM arbitrator erred in failing to apply collateral estoppel to preclude litigation of the causation issue in the SUM arbitration -- was beyond judicial review.

Matter of Kowaleski v New York State Dept. of Correctional Servs. (16 NY3d 85)

In this proceeding, the Court considered an employee's CPLR 7511 petition seeking to vacate an arbitral award that terminated her employment on the grounds that the arbitrator failed to consider and determine whether the disciplinary action that was the subject of the arbitration was brought to retaliate against her for reporting the improper behavior of fellow employees. The Court granted petitioner's application to vacate the arbitration award and held that, pursuant to Civil Service Law § 75-b, the arbitrator was required to consider and determine the merits of the employee's affirmative defense that the disciplinary action was motivated by her employer's desire to retaliate against her. By failing to do so, the arbitrator exceeded his authority. Notably, the arbitrator's finding that the employee had committed the alleged infractions did not obviate the need for consideration of the retaliation defense.

ATTACHMENT

Hotel 71 Mezz Lender LLC v Falor (14 NY3d 303)

This matter involved the issuance of an order of attachment in New York on one of the defendants, the nondomiciliary garnishee of defendants' intangible personal property, who voluntarily submitted to personal jurisdiction in New York. The main issue before the Court was whether the intangible personal property plaintiff sought to attach, i.e., defendants' ownership/membership interests in various out-of-state business entities, was subject to attachment under CPLR article 62. The Court held that an out-of-state judgment debtor’s ownership or membership interests in business entities formed outside New York State are considered “property” subject to pre-judgment attachment under CPLR article 62, even where the judgment debtor’s interests are not evidenced by a certificate or other written instrument.

CIVIL PRACTICE

Moray v Koven & Krause, Esqs. (15 NY3d 384)

Plaintiff commenced a legal malpractice action against defendant law firm by filing a summons with notice, which was served by a process server after the lawyer representing plaintiff was suspended from the practice of law. When a demand for a complaint did not prompt a response from plaintiff's then-suspended attorney, defendant successfully moved to dismiss the action. The Court held, however, that plaintiff's lawsuit was automatically stayed by operation of CPLR 321 (c) on the date when his attorney was suspended, and de-

fendant never acted to lift the stay by serving a notice upon plaintiff to appoint a new attorney within 30 days.

CLASS ACTIONS

City of New York v Maul (14 NY3d 499)

In this action, the question presented was whether class action certification under CPLR article 9 was appropriately granted to plaintiffs, a group of developmentally disabled children and young adults who were or had been in the foster care system. Plaintiffs alleged that State and New York City agencies had not fulfilled their statutory and regulatory obligations regarding proper placement referrals and the provision of adequate care and treatment necessary for plaintiffs' needs. Alleging a class of about 150 youngsters who were similarly situated, plaintiffs were successful in obtaining class certification status from Supreme Court and the Appellate Division. On appeal to this Court, defendant agencies contended that class certification was not warranted due to factual distinctions between the situations and needs of each plaintiff, arguing that these differences meant that their claims lacked common questions of fact as required by CPLR 901. Plaintiffs countered that the courts below did not abuse their discretion in granting class certification because a number of issues common to all plaintiffs had been identified. This Court reiterated that the propriety of class certification is committed to the sound discretion of the courts below and, in this case, the Appellate Division had identified four common issues affecting plaintiffs, distinct from a generalized claim of systematic failure. Hence, this Court rejected the argument that the Appellate Division had not properly weighed the CPLR article 9 criteria, finding no abuse of discretion as a matter of law.

Flemming v Barnwell Nursing Home & Health Facilities, Inc. (15 NY3d 375)

The Court was asked to consider whether New York law permits an award of counsel fees and expenses to an objectant in a class action, and the Court held that it does not. The Court noted that the language of the governing statute, CPLR 909, permits attorney fee awards only to “the representatives of the class,” and does not authorize an award of counsel fees to any party, individual or counsel, other than class counsel. Thus, the Court held that there was no basis, under the statute or otherwise, to award a fee to an objectant's attorney.

CONSTITUTIONAL LAW

Matter of Maron v Silver; Larabee v Governor; Chief Judge of the State of New York v Governor (14 NY3d 230)

This litigation was prompted by the Legislature's failure to adjust judicial compensation for Judiciary Law article 7-B judges since 1998. The Court held that the Legislature's failure to independently consider judicial compensation on the merits, by tying it to unrelated legislative objectives and policy initiatives, threatened the structural independence of the Judiciary in violation of the Separation of Powers Doctrine.

CORPORATIONS

Kirschner v KPMG LLP; Teachers' Retirement Sys. of Lousiana v PricewaterhouseCoopers LLP (15 NY3d 446)

The United States Court of Appeals for the Second Circuit and the Delaware Supreme Court posed certified questions that called upon the Court to decide whether to broaden the remedies available under New York common law to creditors and shareholders of corporations whose management engaged in financial fraud that was allegedly either assisted or not detected at all or soon enough by outside professional advisors, such as auditors, investment bankers, and lawyers. Declining to alter its precedent, the Court adhered to longstanding principles of in pari delicto and imputation, with its narrow adverse interest exception, which prevent corporations from shifting responsibility for their agents' misconduct to such third parties.

CRIMINAL LAW

People v Kisina (14 NY3d 153)

In this case, the Court determined that a physician who had submitted fraudulent medical documentation to a no-fault insurance carrier in order to receive payments for treatments that were unnecessary or unperformed could be found guilty of falsifying business records in the first degree (Penal Law § 175.10). Defendant could be convicted under the statute, despite being a company outsider. Further, the Court concluded, the fraudulent medical records were "business records" within the meaning of the statute.

People v Williams; People v Hernandez; People v Lewis; Matter of Echevarria v Marks; and People v Rodriguez (14 NY3d 198)

These five cases raised a common issue arising from a provision in Jenna's Law -- Penal Law § 70.45 -- mandating that a period of postrelease supervision (PRS) be a component of all determinate sentences of incarceration. The trial courts in each of these cases had not pronounced a term of PRS at the initial sentencing proceedings involving these defendants. All five defendants had completed serving their prison terms and were released from custody but were subsequently brought back to court to be resentenced for the purpose of imposing a term of PRS. During these appeals, none of the defendants challenged the validity of their convictions; instead they sought vacatur of the resentencing judgments and restoration of their original sentences. Because, at the time of the resentencing proceedings, these individuals had already completed their original sentences (which had involved only terms of incarceration) and been returned to their communities, and the time to appeal their original sentences had expired or the appeals had been finally determined, this Court concluded that defendants had a legitimate expectation in the finality of their original sentences. Therefore, the imposition of PRS on resentencing in these circumstances violated the constitutional protection against double jeopardy, requiring vacatur of the judgments in four of the cases and reinstatement of the original sentences. Since Echevarria had challenged his resentencing by commencing an Article 78 proceeding to prevent resentencing, rather than pursuing an appeal after resentencing, this Court dismissed the petition, finding that relief in the nature of prohibition was not appropriate.

People v Zephrin (14 NY3d 296)

On this appeal, the Court considered the issue whether defendant's jail-time credit toward his sentence of imprisonment also served to reduce his term of probation where defendant received a split sentence of incarceration and probation. The Court held that defendant was entitled to credit toward his term of probation and, accordingly, his term of probation had expired prior to the filing of the declaration of delinquency upon which the conviction relevant to the appeal was premised. Relying on Penal Law § 60.01 (2) (d), the Court reasoned that, because the two components of a "split sentence" -- a term of incarceration and a term of probation -- cannot together exceed the term of probation or conditional discharge authorized by article 65 of the Penal Law, where a defendant has been incarcerated pending sentencing and, as a result, receives credit for time served toward the term of imprisonment of a split sentence, that defendant's probationary term is also reduced by the period the defendant was incarcerated prior to sentencing.

People v Assi (14 NY3d 335)

This case required the Court to determine whether the Hate Crimes Act of 2000 applied to purported "property damage" crimes, such as attempted arson. The charges arose after a group of men attempted to start a fire in a synagogue. Defendant eventually admitted that he had participated in the attempted arson because he was angry at the Israeli Army and intended to make a statement about violence in the Middle East. On appeal, defendant argued that article 485 of the Penal Law applied only to crimes against persons, not property, maintaining that the attempted arson of a building could not qualify as a hate crime. Based on the text of the relevant statutes and the legislative intent, this Court disagreed. The Court noted that, although defendant's actions involved attempted destruction of a building, the true victims were the individuals of Jewish faith that were members of the synagogue. Here, where defendant committed an attempted arson of a house of worship because of his anger toward a religious group, his conduct fell within the scope of the Hate Crimes Act.

People v Mothersell (14 NY3d 358)

Defendant challenged a drug possession conviction obtained in reliance upon evidence seized from his person during a strip search purportedly authorized by an "all persons present" warrant. Adhering to the standard previously established by this Court for judging the adequacy of the predicate offered in justification of such a warrant (see People v Nieves, 36 NY2d 396 [1975]), the Court deemed the warrant and the search performed under its authority invalid; the warrant application failed to set forth facts from which it could be inferred, in satisfaction of the Nieves standard, that all those likely to be present at the targeted residential premises at the time of the warrant's execution would probably be in possession of contraband. Suppression of the evidence seized from defendant was independently required by reason of the extreme, and under the circumstances, unreasonable intrusiveness of the search through which it was uncovered. The Court had held that strip searches of arrestees to facilitate visual inspection were not permissible except in situations where there existed reasonable suspicion that an arrestee had hidden contraband beneath his or her clothing (People v Hall, 10 NY3d 303, 311 [2008], cert denied 555 US ___, 129 S Ct 159 [2008]), and the search warrant at issue did not set forth any particularized ground to suppose that defendant had in fact secreted contraband under his clothes.

People v Caban (14 NY3d 369)

The defendant was convicted of criminally negligent homicide for driving into and killing a pedestrian. During her trial, the People showed that at the time of the accident, her driver's license was suspended. The defendant argued that evidence of the license suspension should not have been admitted because it was irrelevant to the issue of criminal negligence. The Court affirmed the conviction, ruling that the evidence assisted the jury in determining the extent of the defendant's fault.

People v Tolentino (14 NY3d 382, *cert granted* 131 S Ct 595)

Defendant was driving his car in New York City when he was stopped by police for playing music too loudly. The police learned his name and ran a computer check of Department of Motor Vehicles (DMV) files to look up his driving record. When this check disclosed that defendant's license was suspended with at least 10 suspensions imposed on at least 10 different dates, he was arrested and charged with first-degree aggravated unlicensed operation of a motor vehicle (Vehicle and Traffic Law § 511 [3] [a] [ii]). Defendant claimed that his driving record maintained by DMV was subject to suppression because without the purportedly unlawful stop, the police would not have learned his name, which is what allowed them to access this record. Citing federal circuit court decisions handed down in immigration cases, the Court held that a defendant may not invoke the fruit-of-the-poisonous-tree doctrine when the only link between an allegedly improper police activity and the disputed evidence is that the police learned the defendant's name. The Court distinguished Davis v Mississippi (394 US 721 [1969]) and Hayes v Florida (470 US 811 [1985]), where individuals were illegally stopped for the purpose of obtaining their fingerprints. This evidence was used to establish these individuals' identities as perpetrators of crimes under investigation, not to establish the identity of someone apprehended by the police and subject to the court's jurisdiction. Finally, the Court reasoned that its ruling would not give the police an incentive to flout the Fourth Amendment since any evidence recovered in the course of an illegal stop would still be subject to the exclusionary rule.

People v Pettigrew (14 NY3d 406)

In this proceeding to determine defendant's risk level classification under the Sex Offender Registration Act, defendant contested 30 points under risk factor one which requires clear and convincing evidence that defendant was armed with a dangerous instrument. The Court held that defendant's display of a gun to the victim and its threatened use constituted clear and convincing evidence that he was armed with a dangerous instrument during the commission of crime for which he was classified a level three sex offender.

People v McBride (14 NY3d 440)

The Court held that there was record evidence to support the determination that exigent circumstances justified the warrantless entry into defendant's home. Although warrantless entries are presumptively unreasonable, the Court stated there are a number of factors that a suppression court should consider in determining whether exigent circumstances are present. Those factors, though not exhaustive, include: (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being en-

tered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. Analyzing these factors, the Court noted that defendant did not challenge the suppression court's finding of probable cause to arrest him for armed robbery, a violent crime. The Court also noted there was record support for the affirmed findings below, precluding this Court's further review.

People v Gravino; People v Ellsworth (14 NY3d 546)

Defendant Gravino pleaded guilty to a crime requiring her to register as a sex offender under the Sex Offender Registration Act (SORA) (Correction Law art 6-C); defendant Ellsworth pleaded guilty to a sex crime in exchange for a split sentence of six months in jail and 10 years of probation. Both subsequently argued that their pleas were not knowing, voluntary and intelligent because during their respective plea colloquies, Gravino was not informed of her SORA obligation, and Ellsworth was not advised that contact with his minor children might be restricted. The Court held that SORA registration and the terms and conditions of probation are not part of the punishment meted out by a judge. As a result, they are collateral rather than direct consequences of a guilty plea -- i.e., a judge's failure to mention them at the plea hearing does not, by itself, undermine the knowing, voluntary and intelligent nature of a defendant's guilty plea.

People v Pierce (14 NY3d 564)

The issue in this case was whether certain crimes were properly charged in a superior court information (SCI) upon the defendant's waiver of indictment on a felony complaint pursuant to a negotiated plea. Although a lesser included offense of a crime charged in the felony complaint may usually be substituted for the original charge in the SCI, in this case one of the new charges in the SCI was of a higher grade than the crime charged in the felony complaint. While the statutory scheme does not prevent a crime of higher degree from being included in an SCI if properly joined with another crime in the SCI that had also been charged in the felony complaint, here joinder of the the higher-grade offense was impermissible under CPL 200.20 (2) (c) because the crimes set forth in the SCI lacked comparable elements and involved dissimilar criminal conduct. Hence, the improper inclusion of an offense in the waiver of indictment and SCI was deemed a jurisdictional defect that required reversal of the conviction.

People v Mitchell (15 NY3d 93)

Defendant pleaded guilty in the County Court of Essex County to felony driving while intoxicated (Vehicle and Traffic Law §§ 1192 [2], [3], 1193 [1] [c]) and aggravated unlicensed operation of a motor vehicle in the second degree, a misdemeanor (Vehicle and Traffic Law § 511 [2]). He was sentenced to time in jail and probation, and the court transferred supervision of his probation to Franklin County, where defendant resided, as required by Criminal Procedure Law § 410.80 (1). When defendant later asked County Court in Essex County to set aside his felony conviction and sentence, the judge turned him down on the ground that County Court in Franklin County was, in the words of section 410.80 (2), "the appropriate court within the jurisdiction of the receiving probation department," which assumed all powers and duties of the sentencing court and possessed sole jurisdiction in the case. The Court disagreed, concluding that section 410.80 (2) transferred from sentencing courts to receiving courts the full range of powers and duties necessary for the judiciary to

carry out its responsibilities to enforce the terms and conditions of probationers, and to deal with relief from forfeitures and disabilities. The Legislature did not intend, in addition, to divest sentencing courts of their jurisdiction under Criminal Procedure Law article 440.

People v Devone; People v Abdur-Rashid (15 NY3d 106)

In these companion cases arising out of law enforcement's use of a canine sniff during a vehicular stop, the Court concluded that police needed only a "founded suspicion" before conducting such a sniff. The Court deemed that standard appropriate given one's diminished expectation of privacy when traveling in an automobile, coupled with the fact that canine sniffs are less intrusive than residential searches and provide significant utility to law enforcement.

People v Reome (15 NY3d 188)

The defendant was convicted of being an accomplice to rape. The People's case at trial consisted primarily of testimony from two witnesses -- the victim, and one of the defendant's accomplices. The victim provided detailed testimony about the incident but was unable to identify the men involved. The accomplice's account of the incident was very similar to the victim's, but he identified the defendant as one of the participants in the rape. On appeal, the defendant argued that his conviction violated CPL 60.22 (1), which says, "A defendant may not be convicted of any offense upon the testimony of an accomplice unsupported by corroborative evidence tending to connect the defendant with the commission of such offense." In order to decide this appeal, the Court had to decide whether CPL 60.22 (1) required that the non-accomplice evidence independently connect the defendant to the crime, or whether the statute was satisfied if the non-accomplice evidence merely "harmonized" with the accomplice evidence. The Court affirmed the defendant's conviction, holding that "[c]ourts may consider harmonizing evidence as well as independent evidence, while giving due weight to the difference between the two."

People v Rivera (15 NY3d 207)

The Court held that the trial court violated CPL 310.70 when it instructed the jury to render a partial verdict, in which the jury acquitted defendant of four counts (of the eleven submitted to it) and convicted him of one, refused to accept said verdict after it was announced in open court, and then ordered the jury to continue deliberations on all the counts submitted to it. The Court noted that under the plain language of CPL 310.70, a trial court is required to follow one of two courses when a deliberating jury declares that it has reached a verdict as to some, but not all, of the counts submitted to it, and there is a reasonable possibility of ultimate agreement on any of the unresolved counts. The court may either order the jury to render a partial verdict and continue deliberating “upon the remainder” of the counts submitted to the jury (CPL 310.70 [1] [b] [i]), or “[r]efuse to accept a partial verdict” and order the jury to continue its deliberations “upon the entire case” (CPL 310.70 [1] [b] [ii]). In addition, the Court stressed that by refusing to accept the partial verdict after it was announced, the trial court signaled to the jury that the partial verdict was incorrect and effectively, even though inadvertently, inserted itself into the jury deliberations.

People v Correa; People v Fernandez; People v Mack (15 NY3d 213)

In these three cases, defendants challenged rules promulgated by the Chief Judge

and Chief Administrative Judge creating the Bronx Criminal Division or Integrated Domestic Violence parts in Supreme Court and permitting the transfer of their misdemeanor prosecutions from local criminal courts to Supreme Court. After analyzing relevant sections of the New York Constitution and the Judiciary Law, the Court rejected defendants' contention that court administrators lacked the authority to create the new court parts and to direct the transfer of misdemeanor cases to those parts for resolution in Supreme Court. The Court was further unpersuaded by defendants' assertion that Supreme Court lacked the subject matter jurisdiction to try misdemeanor offenses not charged in an indictment or superior court information. The Court noted that, under the New York Constitution, Supreme Court has general, concurrent jurisdiction over any case that can be heard by any other court in the unified court system (with the exception of claims against the state). Although defendants claimed that certain provisions of the Criminal Procedure Law divested Supreme Court of that jurisdiction, the Court disagreed after examination of that statutory scheme, finding that, even if the Legislature had the authority to curtail Supreme Court's power in the manner claimed by defendants, none of the provisions on which defendants relied evinced such a legislative intent.

People v McKinnon (15 NY3d 311)

Defendant was convicted of first degree assault. The question on appeal was whether defendant "seriously disfigured" his victim. The Court held that a person is seriously disfigured when a reasonable observer would find the victim's altered appearance distressing or objectionable. Relevant factors include the nature of the injury and the position of the injury on the victim's body. Applying this standard, the Court found the record insufficient to support the jury's finding of serious disfigurement. The record showed only that the victim had two scars of moderate size on her inner forearm. The Court rejected the People's invitation to infer that whatever the jury saw during trial must have supported its finding of serious disfigurement.

People v Syville; People v Council (15 NY3d 391)

In these cases, the issue was whether defendants who failed to seek relief within the one-year grace period permitted in CPL 460.30 for failures to timely file a notice of appeal from a criminal conviction could seek leave to file a late notice of appeal through use of the coram nobis procedure. In each case, defendants submitted proof, not contested by the People, that they had timely requested that their attorneys file notices of appeal but their attorneys had failed to do so and they further contended that they had not and could not have reasonably discovered that omission in time to seek relief under CPL 460.30. The Court determined that a defendant who could not reasonably have discovered within the one-year statutory period that a notice of appeal was not filed must be provided with an opportunity to pursue that claim if the right to appeal was lost due solely to the deficient performance of counsel in failing to file a timely notice of appeal. The Court further concluded that coram nobis was the appropriate vehicle to address a constitutional wrong of this nature when a defendant has no other procedural recourse.

People v Levy (15 NY3d 510)

Police executed a search warrant against defendant's auto parts business in 2004 to look for and seize counterfeit parts for Ford vehicles. The search, which was conducted by

a detective and a brand-protection employee from Ford, turned up a variety of allegedly counterfeit parts, which were immediately seized. Subsequent search warrants were issued and executed in 2005 and 2006, both of which similarly resulted in the confiscation of products that were not manufactured by Ford or its aftermarket brand, but nonetheless displayed Ford product numbers or trademarks. As a consequence, defendant was eventually tried before a jury and convicted of two counts of second-degree trademark counterfeiting (Penal Law § 165.72). He protested that because the majority of the trademarks in evidence did not cover the specific automotive parts allegedly counterfeited, the People had not proven that he acted with the requisite "intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods" (id.). The Court rejected this argument, concluding that section 165.72, unlike the federal Trademark Counterfeiting Act, is not limited to those instances in which the counterfeit mark is used in connection with goods or services identical to those for which the mark is registered on the Principal Register at the United States Patent and Trademark Office.

People v Boscic (15 NY3d 494)

This case posed the question of whether the Court's prior decision in People v Todd (38 NY2d 755 [1975]) required that breath-alcohol devices, commonly referred to as breathalyzers, must be calibrated at least every six months in order for the test results to be admissible at trial in a driving while ability impaired prosecution. The Court determined that there is no per se six-month calibration rule but that the People must lay an adequate foundation demonstrating that the particular device used was in proper working order at the time the test was administered.

People v Hecker; People v Guardino; People v Hollis; People v Black (15 NY3d 625)

The Court applied the three-step protocol formulated by the United States Supreme Court in Batson v Kentucky (476 US 79 [1986]) to a series of four appeals. In People v Guardino and People v Hollis, the Court concluded that defendants failed to meet their respective burdens at step one of establishing a prima facie case of purposeful racial discrimination. The Court observed that although the first-step Batson burden is not intended to be onerous, purely numerical or statistical arguments are rarely conclusive in the absence of other facts or circumstances to give rise to an inference of discrimination. In People v Hecker, the Court concluded that there was no record support for Supreme Court's finding that defense counsel's decision to peremptorily strike one Asian-American juror was pretextual. The Court concluded that defense counsel's choice to strike the juror of Asian descent was not rooted in racial animosity. The Court further held that although the sufficiency of the step-one prima facie case becomes moot once a party places its race neutral reasons for lodging a peremptory strike on the record, the strength or paucity of a step-one showing is a factor that a trial court and a reviewing court may consider in determining whether the record as a whole supports a finding of prextext. Finally, in People v Black, the Court concluded that there was record support for Supreme Court's determination that the People's race-neutral reasons for excluding three African-American prospective jurors were nonpretextual. The Court rejected the argument that certain facially race-neutral reasons -- such as residence, employment status, and educational backgrounds -- are "per se" pretextual. Rather, the Court reaffirmed its precedent and held that trial courts must evaluate whether

the proffered step-two race neutral reasons are pretextual based on the totality of all the relevant facts and circumstances.

ELECTION LAW

Matter of Stewart v Chautauqua County Bd. of Elections (14 NY3d 139)

Following the general election for the position of Chautauqua County Legislator for the Seventh District, the candidates challenged, as relevant to the appeal, one affidavit ballot, two absentee ballots, and two optical scan ballots. The Court held that the Appellate Division properly invalidated the affidavit ballot because the record reflected the voter was not a resident of the voting district. As to the two absentee ballots, the method employed by the Board of Elections in response to the two voters' incomplete absentee ballot applications -- namely, mailing new absentee ballots to both voters with instructions to return the completed application together "with [the absentee] ballot or [the] ballot will not be counted" -- was not a substantive deficiency implicating voter qualification but, rather, was merely a slight deviation from the prescribed procedure and, accordingly, the votes were valid. Finally, in response to federal mandates, Chautauqua County was one of several counties statewide that used new optical scan voting machines for the first time in the November 2009 general election. At the end of the day of the election, two optical scan ballots remained which had been completed by voters but rejected by the machines as unreadable. Both voters had left their ballots at the optical scan machines without ensuring that the votes were counted. The Court concluded that the process utilized by the election inspectors, which ultimately culminated in a manual count of the ballots by the Board of Elections, complied with the provisions of the applicable regulation (9 NYCRR 6210.13).

ENVIRONMENTAL LAW

Matter of Lighthouse Pointe Prop. Assoc. LLC v New York State Dept. of Envtl. Conservation (14 NY3d 161)

Lighthouse Pointe Property LLC (Lighthouse) entered into agreements to purchase two parcels of land, intending to build a $250 million mixed use waterfront development on the property, the site of a closed city landfill and pollutant-laced fill material and soil. The landfill was included in the State's database of hazardous substance waste disposal sites. Lighthouse filed requests with the New York State Department of Environmental Conservation (DEC) for acceptance of these parcels into the State's Brownfield Cleanup Program (BCP), which provides tax credits to encourage the voluntary private-party cleanup of "brownfield site[s]," defined as "any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant" (ECL 27-1405 [2]). DEC turned down Lighthouse's applications on the ground that the quantities and concentrations of contaminants on the parcels were minimal and so did not complicate redevelopment by requiring cleanup. The Court concluded that DEC had acted arbitrarily and capriciously and contrary to law when it decided that this property did not fall within the statutory definition of a "brownfield site." The Court also opined that the record supported Supreme Court's decision that, as a matter of law, Lighthouse was eligible for acceptance

into the BCP program, given the undisputed evidence that the presence of contaminants in excess of accepted cleanliness levels had stymied the site's redevelopment in the past, and that Lighthouse's financing was contingent upon implementation of DEC-sanctioned remedial measures as well as a release from liability, which was "apparently impossible absent Lighthouse's completion of a cleanup under DEC's auspices in the BCP" (14 NY3d at 178).

ESTATES

Matter of Hyde (and another proceeding) (15 NY3d 179)

This appeal arose out of a dispute among trust beneficiaries over the payment of counsel fees the trustees had accrued while defending themselves against several beneficiaries' objections to trustee accountings. The beneficiaries who did not participate in the failed objections sought to have the counsel fees paid exclusively from the trust shares of the objecting beneficiaries, instead of from the corpus of the trust. The Court held that "Surrogate's Court Procedure Act § 2110 grants the trial court discretion to allocate responsibility for payment of a fiduciary's attorney's fees for which the estate is obligated to pay -- either from the estate as a whole or from shares of individual estate beneficiaries." The case was therefore remitted to the Surrogate's Court to determine, based on a multi-factored test, how to allocate responsibility for the fees. In so doing, the Court overruled its memorandum decision, Matter of Dillon (28 NY2d 597 [1971]), which interpreted SCPA 2110 (2) to require the corpus of the trust to pay the attorney's fees, regardless whether the beneficiaries' objections would have benefitted the trust as a whole. By overruling Dillon, the Court concluded it was "restor[ing] the plain meaning of SCPA 2110 (2)" and returning to the principles of fairness that had guided the case law preceding Dillon.

Estate of Schneider v Finmann (15 NY3d 306)

The Court held that a personal representative of an estate may maintain a malpractice claim against an attorney for damages resulting from negligent representation in estate tax planning where such planning caused enhanced estate tax liability. The Court explained that "privity, or a relationship sufficiently approaching privity, exists between the personal representative of an estate and the estate planning attorney." Agreeing with the Texas Supreme Court holding in Belt v Oppenheimer, Blend, Harrison & Tate, Inc. (192 SW3d 780 [Tex 2006]), this Court concluded that an estate has the capacity to maintain a legal malpractice action against an estate planner on a decedent's behalf because the estate "stands in the shoes of [the] decedent" (internal quotations and citation omitted). The Court reasoned that the attorney estate planner must be aware that he or she is tasked with minimizing the tax burden of an estate and the personal representative of an estate should not be prevented from raising a negligence claim against the attorney who caused harm to the estate. The Court further concluded that "such a result comports with EPTL 11-3.2 (b), which generally permits the personal representative of a decedent to maintain an action for 'injury to person or property' after that person's death."

EVIDENCE

People v Ortega; People v Benston (15 NY3d 610)

These cases presented the issue whether certain statements contained in medical records were relevant to diagnosis or treatment and therefore admissible at trial under the business records exception to the hearsay rule. In Benston, the Court determined that references in complainant's medical records to "domestic violence" and a "safety plan" were relevant to complainant's diagnosis and treatment, observing that domestic violence, both as a diagnosis and as an offense, is different from other types of assault. The Court also rejected the argument that this was not a case of domestic violence because the parties were no longer involved in a romantic relationship. Rather, the Court determined that domestic violence is characterized by the parties' involvement in either a current or former intimate relationship. As a result, the Court also found that the references in the medical records to the perpetrator's identity as a former boyfriend were relevant to complainant's diagnosis and treatment. In Ortega, the Court held statements that complainant was "forced to" smoke a white powdery substance were relevant to diagnosis and treatment because the treatment for a person in complainant's position could differ from the treatment for one who intentionally takes drugs and is in control over the amount and nature of the substance ingested.

FAMILY LAW

Matter of Doe (14 NY3d 100)

This case involved an unmarried couple -- LMB and ERJ -- who began caring for a Cambodian orphan. Each member of the couple -- first LMB, and later ERJ -- obtained a document from the Cambodian government purporting to authorize an adoption. After the couple broke up, each claimed that the other's adoption was invalid. ERJ commenced an adoption proceeding before the New York County Surrogate without notice to LMB, who later learned about it and petitioned to vacate it, an application the lower courts granted. On appeal, the parties disputed whether the child was initially adopted by LMB, whether LMB had lost any parental rights that he might have had over the child, and whether the lower courts should have considered the best interests of the child when deciding whether to vacate the adoption by ERJ. The Court found that LMB had validly adopted the child under Cambodian law and that, in this case, New York courts should recognize that adoption. Because New York recognized LMB as the child's father, and because LMB and the child were both living in New York throughout the relevant period, LMB could not relinquish his parental rights unless the requirements of New York law were met, which they were not. The Court refused to enforce a Cambodian government declaration nullifying LMB's parental rights because, at the time of the purported nullification, LMB and the child were both living in New York. The adoption by ERJ was therefore invalid because it had occurred without the consent of LMB, the child's lawful father. The Court concluded that, while the best interests of the child could not remedy this defect in the adoption by ERJ, the lower courts should remain sensitive to the child's interests and to his relationship with ERJ, who had been living with him and caring for him for years.

Matter of H.M. v E.T. (14 NY3d 521)

On this appeal, the Court considered whether Family Court has subject matter jurisdiction to adjudicate a support petition brought pursuant to the Uniform Interstate Family Support Act (Family Ct Act art 5-B) by a biological parent seeking child support from her former same-sex partner. Reasoning that, because Family Court has the subject matter jurisdiction to ascertain the support obligations of a female parent (Family Ct Act § 413 [1] [a]), this Court concluded that Family Court also has the inherent, ancillary authority to ascertain in certain cases whether a female respondent is, in fact, a child's parent.

Debra H. v Janice R. (14 NY3d 576)

Janice R. is the biological mother of a child conceived through artificial insemination. She and Debra H. entered into a civil union in Vermont the month before the child's birth, but Janice R. repeatedly rebuffed Debra H.'s requests to become the child's second parent by means of adoption. After the relationship between Janice R. and Debra H. ended, Debra H. sought joint legal and physical custody of the child on a theory of equitable estoppel or de facto parentage, asking the Court to overrule its decision in Matter of Alison D. v Virginia M. (77 NY2d 651 [1991]). Alison D. held that only a child's biological or adoptive parent has standing under Domestic Relations Law § 70 to seek visitation against the wishes of a fit parent. The Court adhered to Alison D.'s bright-line rule, commenting that the flexibility championed by Debra H. "threaten[ed] to trap single biological and adoptive parents and their children in a limbo of doubt" (14 NY3d at 595). The Court also concluded, however, that Debra H. was the child's parent under Vermont law as a result of the civil union and under New York law as a matter of comity, thereby conferring standing on her under section 70 to seek visitation and custody.

Matter of Juanita A. v Kenneth Mark N. (15 NY3d 1)

The issue before the Court was whether a biological father may assert an equitable estoppel defense in paternity and child support proceedings. At the time the petition was brought against the biological father, the child was 12 years old and had lived in an intact family with her mother and her mother's husband. The mother's husband's name appeared on the child's birth certificate and he was also the biological father of mother's older and younger children. For most of the child's life, she referred to mother's husband as father. The biological father raised an issue as to whether it was in the child's best interest to have someone besides the husband declared the child's father this late in her childhood. The Court expressly rejected the Law Guardian's position that a person who has already been determined to be a child's biological father could not raise such an equitable estoppel argument. As a result, the Court concluded that it was proper for the biological father to assert a claim of estoppel to, among other things, protect the status of that parent-child relationship. Thus, under the circumstances of the case, the Court held that where another father figure is present in the child's life, the biological father may assert an equitable estoppel claim.

FOREIGN JUDGMENT

John Galliano, S.A. v Stallion, Inc. (15 NY3d 75)

The Court held that, pursuant to CPLR article 53, on the record before it a money

judgment entered in France should be recognized in New York. The party opposed to recognition, Stallion, Inc., argued that, because certain papers served on it in the United States in an effort to comply with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Convention) (20 UST 361, TIAS No. 6638 [1969]) were written in French and not accompanied by an English translation, the money judgment should not be recognized in New York. The Court disagreed, affirming the Appellate Division's decision that due process was not offended on this record. If a party received no meaningful notice of a foreign proceeding resulting in a judgment against it, recognition of that judgment here would be improper. But where a party submits to a foreign jurisdiction's courts with respect to the subject matter involved -- as occurred here given the licensing agreement's forum selection clause -- and where it received meaningful notice of the foreign proceeding, under article 53 of the CPLR the judgment must be recognized in New York.

INSURANCE LAW

Kramer v Phoenix Life Ins. Co. (15 NY3d 539)

On this certified question from the United States Court of Appeals for the Second Circuit, the Court held that New York law permits an individual to procure an insurance policy on his or her own life and immediately transfer it to one without an insurable interest in the individual's life, even if the policy was obtained for the purpose of the transfer. The case involved several insurance policies procured by the insured and issued to two insurance trusts, with the insured's adult children named as trust beneficiaries. Allegedly, neither the insured nor his children ever paid premiums on the policies and, immediately after the policies were issued, the beneficiaries assigned their interests to "stranger investors." Following the insured's death, his widow, as personal representative of his estate, filed an action seeking a declaratory judgment that the policy proceeds should be paid to her because the policies had been obtained in violation of the insurable interest rule, Insurance Law § 3205 (b). Defendants were investors, brokers, trustees, and life insurance companies. The insurance companies sought a declaration that because the policies violated the insurable interest rule, they were void and need not be paid to anyone. The other defendants argued that the policies complied with the rule, and so should be paid to those who held them. The Court agreed. Under the express language of Insurance Law § 3205 (b), there is no insurable interest requirement when an insured obtains a policy on his or her own life and the insured has great freedom in immediately assigning a policy to anyone, without regard to the existence of an insurable interest. Therefore, the Court concluded, the policies complied with the insurable interest rule.

LABOR LAW

Matter of New York Charter School Assn. v Smith (15 NY3d 403)

This litigation was sparked by an opinion letter dated August 31, 2007, wherein the New York State Department of Labor declared that the prevailing wage law mandate of Labor Law § 220 applied to all charter school projects. Shortly thereafter, the Commissioner

of the Department of Labor notified the Charter Schools Institute and the Commissioner of the State Education Department that it would begin to enforce prevailing wage laws on all charter school projects for which the advertising of bids occurred on or after September 20, 2007. The Court held that this blanket ruling of the Commissioner was error, as the projects undertaken by the charter schools contemplated by the litigation did not meet the contract prong of the Matter of Erie Indus. Dev. Agency v Roberts (63 NY2d 810 [1984]) test.

Nostrom v A.W. Chesterton Co. (15 NY3d 502)

The issue before the Court was whether vicarious liability under Labor Law § 241 (6), which generally arises from a violation of the regulations found in Part 23 of the Industrial Code, may be based solely on a violation of regulations contained in Part 12 of the Industrial Code pertaining to the control of air contaminants in the workplace. In this case, because defendants did not direct or control the decedent's work, they could be liable for his injuries only if the vicarious liability provisions in Labor Law § 241 (6) were applicable. After examining the text and regulatory history of Parts 12 and 23 of the Industrial Code, the Court concluded that the Legislature had not intended to impose section 241 (6) vicarious liability on owners and contractors for violations of the regulations in Part 12, except to the extent that certain provisions are expressly incorporated in Part 23.

LANDLORD AND TENANT

Matter of Bikman v New York City Loft Bd. (14 NY3d 377)

The issue in this case is whether the estate of a deceased loft tenant is entitled to recoup the value of improvements made by the tenant pursuant to Multiple Dwelling Law § 286 (6). Under section 286 (6), a residential tenant may sell the improvements he made to the unit to the landlord or an incoming tenant. The intent of the law was to prevent an owner from (1) receiving "unearned enrichment" and (2) depriving the tenants who paid for the improvements of fair compensation. The Court concluded that it would be unfair to deprive the estate of the value of the property which would have benefitted the tenant had she lived. The Court rejected the determination by the Loft Board, the administrative body which oversees lofts, that the estate could not recoup the value of improvements made by the deceased tenant. Accordingly, the Loft Board's interpretation of the statute was not entitled to deference and this Court held that Multiple Dwelling Law § 286 (6) permits the estate of a deceased tenant to recoup the value of fixtures and improvements made to the unit.

Matter of Cintron v Calogero (15 NY3d 347)

Tenant filed a complaint alleging that his then-current rent constituted an overcharge based on the owners' failure to comply with two previous DHCR rent reduction orders issued in 1987 and 1989. This Court concluded that it was not a violation of the four-year time limit to consider the rent set by the previous rent reduction orders in ascertaining the amount of the overcharge due to tenant, because (1) the rent reductions orders remained in effect during the four-year period preceding tenant's overcharge complaint, and (2) DHCR could examine its own records to determine the appropriate rent based on the rent reduction orders, rather than imposing any onerous burden on a landlord to keep rental history records indefinitely.

Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin. (15 NY3d 358)

Applying the rule set forth in Thornton v Baron (5 NY3d 175 [2005]), the Court concluded that, in determining the base rent in an overcharge proceeding involving a rent-stabilized apartment, the Division of Housing and Community Renewal had an obligation to ascertain whether the rent on the base date was a lawful rent, notwithstanding the statute of limitations generally applicable to rent overcharge claims, where substantial indicia of fraud existed on the record.

MATRIMONIAL LAW

Howard S. v Lillian S. (14 NY3d 431)

At issue in this case was the extent of discovery that should be permitted into issues of fault in matrimonial actions. In recognition of the fact that marriage is an economic partnership, marital fault generally is not considered when making an equitable distribution award unless there is egregious conduct that shocks the conscience. The Court further interpreted egregious conduct as outrageous behavior exceeding the limits of any basis for an ordinary divorce action. Plaintiff husband contended that wife's conduct -- engaging in an adulterous relationship that resulted in the birth of a child that she knew or should have known was fathered by another man and keeping that information from plaintiff -- constituted just such egregious conduct. This Court rejected that argument and found that, while undoubtedly painful for the other spouse, adultery and its unintended consequences did not constitute egregious conduct. The Court, therefore, rejected plaintiff's attempt to obtain discovery on the issue of marital fault.

MENTAL HEALTH

Matter of State of New York v Rashid (16 NY3d 1)

The Court interpreted article 10 of the Mental Hygiene Law, a key component of the Sex Offender Management and Treatment Act (SOMTA) (L 2007, ch 7), to determine when a sex offender civil management petition is timely, and which statutory provisions define SOMTA-qualifying offenses. The Court held that, in order to pursue civil management under article 10, the Attorney General must file the required petition in a court of competent jurisdiction before the subject of the petition is released from State custody or supervision; and that SOMTA's definition of "related offenses" (Mental Hygiene Law § 10.03 [1]), rather than Penal Law § 70.30, governs eligibility for article 10 civil commitment.

People ex rel. Joseph II. v Superintendent of Southport Correctional Facility (15 NY3d 126)

The issue in this case was whether prisoners were "detained sex offenders" subject to involuntary hospitalization at the conclusion of their prison terms under article 10 of the Mental Hygiene Law. There was no dispute that each had committed sex offenses and that each was in detention; the question was whether the statute nevertheless did not apply because the prisoners' detention was illegal. Each had previously completed his prison term,

and had been subjected to an illegal term of postrelease supervision. Violation of that illegal post-release supervision led to their reincarceration. Each argued that the statute was not intended to reach sex offenders illegally detained. Although each succeeded in the lower courts, the Court of Appeals reversed, holding that the relevant article 10 provisions are best read not to distinguish between legally and illegally detained sex offenders.

MUNICIPAL CORPORATIONS

San Marco v Village/Town of Mount Kisco (2010 NY Slip Op 09197 [decided December 16, 2010])

This appeal posed the question whether a prior written notice statute acts as an absolute bar to recovery against a municipality in a slip and fall case, where no prior written notice of a black ice hazard in a municipal parking lot had been filed. Since the municipality's snow plowing efforts might have created the black ice and, if so, the municipality might have known of the danger, the Court applied an exception to the prior written notice statute for a hazard created by the municipality's "affirmative act of negligence" (Amabile v City of Buffalo, 93 NY2d 471, 474 [1999]). In denying summary judgment to the municipal defendant here, the Court upheld the underlying purpose of prior written notice statutes to give municipalities a reasonable opportunity to remedy dangerous conditions on their property. However, the Court reasoned that "these statutes were never intended to and ought not to exempt a municipality from liability as a matter of law where a municipality's negligence in the maintenance of a municipally owned parking facility triggers the foreseeable development of black ice as soon as the temperature shifts." Distinguishing the long-term wear and tear that creates potholes from the readily ascertainable temperature fluctuations that cause snow to melt and refreeze, the Court held that "the immediacy requirement for 'pothole cases' should not be extended to cases involving hazards related to negligent snow removal."

NEGLIGENCE

Anand v Kapoor (15 NY3d 946)

Plaintiff was injured during a golf game. Defendant, a friend, "shanked" a shot, striking plaintiff while the latter was searching for his own ball. The errant shot blinded plaintiff in the left eye. Plaintiff claimed that defendant's failure to call "Fore" or otherwise warn him amounted to negligence. The Court noted that those who participate in sports and recreational activities assume certain inherent risks, but not the risks of reckless or intentional conduct or concealed or unreasonably increased risks. Holding that defendant's failure to warn his friend did not fit any of these exceptions, the Court concluded that plaintiff assumed the risk of being hit by the "shanked" shot.

Trupia v Lake George Cent. School Dist. (14 NY3d 392)

In this action to recover for injuries sustained by a child in a fall from a bannister during allegedly unsupervised "horseplay" at a summer program run by defendant, the question was whether defendant could avoid responsibility for the child's injury by claiming that

the child had assumed the risks of the injury-producing activity. In holding that this would not be a proper application of the assumption of risk doctrine, the Court recognized that the doctrine constitutes a closely circumscribed exception to the now dominant rules of comparative causation set forth in article 14 of the CPLR. The retention of the assumption of risk doctrine, the Court noted, is justified by the need to protect socially beneficial activities entailing elevated risk from engendering prohibitive liability. The "horseplay" resulting in the infant plaintiff's injury was not such an activity.

REAL PROPERTY TAX

Matter of Gordon v Town of Esopus (15 NY3d 84)

The Court concluded that, under Real Property Tax Law § 480-a, land certified by the Department of Environmental Conservation (DEC) as forest land must be assessed for tax purposes as forest land, not as vacant land. Under the Real Property Tax Law, vacant land is assessed for tax purposes based on its potential for development. Land certified by the DEC as forest land, however, is, pursuant to statute, land exclusively devoted to and suitable for forest crop production. The Court detailed the legislative history of RPTL 480-a, explaining that the Legislature in the mid-1970s drafted and re-drafted the statute and its tax assessment mechanism, all with the purpose of providing a means to protect the State's environment as well as make viable the business of managing forest land and timber production. The Court reasoned that because land is assessed based on its use, and given that the Legislature, in enacting a certification and taxing program, recognized forest land management as a land use, to effectuate the Legislature's purpose in enacting RPTL 480-a, land certified as forest land must be assessed for tax purposes as forest land, not vacant land with development potential.

RIGHT TO COUNSEL

Hurrell-Harring v State of New York (15 NY3d 8)

Plaintiffs, defendants in collateral criminal proceedings unable by reason of indigency themselves to retain counsel, brought this action to obtain declaratory and injunctive relief to address the state's alleged failure, by reason of systemic inadequacies, to provide them with constitutionally mandated representation. On the above-captioned appeal, plaintiffs' complaint, which had been dismissed by the Appellate Division, was reinstated in part. The Court held that although plaintiffs could not state collateral civil claims for ineffective representation, they had sufficiently pleaded claims for the denial of constitutionally required representation by alleging that they had been either actually or constructively unrepresented at critical stages of the underlying criminal proceedings. The Court recognized that the latter category of claims, seeking to enforce the mandate of Gideon v Wainwright (372 US 335 [1963]), were, in distinction to claims requiring an assessment of the constitutional adequacy of particular representation, cognizable in a collateral civil action.

SCHOOLS

Brandy B. v Eden Cent. School Dist. (15 NY3d 297)

Plaintiff commenced this action against Eden Central School District and Child and Family Services of Erie County (CFS), seeking damages for injuries resulting from an alleged sexual assault of her daughter by an older student on the school bus. Plaintiff asserted that the school district inadequately supervised the children and that CFS failed to warn Robert's foster parents of the need to closely supervise him. The Court held that, without "specific knowledge or notice of the dangerous conduct which caused the injury," schools cannot be held liable under a theory of inadequate supervision when unanticipated third-party acts cause injury upon a fellow student. Though Robert had a prior history of aggression against others, the school district demonstrated that there was no record of any sexually aggressive behavior or that his prior behavioral issues had manifested in the two years before the plaintiff's allegations. In fact, his record showed behavioral improvements. Because the school district did not have any knowledge or notice of "prior conduct similar to the unanticipated injury-causing act," summary judgment dismissing the complaint was appropriate. The Court also rejected plaintiff's claim against CFS.

TAXATION

Cayuga Indian Nation of N.Y. v Gould (14 NY3d 614)

This appeal involved a dispute between the Cayuga Indian Nation and law enforcement authorities in Cayuga and Seneca Counties concerning the Nation's failure to collect cigarette sales taxes relating to the retail sale of cigarettes to non-Indian consumers occurring at convenience stores operated by the Nation on recently reacquired aboriginal land. When the District Attorneys of each county executed search warrants and confiscated the inventories of unstamped cigarettes at two convenience stores owned by the Nation, the Nation brought this declaratory judgment action contending that it had no obligation to collect sales taxes from consumers on behalf of the State because the convenience stores were situated on "qualified reservation" land and the State had not implemented a statutory or regulatory scheme addressing the specific tax collection issues posed by the retail sale of cigarettes on Indian reservations. The Court agreed that the Nation's convenience stores were located on a "qualified reservation" as that term is used in Tax Law § 470 (16) (a), interpreting that provision as encompassing any land recognized as such by the federal government. The Court further concluded that the Nation was entitled to a declaration that, absent the implementation of an appropriate legislative or regulatory scheme governing the calculation and collection of cigarette sales taxes that distinguishes between federally-exempt sales to Indians and non-exempt sales to other consumers, county law enforcement authorities could not sanction the Nation for purported noncompliance with New York cigarette sales tax laws.

TORTS

Adams v Genie Indus., Inc. (14 NY3d 535)

Plaintiff was injured when a "personnel lift" he was riding toppled over. He won a

verdict against the lift's manufacturer for negligence and strict liability under a design defect theory, arguing to the jury that the lift should have been built with attached, rather than detachable "outriggers" -- metal "feet" that extend the base of the lift and prevent tipping. The issues in the case were whether sufficient evidence supported the design defect claim and, if so, whether evidence of post-manufacture accidents and defendant's response to them tainted the verdict. The Court upheld the verdict, finding that although another of plaintiff's theories -- premised on defendant's negligence after the product was manufactured and sold -- should not have been presented to the jury, the error was harmless because the evidence adduced to support that theory was also admissible to prove the viable theories. The Court also held that while a party that consents to a modification of a damages award is not aggrieved by and cannot appeal from that modification, it does not thereby lose its right to contest a finding of liability, by which it remains aggrieved, on appeal.

DDJ Mgt., LLC v Rhone Group LLC (15 NY3d 147)

Plaintiffs in this case claimed to have been defrauded into making a large loan to a borrower that later became insolvent. Defendants included major shareholders of the borrower. Defendants argued that, because of the borrower's obvious financial problems, plaintiffs' reliance on any misrepresentations was not justifiable. The Court found that plaintiffs had adequately pleaded justifiable reliance, noting that they had demanded from the borrower various contractual representations and warranties about its financial health and the accuracy of its audit reports. The opinion explained that, "where a plaintiff has gone to the trouble to insist on a written representation that certain facts are true, it will often be justified in accepting that representation rather than making its own inquiry."

Giordano v Market Am., Inc. (15 NY3d 590)

This case came to the Court by certified questions from the Second Circuit. The Court was asked to construe CPLR 214-c (4), which extends the statute of limitations for certain tort victims who do not immediately discover the cause of their injuries. The Court held that CPLR 214-c (4) is limited to actions for injuries caused by the latent effects of exposure to a substance. It further determined that an injury which occurs within 24 to 48 hours of exposure to a substance can be considered "latent" for these purposes. Finally, CPLR 214-c (4) tolls the statute of limitations only if the plaintiff proves that technical, scientific or medical knowledge sufficient to ascertain the cause of the injury had not been discovered, identified or determined before the expiration of the otherwise-applicable limitation period. The Court found this standard satisfied at, but not before, the point at which expert testimony to the existence of the relationship would be admissible in New York courts.

Sykes v RFD Third Ave. 1 Assoc., LLC (15 NY3d 370)

The question presented was whether plaintiffs, purchasers of an apartment, stated a cause of action for negligent misrepresentation against the defendant engineering firm. Plaintiffs complained that defendant made negligently false statements in the building's offering plan about the building's heating, ventilation and air-conditioning system, and that they relied on those statements to their detriment. To state a claim for negligent misrepresentation, plaintiffs had to allege that (1) defendant was aware its statement would be used for a particular purpose or purposes; (2) defendant intended a known party or parties to rely

on its statement; and (3) some affirmative conduct linked defendant to plaintiffs. The Court, construing the "known party or parties" prong, dismissed plaintiffs' complaint. While plaintiffs alleged defendant knew, in general, that prospective purchasers of apartments would rely on the offering plan, they did not allege that defendant knew these particular plaintiffs would so rely.

UNEMPLOYMENT INSURANCE

Matter of Empire State Towing & Recovery Assn., Inc. (Commissioner of Labor) (15 NY3d 433)

Empire State Towing and Recovery Association, Inc. challenged the determination of the Unemployment Insurance Appeal Board that its legal counsel, Peter O'Connell, was its employee in his capacity as executive director, and that Empire State owed additional unemployment insurance payments. An employer-employee relationship exists where the evidence shows that the employer exercises control over the results produced or the means used to achieve the results (see Matter of 12 Cornelia St. [Ross], 56 NY2d 895, 897 [1982]). However, "[c]ontrol over the means is the more important factor to be considered" (Matter of Ted Is Back Corp. [Roberts], 64 NY2d 725, 726 [1984]). In the context of professionals, under the "overall control" test, "substantial evidence of control over important aspects of the services performed other than results or means" is sufficient to establish an employer-employee relationship (Matter of Concourse Ophthalmology Assoc. [Roberts], 60 NY2d 734, 736 [1983]). The Court held that under both tests there was not sufficient evidence to support the Board's finding of an employer-employee relationship.

IV. Appendices

APPENDICES

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

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 web site
http://www.courts.state.ny.us/ctapps/

SUMMARY OF TOTAL APPEALS DECIDED IN 2010 BY JURISDICTIONAL PREDICATE
January 1, 2010 through December 31, 2010

BASIS OF JURISDICTION: ALL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Dissents in Appellate Division	13	10	4	2	0	29
Permission of Court of Appeals or Judge thereof	70	50	11	2	0	133
Permission of Appellate Division or Justice thereof	30	19	2	2	0	53
Constitutional Question	0	1	3	0	0	4
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	0	0	0	17	17
Totals	**113**	**80**	**20**	**6**	**17**	**236**

BASIS OF JURISDICTION: CIVIL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Dissents in Appellate Division	13	10	4	2	0	29
Permission of Court of Appeals	23	26	7	1	0	57
Permission of Appellate Division	16	11	2	1	0	30
Constitutional Question	0	1	3	0	0	4
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	0	0	0	17	17
Totals	**52**	**48**	**16**	**4**	**17**	**137**

BASIS OF JURISDICTION: CRIMINAL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Permission of Court of Appeals Judge	47	24	4	1	0	76
Permission of Appellate Division Justice	14	8	0	0	1	23
Other [1]	0	0	0	0	0	0
Totals	**61**	**32**	**4**	**1**	**1**	**99**

[1] Includes anomalies which did not result in an affirmance, reversal, modification or dismissal (e.g., judicial suspensions, acceptance of a case for review pursuant to Rule 500.27).

APPENDIX 4

COMPARATIVE STATISTICAL ANALYSIS FOR APPEALS DECIDED IN 2010

ALL APPEALS - % CIVIL AND CRIMINAL

	2006	2007	2008	2009	2010
Civil	67% (127 of 189)	73% (135 of 185)	76% (172 of 225)	69% (146 of 212)	58% (137 of 236)
Criminal	33% (62 of 189)	27% (50 of 185)	24% (53 of 225)	31% (66 of 212)	42% (99 of 236)

CIVIL APPEALS - TYPE OF DISPOSITION

	2006	2007	2008	2009	2010
Affirmed	57%	46%	42%	41%	38%
Reversed	21%	22%	37%	35%	35%
Modified	8%	14%	8%	9%	11%
Dismissed	--	--	--	1%	3%
Other (e.g., judicial suspension; Rule 500.27 certified question)	14%	18%	12%	14%	13%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	2006	2007	2008	2009	2010
Affirmed	69%	69%	70%	71%	62%
Reversed	16%	30%	7%	21%	32%
Modified	12%	4%	23%	8%	4%
Dismissed	3%	--	--	--	2%

CIVIL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2006	2007	2008	2009	2010
Appellate Division Dissents	15% (19 of 127)	16% (22 of 135)	15.7% (27 of 172)	20% (29 of 146)	21.2% (29 of 137)
Court of Appeals Leave Grants	42.5% (54 of 127)	39% (53 of 135)	42% (72 of 172)	36.3% (53 of 146)	41.6% (57 of 137)
Appellate Division Leave Grants	21% (27 of 127)	21% (28 of 135)	25.6% (44 of 172)	21.9% (32 of 146)	21.9% (30 of 137)
Constitutional Question	8% (11 of 127)	6% (8 of 135)	4.7% (8 of 172)	6.1% (9 of 146)	2.9% (4 of 137)
Stipulation for Judgment Absolute	--	--	--	--	--
CPLR 5601(d)	--	1.5% (2 of 135)	.6% (1 of 172)	1.4% (2 of 146)	--
Supreme Court Remand	--	--	--	2% (3 of 146)	--
Judiciary Law § 44 [1]	2% (3 of 127)	3.7% (5 of 135)	4% (7 of 172)	3.4% (5 of 146)	.7% (1 of 137)
Certified Question from Federal Court (Rule 500.27) [2]	10% (13 of 127)	12.6% (17 of 135)	7.6% (13 of 172)	8.9% (13 of 146)	11.7% (16 of 137)
Other	--	--	--	--	--

[1] Includes judicial suspension matters.

[2] Includes decisions accepting/declining certification.

APPENDIX 6

CRIMINAL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2006	2007	2008	2009	2010
Permission of Court of Appeals Judge	85% (53 of 62)	76% (38 of 50)	72% (38 of 53)	70% (46 of 66)	77% (76 of 99)
Permission of Appellate Division Justice	15% (9 of 62)	22% (11 of 50)	28% (15 of 53)	30% (20 of 66)	23% (23 of 99)
Other	--	2%[1] (1 of 50)	--	--	--

[1] People v Taylor, capital appeal.

MOTION STATISTICS (2006 - 2010)

Motions Undecided as of January 1, 2010 - 197

Motions Numbers Used in 2010 -1380

Motions Undecided as of December 31, 2010 - 195

Motion Dispositions During 2010 - 1384

	2006	2007	2008	2009	2010
Motions Submitted for Calendar Year	1401	1481	1421	1397	1380
Motions Decided for Calendar Year	1397	1440	1459	1370	1384
Motions for leave to appeal	1021*	1100*	1097*	1074*	1045*
granted	61	77	74	77	63
denied	764	824	830	794	758
dismissed	192	192	189	199	224
withdrawn	4	7	4	4	5
Motions to dismiss appeals	8	11	8	7	5
granted	4	6	1	4	3
denied	4	4	6	2	1
dismissed	0	1	1	1	1
withdrawn	0	0	0	0	0
Sua Sponte and Court's Own motion dismissals	92	89	97	90	96
TOTAL DISMISSAL OF APPEALS	96	95	98	94	99
Motions for reargument of appeal	16	27	28	28	27
granted	0	1	0	0	0
Motions for reargument of motion	62	41	61	38	46
granted	1	2	0	0	2
Motions for assignment of counsel	52	48	48	55	83
granted	51	47	46	55	83
Legal Aid	9	8	13	12	24
denied	0	0	2	0	0
dismissed	1	1	0	0	0

* Because more than one relief request may be decided under a single motion number, the total of decisions by relief requests is greater than the total of motions decided.

APPENDIX 7

APPENDIX 7 (continued)

	2006	2007	2008	2009	2010
Motions to waive rule compliance	0	0	0	2	0
granted	0	0	0	0	0
Motions for poor person status	177	213	182	191	160
granted	0	4	8	8	6
denied	0	0	0	0	0
dismissed	177	209	174	183	154
Motions to vacate dismissal/preclusion	3	4	6	14	11
granted	3	2	4	12	11
Motions for calendar preference	0	1	0	1	1
granted	0	0	0	1	1
Motions for amicus curiae status	119	108	110	116	98
granted	114	100	102	112	95
Motions for Executive Law § 71 Order (AG)	2	2	0	0	0
Motions for leave to intervene	2	3	3	0	2
granted	2	3	2	0	2
Motions to stay/vacate stay	21	17	30	20	18
granted	2	2	1	4	1
denied	0	1	4	1	2
dismissed	17	14	25	15	15
withdrawn	2	0	0	0	0
Motions for CPL 460.30 extension	32	27	27	25	20
granted	27	20	26	22	17
Motions to strike appendix or brief	6	8	12	3	8
granted	1	3	4	1	1
Motions to amend remittitur	1	2	0	0	0
granted	0	0	0	0	0
Motions for miscellaneous relief	6	14	6	12	16
granted	0	2	1	0	1
denied	5	9	4	7	9
dismissed	1	2	1	5	6
withdrawn	0	1	0	0	0
Withdrawals/substitution of counsel	1	0	0	0	2
granted	1	0	0	0	2
denied	0	0	0	0	0

CRIMINAL LEAVE APPLICATIONS ENTERTAINED BY COURT OF APPEALS JUDGES

	2006	2007	2008	2009	2010
TOTAL APPLICATIONS ASSIGNED:	2458	2382	2687	2347	2207
TOTAL APPLICATIONS DECIDED: [1]	2436	2371	2637	2380	2220
TOTAL APPLICATIONS GRANTED:	52	36	53	81	108
TOTAL APPLICATIONS DENIED:	2166	2126	2355	2093	1928
TOTAL APPLICATIONS DISMISSED:	212	205	220	203	174
TOTAL APPLICATIONS WITHDRAWN:	6	4	9	3	10
TOTAL PEOPLE'S APPLICATIONS:	47	46	60	48	59
(a) GRANTED:	5	3	7	14	16
(b) DENIED:	35	40	51	32	37
(c) DISMISSED:	3	2	1	0	4
(d) WITHDRAWN:	4	1	1	2	2
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	355	349 [2]	400 [3]	335	315
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	7	5	8	12	15

[1] Includes some applications assigned in previous year.

[2] This average was calculated by dividing the total number of applications assigned during ten and one-third months of the year by seven and dividing the total number assigned during one and two-thirds months by six, because only six Judges were being assigned for the first one and two-thirds months.

[3] This average was calculated by dividing the total number of applications assigned during eight and one-half months of the year by seven and dividing the total number assigned during three and one-half months by six, because only six Judges were being assigned for the last three and one-half months.

APPENDIX 9

2010

THRESHOLD REVIEW OF SUBJECT MATTER JURISDICTION BY THE COURT OF APPEALS

SSD (sua sponte dismissal) - Rule 500.10

	2006	2007	2008	2009	2010
Total Number of Inquiry Letters Sent	74	75	70	84	86
Appeals Withdrawn on Stipulation	1	5	3	2	2
Dismissed by Court sua sponte	52	44	52	54	61
Transferred sua sponte to Appellate Division	4	3	1	6	3
Appeals allowed to proceed in normal course (A final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	5	9	8	7	3
Jurisdistion Retained - appeals decided	1	2	2	1	2
Inquiries Pending	11	12	4	14	15

COMPARATIVE ANALYSIS OF OFFICE FOR PROFESSIONAL MATTERS STATISTICS

2006-2010

TOPIC	2006	2007	2008	2009	2010
Attorneys Admitted (OCA) [1]	8,643	8,906	9,686	10,203	10,132
Certificates of Admission	134	75	130	74	69
Clerkship Certificates	2	7	7	8	5
Petitions for Waiver	189[2]	195[3]	241[4]	208[5]	198[6]
Written Inquiries	67	104	91	94	70
Disciplinary Orders	1,023[7]	534[7]	1,207[7]	3,483[7]	2,295[7]
Name Change Orders	898	1,031	1,036	968	952

[1] The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (see Judiciary Law § 468).

[2] Includes correspondence to 11 law schools reviewing their LL.M. programs under Rule 520.6.

[3] Includes correspondence to 5 law schools reviewing their LL.M. programs under Rule 520.6.

[4] Includes correspondence to 14 law schools reviewing their LL.M. programs under Rule 520.6.

[5] Includes correspondence to 8 law schools reviewing their LL.M. programs under Rule 520.6.

[6] Includes correspondence to 11 law schools reviewing their LL.M. programs under Rule 520.6.

[7] Includes orders involving multiple attorneys' violation of the registration requirements (Judiciary Law § 468-a).

APPENDIX 11

NONJUDICIAL STAFF

Ali, Vivian - Principal Stenographer, Court of Appeals (retired November 2010)

Alvarez-Smith, Angie - Stenographer, Court of Appeals (transferred April 2010)

Asadullah, Sardar - Senior Court Attorney, Court of Appeals

Asiello, John P. - Acting Consultation Clerk, Court of Appeals

Ata, David W. - Senior Law Clerk to Judge Smith (resigned July 2010)

Atwell, Angela M. - Senior Services Aide

Austin, Louis C. - Senior Court Building Guard

Bentley, Andria L. - Senior Court Attorney, Court of Appeals

Bleshman, Joseph M. - Counsel to the Chief Judge

Bohannon, Lisa - Senior Court Analyst

Bowman, Jennifer L. - Senior Court Building Guard

Branch, Jr., Clifton R. - Senior Principal Law Clerk to Judge Jones

Breitenbach, Katherine G. - Senior Court Attorney, Court of Appeals (resigned August 2010)

Brizzie, Gary J. - Principal Custodial Aide

Burry, Benjamin - Law Clerk to Judge Read

Butscha, Mark R. - Court Attorney, Court of Appeals

Byrne, Cynthia D. - Criminal Leave Applications Clerk

Calacone, Stephen F. - Clerical Research Aide (retired November 2010)

Appendix 11 (Continued)

Carro, Christine - Secretary to Judge Ciparick

Cleary, Lisa M. - Principal Stenographer, Court of Appeals

Cohen, John Althouse - Senior Court Attorney, Court of Appeals (resigned August 2010)

Cohen, Stuart M. - Clerk of the Court of Appeals (retired November 2010)

Coleman, Lillian M. - Principal Custodial Aide

Conley, Paul F. - Senior Clerical Assistant, Court of Appeals (retired November 2010)

Costello, James A. - Assistant Deputy Clerk, Court of Appeals

Couser, Lisa A. - Clerical Assistant, Court of Appeals

Cross, Robert J. - Senior Court Building Guard

Culligan, David O. - Clerical Assistant, Court of Appeals

Dalsen, William - Law Clerk to Judge Read

Danner, Scott M. - Senior Law Clerk to Judge Smith

Dautel, Susan S. - Assistant Deputy Clerk, Court of Appeals

Davis, Heather A. - Chief Motion Clerk

Donnelly, William E. - Assistant Building Superintendent

Dragonette, John M. - Senior Court Building Guard

Drury, Lisa A. - 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 - Acting Deputy Chief Court Attorney, Court of Appeals

Appendix 11 (Continued)

Emigh, Brian J. - Building Manager

Engel, Hope B. - Acting Assistant Consultation Clerk, Court of Appeals

Farrell, Laurence - Deputy Chief Security Attendant, Court of Appeals

Fitzpatrick, William J. - Assistant Printer, Court of Appeals (retired November 2010)

Fix-Mossman, Lori E. - Principal Stenographer, Court of Appeals

Fludd, Christopher - Senior Court Building Guard

Fortugno, John J. - Senior Security Attendant, Court of Appeals

Galvin, Martin C. - Senior Law Clerk to Judge Ciparick (resigned February 2010)

Garcia, Heather A. - Senior Security Attendant, Court of Appeals

Gaston, Johnny L. - Senior Court Building Guard (resigned December 2010)

Gilbert, Marianne - Principal Stenographer, Court of Appeals

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

Haas, Tammy L. - Principal Assistant Building Superintendent

Hancock, Dora N. - Secretary to Judge Jones

Hartnagle, Mary C. - Senior Custodial Aide

Heaney, Denise C. - Senior Security Attendant, Court of Appeals

Herrington, June A. - Principal Stenographer, Court of Appeals

Holman, Cynthia M. - Stenographer, Court of Appeals

Hosang-Brown, Yanique - Court Analyst

Ignazio, Andrea R. - Principal Stenographer, Court of Appeals

Appendix 11 (Continued)

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

Irwin, Nancy J. - Principal Stenographer, Court of Appeals

Kaiser, Warren - PC Analyst

Kane, Suzanne M. - Principal Stenographer, Court of Appeals

Kearns, Ronald J. - HVAC Assistant Building Superintendent

Kim, Jay - Law Clerk to Judge Jones

Klein, Andrew W. - Acting Clerk of the Court of Appeals

Kong, Yongjun - Principal Custodial Aide

Kornreich, Mollie M. - Senior Law Clerk to Judge Ciparick

Lawrence, Bryan D. - Principal Local Area Network Administrator

LeCours, Lisa A. - Senior Principal Law Clerk to Judge Graffeo

Lee, Jane H. - Senior Court Attorney, Court of Appeals

Levine, Allyson B. - Senior Court Attorney, Court of Appeals

Liberati-Conant, Christopher - Senior Court Attorney, Court of Appeals

Lyon, Gordon W. - Principal Law Clerk to Judge Pigott

MacVean, Rachael M. - Principal Law Clerk to Judge Ciparick

Mascia, Henry M. - Senior Court Attorney, Court of Appeals

Mayo, Michael J. - Deputy Building Superintendent

McCormick, Cynthia A. - Director, Court of Appeals Management and Operations

McDaniel, Monica C. - Law Clerk to Chief Judge

Appendix 11 (Continued)

McGrath, Paul J. - Chief Court Attorney, Court of Appeals

McMillen, Donna J. - Secretary to the Clerk, Court of Appeals

Michaels, Alexander - Senior Law Clerk to Judge Smith

Mitchell, Mark G. - Senior Court Attorney, Court of Appeals (resigned August 2010)

Moore, Travis R. - Senior Security Attendant, Court of Appeals

Moxley, D. Cameron - Senior Law Clerk to Chief Judge Lippman

Muller, Joseph J. - Senior Security Attendant, Court of Appeals

Mulyca, Jonathan A. - Clerical Assistant, Court of Appeals

Murray, Elizabeth F. - Chief Legal Reference Attorney, Court of Appeals

Nina, Eddie A. - Senior Security Attendant, Court of Appeals

O'Friel, Jennifer A. - Executive Assistant to Chief Judge Lippman

Paglia, Daisy F. - Principal Law Clerk to Judge Read (resigned August 2010)

Pepper, Francis W. - Principal Custodial Aide

Perry, Joseph C. - Law Clerk to Judge Ciparick

Plant, Miles H. - Court Attorney, Court of Appeals

Redcross, Anne T. - Court Attorney, Court of Appeals

Reed, Richard A. - Deputy Clerk of the Court of Appeals

Roberta, Lauren - Law Clerk to Judge Smith

Rosborough, IV, Robert S. - Senior Court Attorney, Court of Appeals (resigned August 2010)

Rudykoff, Nathaniel T. - Senior Principal Law Clerk to Chief Judge Lippman

Appendix 11 (Continued)

Sherwin, Stephen P. - Senior Principal Law Clerk to Judge Graffeo

Somerville, Robert - Senior Court Building Guard

Spencer, Gary H. - Public Information Officer, Court of Appeals

Spiewak, Keith J. - Local Area Network Administrator

Stiefel, George T. - Court Attorney, Court of Appeals

Stevens, Mark P. - Chief Security Attendant, Court of Appeals (retired November 2010)

Stowell, Allison M. - Law Clerk to Judge Read (resigned June 2010)

Stromecki, Kristie L. - Senior Principal Law Clerk to Judge Pigott

Taylor, Janice E. - Senior Principal Law Clerk to Judge Jones (retired August 2010)

Tierney, Inez M. - Principal Court Analyst

Timko, Molly J. - Senior Court Attorney, Court of Appeals (resigned July 2010)

Turon, Kristin L. - Stenographer, Court of Appeals

VanDeloo, James F. - Senior Assistant Building Superintendent

Volpov, Vitaliy - Court Attorney, Court of Appeals

Waddell, Maureen A. - Secretary to Judge Pigott

Waithe, Nelvon H. - Senior Court Building Guard

Warenchak, Andrew R. - Principal Custodial Aide

Wasserbach, Debra C. - Secretary to Judge Graffeo

Welch, Joseph H. - Senior Clerical Assistant, Court of Appeals

White, Serena J. - Court Attorney, Court of Appeals

Wilson, Anne - Senior Court Attorney, Court of Appeals (resigned August 2010)

Appendix 11 (Continued)

Wodzinski, Esther T. - Secretary to Judge Smith

Wood, Margaret P. - Principal Law Clerk to Chief Judge Lippman; Principal Prisoner Applications Attorney, Court of Appeals

Yalamas, George C. - Chief Security Attendant, Court of Appeals