Court of Appeals
of the State of New York

Annual Report of the
Clerk of the Court

2011

2011

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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I have been asked by Andrew Klein, our beloved Clerk of the Court, to write the Foreword to the 2011 Annual Report. It is with very mixed emotions that I do this. Mixed emotions because 2012 is the very last year I will be so privileged to sit on the New York State Court of Appeals. I will have spent 19 years at the Court, spanning the tenures of three Clerks of the Court, two Chief Judges, twelve associate judges (including myself), twenty-two chambers law clerks and one truly dedicated secretary.

When I last authored this Foreword in March 2001, after completing only seven years on the Court, I commented at how quickly time passes "when one is immersed in the wonderful work of the Court, surrounded by chambers' and clerk's staff that give of themselves so tirelessly to ensure that our jurisprudence is reasonable, sound and enduring." Here I am eleven years later still committed to that principle, still marveling at the extraordinary dedication of our judges and non-judicial personnel, still in awe of the Court and its work.

One has but to peruse the pages of the report to witness how in difficult financial times, involving cut backs and other budgetary restraints, ". . . our Judges and staff maintained the same level of excellent service to the bar and the public that they have always provided in the past" (Annual Report, p 1). The 2011 annual report chronicles our work of the past year, examines our docket and the ever efficient operation of our administrative offices. It highlights significant opinions, each year moving into new and different areas of the law at the same time maintaining the Court's "long tradition of exceptional currency in calendaring and deciding appeals" (Annual Report, p 5). I know of no other court that so promptly and expeditiously disposes of appeals and always with well reasoned and scholarly opinions that contribute so markedly to the jurisprudence of the State.

I will miss Court of Appeals Hall. I will miss the beautiful building and the spectacular courtroom, where I am surrounded by portraits of eminent predecessors. I will miss the work of judging and writing, where I hope my contributions have been appreciated. I will miss my colleagues whom I truly cherish as siblings, but most of all I will miss the people, the "family," the faithful and loyal employees of the Court who keep this fine machine running. I have been truly blessed to be among you. Thank you for the experience.

Carmen Beauchamp Ciparick

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Introduction

When I authored my first introduction to the Annual Report last year, I wrote about the then-upcoming 2011 year as an exciting time with new faces on board and veteran employees taking on new roles with fresh perspectives. And, indeed, 2011 has been that. Yet, at the same time, 2011 was a rough year for the Court of Appeals -- for the state courts in general -- brought on by a bleak fiscal climate and the limitations that ensued. The Court faced layoffs, a hiring freeze and spending cutbacks. Nonetheless, I am pleased to say that our Judges and staff maintained the same level of excellent service to the bar and the public that they have always provided in the past.

In 2011, the Court revamped its web site, providing better aesthetics and functionality. One of the most well-received new features is the addition of our undecided lists of argued appeals and civil motions. Through this feature, the bar and public are better able to keep track of matters pending at the Court. Additionally, the Court revised many of the orders issued in both criminal and civil matters, eliminating unnecessary legalese and making the orders more understandable.

Further, the Court implemented its first step in digital filing. As of December 8, 2010, the Court's Rules of Practice were amended to provide for the submission of briefs and records in digital format. Under the amended rules, litigants submit PDF versions of their briefs and records on CDs or DVDs to the Court. The Clerk's Office then conveys these PDF documents electronically to the Judges and their staff. This required significant changes to internal and external operating procedures. As a result of effectuating the amended rules, the Court staff has become much more sophisticated in its knowledge of the digital world. I expect that we will be taking additional strides forward in our digital filing program in the near future.

I would be remiss if I did not also note that in 2011, the Court significantly involved itself in examining and revising rules pertaining to attorney admission and regulation. Effective February 9, 2011, the Court amended the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, adding a section relating to attorney practice in New York following a major

disaster in New York or in another United States jurisdiction. As of April 20, 2011, the Court added a new part 522 to its rules, relating to the registration of in-house counsel in New York. The amendment permits attorneys in good standing in certain other United States jurisdictions to act as in-house counsel for New York organizations without satisfying traditional admission requirements. Additionally, on May 18, 2011, the Court amended section 520.6 of the Rules for the Admission of Attorneys and Counselors at Law, which sets forth the educational requirements for foreign-educated students to sit for the New York State bar examination. The amendment modified the approved law school study program requirements for students whose foreign education is substantively or durationally deficient under the rule. And finally, as 2011 closed out, the Court was immersed in an examination of section 520.3 of the rules, regarding the study of law in an approved law school in the United States.

The 2011 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 2011. The third section highlights selected decisions of 2011. The fourth part consists of appendices with detailed statistics and other information.

I. The Work of the Court

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

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

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

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

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

Each year, with the Appellate Division Departments, the Court of Appeals publishes a timetable for appellate review of primary election-related matters. In August of each year, the Court holds a special session to consider expedited appeals and motions for leave to appeal in cases concerning the September primaries. The Court reviews primary election motions and appeals on the Appellate Division record and briefs, and hears oral argument of motions for leave to appeal. When the Court determines an appeal lies as of right or grants a motion for leave to appeal, oral argument of the election appeal is usually scheduled for the same day. Primary election appeals are decided quickly, often the day after oral argument is heard.

In 2011, the Court and its Judges disposed of 3,686 matters, including 242 appeals, 1,355 motions and 2,089 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 129 notices of appeal received by the Court in 2011, 63 were subject to Rule 500.10 inquiries. Of those, all but 12 were dismissed sua sponte or on motion, withdrawn, or transferred to the Appellate Division. Six inquiries were pending at year's end. The Rule 500.10 sua sponte dismissal (SSD) screening process is valuable to the Court, the bar and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

2. Normal Course Appeals

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

In conference, the Judges are seated clockwise in seniority order around the conference table. When a majority of the Court agrees with the reporting Judge's proposed disposition, the reporting Judge becomes responsible for preparing the Court's writing in the case. If the majority of the Court disagrees with the recommended disposition of the appeal, the first Judge taking the majority position who is seated to the right of the reporting Judge assumes responsibility for the proposed writing, thus maintaining randomness in the distribution of all writings for the Court. Draft writings are circulated to all Judges during the Court's subsequent intersession and, after further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next 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 331 appeals filed in 2011, 58 (17.5%) were initially selected to receive SSM consideration, a slight decrease from the percentage initially selected in 2010 (18%). Forty-one were

civil matters and 17 were criminal matters. Twelve appeals initially selected to receive SSM consideration in 2011 were directed to full briefing and oral argument. Of the 242 appeals decided in 2011, 37 (15.3%) were decided upon SSM review (24.9% were so decided in 2010; 11.8% were so decided in 2009). Twenty-six were civil matters and 11 were criminal matters.

Of the 58 appeals filed in 2011 and initially selected to receive SSM consideration, 26 were taken from orders or judgments of the Appellate Division, First Department. Four of these were appeals as of right based on a double dissent below, 17 were leave grants of the Appellate Division or a Justice of that court, and five were by leave of this Court or a Judge of this Court.

4. Promptness in Deciding Appeals

In 2011, 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 37 days; for all appeals, the average time from argument or submission to disposition was 35 days. The average period from filing a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately 11 months. The average period from readiness (all papers served and filed) to calendaring for oral argument was approximately six 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 2011 (including SSM appeals tracked to normal course) was 375 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 294 days. Thus, by every measure, in 2011 the Court maintained its long tradition of exceptional currency in calendaring and deciding appeals.

B. The Court's 2011 Docket

1. Filings

Three hundred thirty-one (331) notices of appeal and orders granting leave to appeal were filed in 2011 (380 were filed in 2010). Two hundred forty-four (244) filings were civil matters (compared to 260 in 2010), and 87 were criminal matters (compared to 120 in 2010). The Appellate Division departments issued 63 of the orders granting leave to appeal filed in 2011 (43 were civil, 20 were criminal). Of these, the First Department issued 38 (27 civil and 11 criminal).

Motion filings decreased slightly in 2011. During the year, 1,375 motion numbers were used, a nominal decrease from the 1,380 motion numbers used in 2010. Criminal leave applications also decreased slightly in 2011. Two thousand one hundred ninety (2,190) applications for leave to

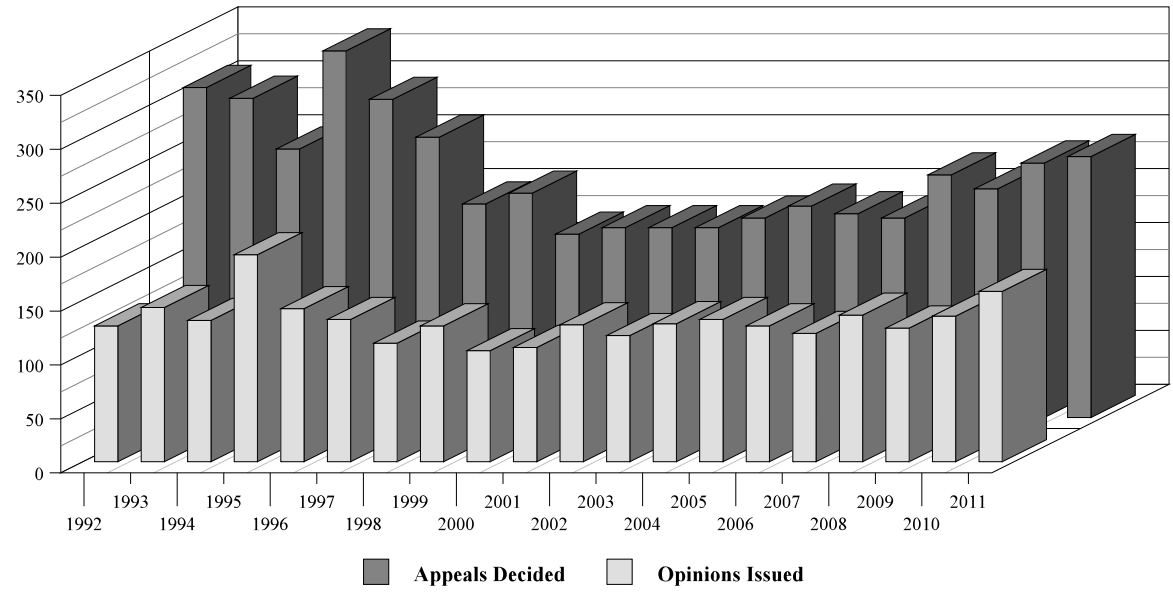
appeal in criminal cases were assigned to individual Judges of the Court during the year, 17 fewer than in 2010. On average, each Judge was assigned 313 such applications during the year.

2. Dispositions

(a) Appeals and Writings

In 2011, the Court decided 242 appeals (130 civil and 112 criminal, compared to 137 civil and 99 criminal in 2010). Of these appeals, 129 were decided unanimously. The Court issued 157 signed opinions, one per curiam opinion, 85 dissenting opinions, 16 concurring opinions, 65 memoranda and 20 decision list entries (one of which was a dissenting entry). The chart below tracks appeals decided and full opinions (signed and per curiam) issued over the past 20 years.

Appeals Decided and Opinions Issued
1992-2011

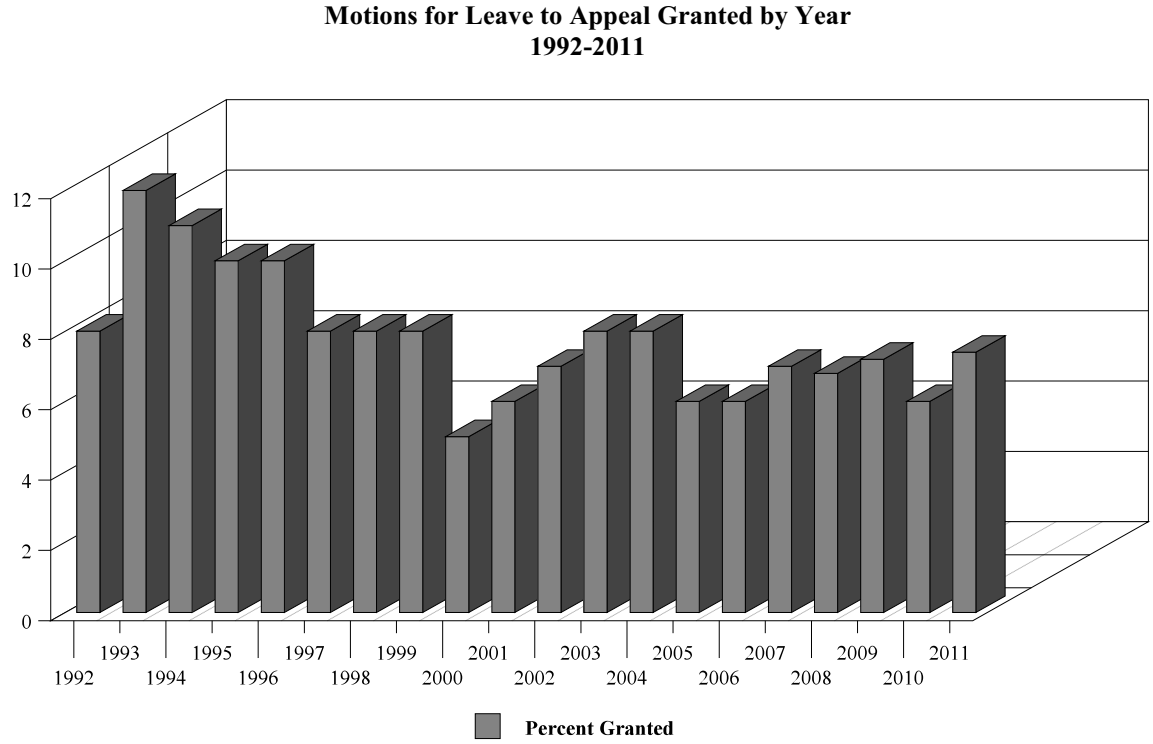


(b) Motions

The Court decided 1,355 motions in 2011 -- 29 less than in 2010. 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 65 days, while the average period of time from return date to disposition for all motions was 59 days.

The Court decided 1,107 motions for leave to appeal in civil cases during the year -- 62 more than in 2010. Of these, the Court granted 7.4% (up from 6% in 2010), denied 74.3% (up from 72.5%

in 2010) and dismissed 18.3% for jurisdictional defects (down from 21.5% in 2010). The chart below shows the percentage of civil motions for leave to appeal granted over the past 20 years.



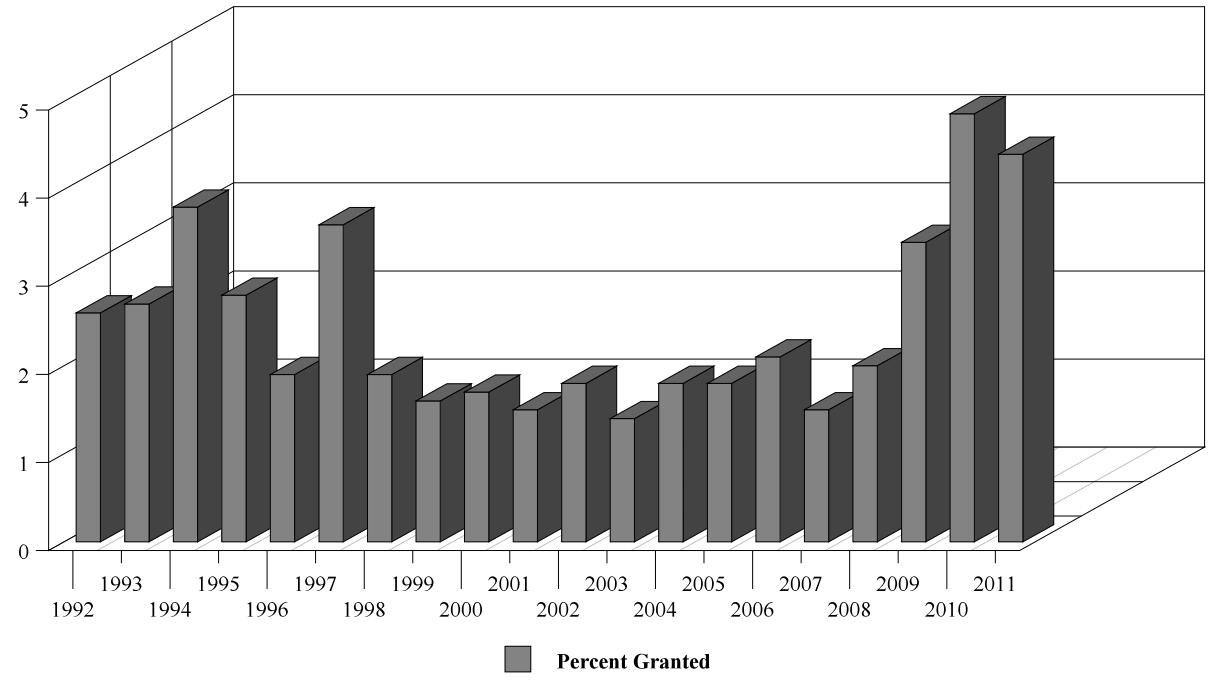
Eighty-two motions for leave to appeal were granted in 2011. The Court's leave grants covered a wide range of subjects. For example, the Court granted leave to address whether an animal welfare organization has standing to challenge the alleged failure of New York City officials to provide full-service animal shelters as required by the City Animal Shelters and Sterilization Act. The Court also granted leave to address whether federal credit unions are exempt from the mortgage recording tax under the Federal Credit Union Act of 1934 or the Supremacy Clause of the United States Constitution. The Court granted leave to address whether exotic dances constitute "dramatic or musical arts performances," thereby exempting monies paid for such performances from taxation. The Court also granted leave in several cases to address whether the State is privileged from civil liability for the illegal imposition of post-release supervision.

The Court's other leave grants spanned issues involving the Education Law, No-Fault Law, General Business Law, Business Corporation Law, Freedom of Information Law, Workers' Compensation Law, Civil Service Law, and Election Law. Other issues involved administrative law, taxation, bail, civil service protections, contracts, adverse possession, landlord and tenant disputes, public work contracts, negligence, discipline of teachers and other school personnel, civil rights, compensation of assigned counsel, arbitration, and environmental conservation.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 91 of the 2,089 applications for leave to appeal in criminal cases decided in 2011 -- down slightly, on a percentage basis, from the grant of 108 of the 2,220 applications made in 2010. One hundred forty-two applications were dismissed for lack of jurisdiction, and 11 were withdrawn. Eighteen of 70 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
1992-2011



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 2011, 222 applications for leave to appeal from such orders were assigned to Judges of the Court, down nominally from 223 in 2010. 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 2011, on average, 79 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 2011, the Court did not review any determinations of the State Commission on Judicial Conduct. Pursuant to Judiciary Law § 44 (8), the Court suspended one judge with pay.

(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 2011, the period from receipt of initial certification papers to the Court's order accepting or rejecting review was 31 days. The average period from acceptance of a certification to disposition was 8.3 months.

Four cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2010. In 2011, the Court answered the questions certified in those cases. Also in 2011, the Court accepted one new case involving a question certified by the United States Court of Appeals for the Second Circuit. That case remained pending at the end of 2011.

C. Court Rules

In 2011, the Court amended its Rules for the Admission of Attorneys and Counselors at Law (22 NYCRR Part 520) in three significant respects. In February, section 520.11 was amended by adding a provision relating to attorney practice in New York following a major disaster in New York or in another United States jurisdiction. In April, the Court added a new Part 522 relating to the registration of in-house counsel in New York. Part 522 permits attorneys in good standing in certain other U.S. jurisdictions to act as in-house counsel for New York organizations without satisfying traditional admission requirements. Further, in May, the Court amended section 520.6, which sets forth the educational requirements for foreign-educated students to sit for the New York State bar examination. The amendment substantially modified the program requirements for study at ABA-approved law schools for students whose foreign legal education is substantively or durationally deficient under the rule.

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). 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 webcasts 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 school children to members of the bar. Throughout the year, the Public Information Officer and other members of the Clerk's staff conduct tours of the historic courtroom for visitors. The Public Information Office maintains a list of subscribers to the Court's "hard copy" slip opinion service and handles requests from the public for individual slip opinions.

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

The Court's comprehensive 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 more than a year's 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. Since 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, undecided lists of argued appeals and civil motions, and a form for use by pro se litigants -- and it provides links to other judiciary-related web sites. The text and webcast of the Chief Judge's most recent State of the Judiciary address are posted on the home page, and the text of prior addresses can be reached through the "Annual Releases and Events" link. Archived webcasts of Law Day Celebrations and prior Annual Reports are available through that link.

D. Office for Professional Matters

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

The Court Attorney drafts reports to the Court on matters relating to (1) attorney admission and disciplinary cases, (2) petitions seeking waiver of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law, and the Rules for the Licensing of Legal Consultants, 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.

In 2011, the Court amended its Rules for the Admission of Attorneys and Counselors at Law (22 NYCRR Part 520) in three significant respects. In February, Section 520.11 was amended by adding a provision relating to attorney practice in New York following a major disaster in New York or in another United States jurisdiction. In April, the Court added a new Part 522 relating to the registration of in-house counsel in New York. Part 522 permits attorneys in good standing in certain other U.S. jurisdictions to act as in-house counsel for New York organizations without satisfying traditional admission requirements. Further, in May, the Court amended section 520.6, which sets forth the educational requirements for foreign-educated students to sit for the New York State bar examination. The amendment substantially modified the program requirements for study at ABA-approved law schools for students whose foreign legal education is substantively or durationally deficient under the rule.

E. Central Legal Research Staff

Under the supervision of the individual Judges and the Clerk of the Court, the Central Legal Research Staff prepares draft reports on motions (predominately civil motions for leave to appeal), requests to answer certified questions, and selected appeals for the full Court's review and deliberation. From December Decision Days 2010 through December Decision Days 2011, Central Staff completed 1,074 motion reports, 51 SSD reports, 18 SSM reports and 1 report regarding a certified question. Throughout 2011, 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 2011, 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 2011 were graduates of Albany, Boston University, the State University of New York at Buffalo, Cardozo, Fordham University, New York University, Pace University, St. John's University, Syracuse University, Touro and Vermont law schools. Staff attorneys hired for work beginning in 2012 will represent law schools from Albany, the State University of New York at Buffalo, Cardozo, Fordham University, St. John's University and Syracuse University.

F. Library

The Chief Legal Reference Attorney provides legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk’s Office staff. During 2011, 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's library continues to expand in-house databases. The ISYS databases, which 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 Continuing Legal Education (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 they are updated and offered to Judges' law clerks and staff attorneys annually.

In 2011, 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 currently is chaired by the Senior Deputy Chief Court Attorney. Other members include the Deputy Clerk of the Court, the Chief Court Attorney, the Chief Legal Reference Attorney, two Judges' law clerks, and two attorneys from the Law Reporting Bureau. A Central Legal Research Staff secretary manages CLE records and coordinates crediting and certification processes with the New York State Judicial Institute (JI). Specifically, the secretary maintains three databases to track CLE classes offered by the Court, the attorneys eligible to attend classes, and the number of credits each attorney has earned at Court-sponsored programs. In addition, she prepares the paperwork necessary to comply with the rules of the JI and the CLE Board, and she provides general support to the Committee.

During 2011, the CLE Committee provided nine programs for Court of Appeals attorneys -- including new staff training and orientation -- totaling 17 credit hours. Law Reporting Bureau and Board of Law Examiners attorneys participated in many of the offered programs. Attorneys also attended classes offered by the Appellate Division, Third Department; Albany Law School; and the New York State Bar Association. These programs accounted for over 15 additional credit hours. Several experienced/non-transitional attorneys viewed recorded programs from the JI and other sources at their desktops.

H. Management and Operations

The Director, 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, 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 2011-2012 fiscal year budget appropriation of $14,675,028, 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 2012-2013 for the Court and its ancillary agencies is $14,412,047, a decrease of $262,981 (-1.8%) over the current year adjusted appropriation. The 2012-2013 personal services request of $12,464,272 reflects a decrease of $171,322 (-1.4%) over the current year's appropriation, which provides funding for all authorized judicial positions. The 2012-2013 nonpersonal services request of $1,947,775 reflects a decrease of $91,659 (-4.5%) 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 2012-2013 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 2011, the Court reported filing fees for civil appeals totaling $37,781. Also, the Court reported filing fees for motions totaling $42,875. 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 ($3,900) and miscellaneous collections ($4,888.34). For calendar year 2011, revenue collections totaled $89,444.34.

J. Computer Operations

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Principal LAN Administrator, assisted by a LAN Administrator and a PC Analyst. These operations include all software and hardware used by the Court, and a statewide network connecting six remote Judges' chambers with Court of Appeals Hall.

The department maintains a hands-on help desk to assist employees with hardware and software issues as they arise. Training on software and hardware is provided as needed, either within the courthouse or via outside agencies, depending on the situation. Maintenance calls to the help desk are estimated at approximately 2,500 for the year. The department also arranged simulcast presentations and teleconferences throughout the year to bring meetings and continuing legal education 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. In 2011, the department successfully revamped the Court's Internet site to be more user-friendly and comprehensive. The 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 730,000 visits to the web site were recorded in 2011, averaging approximately 2,000 visits per day.

K. Security Services

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

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

The Security Unit conducts a variety of security functions, including magnetometer / security screening for the visiting public, judicial escorts, security patrols, video monitoring, and providing a security presence in the courtroom when the Court is in session. In 2011, 56 vouchers were generated for items held at the screening post, including 4 firearms. In addition, screening of mail and package items received by the Court identified 11 items which were deemed inappropriate communications. The Security Unit also made fire safety and video monitoring enhancements at the offices of the State Board of Law Examiners.

The members of the Security Unit completed several mandatory training programs during 2011, including firearms, pepper spray, first aid, CPR, automated external defibrillator (AED), and baton re-certification. Several Court Officers received additional training as members of the Court's Special Response Team. In the event of an emergency, members of the Special Response Team can be re-deployed to any court facility. Finally, first aid/CPR/AED training was also made available to all Court staff.

L. Personnel

The following personnel changes occurred during 2011:

APPOINTMENTS:

Bailey, Keith - employed as Building Guard, January 2011.

APPOINTMENTS (cont'd):

Bova, Matthew J. - employed as Law Clerk to Court of Appeals Judge, December 2011.

Cooper, Jenna - employed as Law Clerk to Court of Appeals Judge, August 2011.

Dewar, Keith - employed as Law Clerk to Court of Appeals Judge, January 2011.

Mason, Marissa K. - employed as Clerical Assistant, Court of Appeals, January 2011.

MacVean, Rachael - appointed as Principal Court Attorney to Court of Appeals, January 2011.

Ohiorhenuan, Zara - employed as Law Clerk to Chief Judge, August 2011.

Riordan, Elizabeth - employed as Law Clerk to Court of Appeals Judge, August 2011.

Siffert, David - employed as Law Clerk to Court of Appeals Judge, August 2011.

PROMOTIONS:

Burry, Benjamin - promoted to Senior Law Clerk to Court of Appeals Judge, August 2011.

Dalsen, William - promoted to Senior Law Clerk to Court of Appeals Judge, August 2011.

Drury, Lisa - promoted to Senior Principal Law Clerk to Court of Appeals Judge, March 2011.

Eddy, Margery Corbin - promoted to Senior Deputy Chief Court Attorney to Court of Appeals, January 2011.

Kim, Jay - promoted to Senior Law Clerk to Court of Appeals Judge, August 2011.

Klein, Andrew W. - promoted to Clerk of the Court, April 2011.

Lyon, Gordon - promoted to Senior Principal Law Clerk to Court of Appeals Judge, September 2011.

Moxley, D. Cameron - promoted to Principal Law Clerk to Chief Judge, March 2011.

Perry, Joseph - promoted to Senior Law Clerk to Court of Appeals Judge, January 2011.

Roberta, Lauren - promoted to Senior Law Clerk to Court of Appeals Judge, August 2011.

RESIGNATIONS AND RETIREMENTS:

Bailey, Keith - Building Guard, budgetary termination, June 2011.

Danner, Scott M - Senior Law Clerk to Court of Appeals Judge, resigned July 2011.

Farrell, Laurence - Deputy Chief Security Attendant, Court of Appeals, retired August 2011.

Kornreich, Mollie - Senior Law Clerk to Court of Appeals Judge, resigned August 2011.

McDaniel, Monica - Law Clerk to Chief Judge, resigned August 2011.

Michaels, Alexander - Senior Law Clerk to Court of Appeals Judge, resigned August 2011.

Moxley, D. Cameron - Principal Law Clerk to Chief Judge, resigned June 2011.

Roberta, Lauren - Senior Law Clerk to Court of Appeals Judge, resigned December 2011.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Erin Kandel, Meredith Lee-Clark, Brian Lusignan, Greg Mann, Noel Mendez, and Matthew Schrantz were appointed Court Attorneys in August 2011.

PROMOTIONS**:**

Principal Court Attorney Margery Corbin Eddy was promoted to Senior Deputy Chief Court Attorney in January 2011.

Rachael MacVean, Senior Law Clerk to Judge Carmen Ciparick, began work for Central Staff as a Principal Court Attorney in January 2011.

Mark R. Butscha, Miles H. Plant, Anne T. Redcross, George T. Stiefel, Serena J. White and Vitaliy Volpov were promoted to Senior Court Attorneys in August 2011.

COMPLETION OF CLERKSHIPS:

Christopher A. Liberti-Conant completed his clerkship in March 2011. Andria L. Bentley completed her clerkship in April 2011. Jane H. Lee completed her clerkship in June 2011. Sardar M. Asadullah, Allyson B. Levine and Henry M. Mascia completed their clerkships in August 2011.

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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 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, Hope Engel, 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 2011. I particularly thank Laurence Farrell, who retired from the position of Deputy Chief Security Attendant after 11 years of dedicated and talented service to the Court in that position.

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. 2011: Year in Review

This section -- a summary of Court of Appeals decisions handed down in 2011 -- reflects the range of constitutional, statutory, regulatory, and common law issues reaching the Court each year.

ADMINISTRATIVE LAW

Matter of Casado v Markus (16 NY3d 329)

Petitioners, rent-stabilized tenants, sought to invalidate rent increases permitted by the Rent Guidelines Board on the ground that they unfairly classified low-rent, slow-turnover apartments separately from other apartments, permitting greater rent increases. Specifically, petitioners argued that no classifications among apartments were valid under the New York City Administrative Code and that even if some classifications were valid, this one was not because of a State legislature-adopted City Code provision dealing with the same subject. The Court held that the City Code could not be read to prohibit the Board from classifying apartments, and that the State-adopted provision of the City Code covered a classification different from the one challenged in this case. Accordingly, the increases were upheld.

Metropolitan Taxicab Bd. of Trade v New York Taxi & Limousine Commn. (18 NY3d 329)

New York City taxi medallion owners challenged a regulation of the New York Taxi & Limousine Commission that prevented owners from charging cab lessees sales tax on top of the maximum permitted lease rates. The Commission's regulation prohibited the owners' previous practice of charging sales tax in addition to the lease rate caps. The Commission admitted that it did not consider cost to the owner in implementing this new rule, but argued that New York City Charter § 2304 (c) permits consideration of numerous factors without requiring consideration of any given factor. The Court held that, while investigation of costs was not required, the new rule required some justification, and none was presented. Specifically, the Commission's claim that confusion required a uniform rule was not supported by record evidence, and its claim that the rule was a mere clarification of the previous policy was contradicted by evidence that the Commission had not previously considered the issue. Absent justification, the Court found the regulation to be without rational basis in the record and annulled it.

ARBITRATION

Matter of Johnson City Professional Firefighters Local 921 (*Village of Johnson City*) (18 NY3d 32)

A firefighters union sought arbitration relative to a "no-layoff" clause in its collective bargaining agreement with the Village, which provided that "[t]he Village shall not lay-off any member of the bargaining unit during the term of this contract." After the Village voted to abolish six firefighter positions out of budgetary necessity, the union sought to arbitrate the dispute. Relying on Yonkers School Crossing Guard Union of Westchester Ch., CSEA v City of Yonkers (39 NY2d

964 [1976]) and its progeny, the Court held that the "no-layoff" clause was not arbitrable under the collective bargaining agreement because it was not "explicit, unambiguous and comprehensive," and therefore did not prohibit the Village from abolishing firefighter positions out of budgetary necessity.

BANKS and BANKING

Greenberg, Trager & Herbst, LLP v HSBC Bank USA (17 NY3d 565)

Plaintiff law firm deposited a fraudulent check into its IOLA account. After confirming with its bank that the check had cleared, plaintiff wired proceeds from that check. After the funds had been wired, plaintiff's bank informed plaintiff that the check had been dishonored and it was charging plaintiff the amount of the check. The Court held that a payor bank does not owe a duty to a non-customer to detect fraudulent checks. The only duty a payor bank owes to a non-customer is to pay the check, return the check or send notice of dishonor. The Court further determined that there is no fiduciary relationship between a bank and its customer during the check payment process. Additionally, the Court held that the use of the term "cleared" was ambiguous in this case and plaintiff could not justifiably rely on its bank's verbal assurance that the check had cleared. Finally, the Court concluded that until there is final payment of a check the risk of a dishonored check lies with the depositor.

CIVIL PROCEDURE

Goldenberg v Westchester County Health Care Corp. (16 NY3d 323)

Plaintiff commenced a special proceeding seeking permission to file a late notice of claim for medical malpractice against defendant county hospital; he attached a copy of a proposed complaint to the petition as an exhibit. Supreme Court granted the petition, and plaintiff thereafter served the hospital with a notice of claim as well as a summons and complaint, both without an index number. In short, plaintiff did not purchase an index number and file a summons and complaint with the County Clerk to commence the lawsuit before serving the hospital, as he should have. After the statute of limitations expired, the hospital moved to dismiss the lawsuit as untimely, using an index number secured for purposes of making the motion. The Court agreed that, in light of the absence of a summons, there was a complete failure to file before the statute of limitations lapsed, which is not the kind of mistake that CPLR 2001 vests Supreme Court with discretion to forgive.

Roslyn Union Free School Dist. v Barkan (16 NY3d 643)

The issue in this case was whether a three- or six-year statute of limitations applied to causes

of action for negligence and breach of fiduciary duty by a school district against former members of the school board. Although a three-year limitations period typically applies to actions that seek monetary damages for injury to property, in this case the Court held that the six-year limitations period in CPLR 213 (7) applicable to "an action by or on behalf of a corporation against a present or former . . . officer . . . to recover damages for waste or for an injury to property or for an accounting in conjunction therewith" governed, rendering the claim timely. The Court's determination turned on whether the school district was a "corporation" within the meaning of the statute. The Court concluded that it was, based on examination of various statutory references to public corporations, municipal corporations and school districts in the General Construction Law and the Education Law.

Simon v Usher (17 NY3d 625)

In this medical malpractice action, the issue presented was whether the five-day extension under CPLR 2103 (b) (2) applies to the 15-day time period prescribed by CPLR 511 (b) to move for change of venue when a defendant serves its demand for change of venue by mail. The Court held that it does. The Court accepted defendant's reliance upon CPLR 2103 (b) (2) and reasoned that defendants are entitled to a five-day extension of the 15-day period prescribed by CPLR 511 (b) because defendants' motion papers are not initiatory and the demand was served by mail.

COMMERCIAL LAW

Bessemer Trust Co., N.A. v Branin (16 NY3d 549)

The United States Court of Appeals for the Second Circuit certified a question to the Court seeking guidance on what constitutes "improper solicitation" of a client by a voluntary seller of that client's "good will" under New York common law. Drawing on the Court's decision in Mohawk Maintenance Co. v Kessler (52 NY2d 276 [1981]), the Court reaffirmed the longstanding principle that a seller has an implied covenant or duty to refrain from soliciting former customers, which arises upon the sale of "good will" of an established business.

NML Capital v Republic of Argentina (17 NY3d 250)

In this certified question from the United States Court of Appeals for the Second Circuit, the Court was asked to interpret the specific terms of bonds issued by the nation of Argentina addressing interest payments to bondholders, namely, whether Argentina's obligation to make biannual interest-only payments continued after maturity or acceleration of the debt and, if so, whether bondholders were entitled to prejudgment interest on payments that were not made because of the nation's default. Relying on well-established principles of contract interpretation, the Court held that Argentina -- the drafter of the notes and bond documents -- could have clearly stated that interest payments were to cease at maturity or at the time of acceleration if that had been the intent of the parties. Instead,

based on the structure and language chosen in the clause, the Court concluded that the principal was due in April 2005 and interest-only payments were to be continued biannually until the principal was paid. The Court also determined that the bondholders were entitled to prejudgment interest under CPLR 5001 on the unpaid biannual interest payments that were due and not paid after the loans matured or were accelerated.

CONFLICT OF LAWS

Matter of the Liquidation of Midland Ins. Co. (16 NY3d 536)

In this choice-of-law dispute between policyholders and the New York State Liquidation Bureau, the Court considered whether insurance policies issued by Midland Insurance Company must be interpreted under New York substantive law because Midland had been adjudged insolvent and placed into liquidation in New York. The Court concluded that New York law need not apply and held that for each Midland policy in dispute an individual choice-of-law analysis must be conducted to determine which jurisdiction's law should control. In so holding, the Court observed that New York has long applied the "grouping of contacts" approach to choice-of-law questions in contract cases. In the context of liability insurance contracts, the Court recognized that, under such an approach, the jurisdiction with the most significant relationship to the transaction and the parties generally will be the jurisdiction which the parties understood was to be the principal location of the insured risk. The Court found no statutory support for the argument that article 74 of the Insurance Law, which governs liquidations in New York, abrogated the "grouping of contacts" approach to choice-of-law questions.

Edwards v Erie Coach Lines Co. (17 NY3d 306)

A charter bus carrying members of an Ontario (Canada) women's hockey team struck the rear end of a tractor trailer parked on the shoulder of a highway in upstate New York, killing and injuring bus passengers and killing the trailer's driver. The injured and deceased bus passengers and the bus defendants were Ontario domiciliaries; the trailer defendants were Pennsylvania domiciliaries. Ontario law caps noneconomic damages where negligence causes catastrophic personal injury, while New York law does not. In these subsequent actions to recover damages for wrongful death and/or personal injuries, the Court applied the three-rule framework of Neumeier v Kuehner (31 NY2d 121 [1972]) to decide that the Ontario cap controlled any award of noneconomic damages against the bus defendants because they shared an Ontario domicile with plaintiffs; however, as to the trailer defendants, the place of the tort -- New York -- was the proper choice under the third Neumeier rule because the domicile of plaintiffs, the trailer-defendants and the place of the tort were all different. The trailer defendants did not ask the trial court to consider Pennsylvania law, and they had no contacts whatsoever with Ontario.

CONSTITUTIONAL LAW

Bordeleau v State of New York (18 NY3d 305)

A group of New York State taxpayers commenced this declaratory judgment action against the State, the State Urban Development Corporation doing business as Empire State Development Corporation (ESDC), the Department of Agriculture and Markets, and certain private corporations, challenging appropriations in the 2008-2009 state budget. Plaintiffs alleged that the appropriations resulted in loans or grants issued by public defendants to private entity defendants and other private companies for the purpose of economic development in violation of article VII, § 8 (1) of the State Constitution, which prohibits the gifting or loaning of state money to any private corporation. The Court found no constitutional infirmity to the challenged appropriations. The Court concluded that the challenge to appropriations made by the ESDC, a public benefit corporation, could not survive a CPLR 3211 motion to dismiss because article VII, § 8 (1) permits state funding to public benefit corporations for a public purpose. Additionally, the Court reasoned that, because it is well settled that public benefit corporations enjoy a status separate and distinct from the State, they are not subject to the "gifting or loaning" prohibition under article VII, § 8 (1). The Court further held that an appropriation is valid where it has a predominant public purpose and any private benefit is merely incidental. Thus, concerning the appropriations to the State Department of Agriculture and Markets to fund contracts for the promotion of agricultural products grown or produced in New York, the Court concluded that they fulfilled a predominantly public purpose and are not prohibited under article VII, § 8 (1).

CONSUMER PROTECTION

People v First Am. Corp. (18 NY3d 173)

The Attorney General commenced an action against defendant First American Corporation and eAppraiseIT, LLC seeking injunctive and monetary relief as well as civil penalties for violations of New York's Executive Law and Consumer Protection Act (see Executive Law § 63 [12]; General Business Law § 349), as well as the common law. The gravamen of the complaint was that defendants engaged in fraudulent and deceptive acts by grossly inflating the value of real estate appraisals to the detriment of consumers and the public. The Court held that federal law did not preempt the Attorney General from asserting these claims in that federal law did not occupy the entire field with respect to real estate appraisal regulation. The Court specifically observed that the Financial Institutions Reform, Recovery and Enforcement Act, enacted by Congress in 1989, envisioned a cooperative effort between federal and state authorities to ensure that real estate appraisal reports comport with the Uniform Standards of Professional Appraisal Practice.

COPYRIGHT LAW

Penguin Group (USA), Inc. v American Buddha (16 NY3d 295)

The United States Court of Appeals for the Second Circuit asked the Court to determine the scope of long-arm jurisdiction in a copyright infringement action pending in federal court. Plaintiff, a publishing house in New York City, alleged that four of the books it was offering for sale had been posted in electronic form on two web sites operated by defendant in Oregon and Arizona, rendering the literary works available free of charge to any person with access to the Internet. Defendant moved to dismiss the copyright infringement complaint on the basis of lack of personal jurisdiction, claiming that it had insubstantial ties to New York State. In response, plaintiff asserted long-arm jurisdiction over the nondomiciliary under CPLR 302 (a) (3) (ii) on the rationale that defendant committed a tortious act outside New York that resulted in injury to plaintiff within the state. The question the Court answered was whether, in a copyright infringement case involving uploading of copyrighted printed literary works onto the Internet, the situs of the injury for long-arm jurisdictional purposes is the location of the infringing action or the location of the principal place of business of the copyright holder. The Court determined that it was the latter.

CRIMINAL LAW

People v Harnett (16 NY3d 200)

This case involved a defendant who pleaded guilty without being informed that his guilty plea could expose him to Sex Offender Management and Treatment Act (SOMTA) proceedings, which could ultimately result in civil confinement in a state facility. The Court held that potential SOMTA proceedings were not "direct consequences" of a plea, i.e., consequences that have a definite, immediate, and automatic effect on the defendant's punishment; instead they were "collateral consequences." Thus, the failure to warn defendant of such consequences did not automatically taint the plea. The Court then considered the defendant's claim that fundamental fairness required SOMTA consequences to be disclosed because they were simply too important to be left out of a plea allocution. The Court held that on the record before it, the potential for SOMTA proceedings in this particular case was too speculative and thus the defendant could not show that disclosure of potential SOMTA consequences would have actually caused him to reject the plea.

People v Rodriguez (16 NY3d 341)

The intoxicated defendant jumped into a box truck parked on a hill. The truck careened down the hill, killing one pedestrian and seriously injuring two. The People claimed that defendant intended to move the truck to play a trick on its owner; defendant countered that he jumped into the truck in an attempt to steer it to safety only after he saw it careening downhill under its own weight. The Court concluded that the trial court correctly precluded defendant from asserting a choice-of-

evils defense set forth in Penal Law § 35.05 (2), because there was no reasonable view of the evidence that would have supported such a charge for either manslaughter in the second degree or assault in the second degree, noting that, under defendant's scenario, he did not commit an illegal act by jumping into the truck, meaning there was no "evil" on his part. The Court also concluded that the trial court erred in not permitting defendant to assert the choice-of-evils defense concerning the offense of operating a motor vehicle while intoxicated, but that such error was harmless given the fact that the jury found defendant guilty of the second degree assault count because, based on that finding, the jury must have concluded that defendant caused the truck's movement.

People v Lopez (16 NY3d 375)

In this indelible right to counsel case, the Court was asked whether a person who is in police custody can be interrogated on an unrelated matter without the presence of the attorney representing him on the case for which he is in jail. Defendant was incarcerated pending prosecution of a drug charge in Pennsylvania, and he was represented by a Pennsylvania attorney who had entered the case. A New York detective traveled to Pennsylvania to question defendant about a robbery in Staten Island that had resulted in the death of a store owner. The Pennsylvania authorities told the detective that defendant was in jail because he had been unable to post bail. During his meeting with defendant, the detective administered Miranda warnings and asked defendant if he wanted to consult with an attorney about the New York homicide case. Defendant declined the offer, but did not indicate that he was represented by counsel in connection with the Pennsylvania drug charge. Defendant was later convicted of intentional and felony murder and other crimes based, in part, on statements that he made to the detective. The Court emphasized that when an attorney undertakes to represent an accused, law enforcement authorities may not question a suspect who is in custody about that matter, unless the accused validly waives the right to counsel in the presence of the attorney. But if the police seek to speak to the suspect about an unrelated matter, different rules apply and the issue becomes whether the police were aware, or should have been aware, that the accused was represented by an attorney in relation to the charge for which he was in custody. The Court held that, before a police officer may question a person in police custody about an unrelated matter, the officer must make reasonable inquiry regarding the accused's representational status when the circumstances indicate that there is a probable likelihood that an attorney has entered the custodial matter. Because the detective in this case should have suspected that defendant was represented on the custodial charge and failed to make any inquiry in that regard, the Court determined that defendant's indelible right to counsel had been violated. However, applying the harmless error doctrine, the Court affirmed defendant's conviction in light of other overwhelming evidence establishing defendant's role in the murder.

People v Alonso (16 NY3d 581)

The indictment, charging Medicaid fraud, was dismissed against defendant by the trial court due to the prosecution's failure to disclose exculpatory evidence in accordance with the mandate of Brady v Maryland (373 US 83 [1963]). Although the dismissal was ostensibly made pursuant to Criminal Procedure Law § 240.70 (1), which is not referenced in Criminal Procedure Law § 450.20, the statute governing the appealability of orders dismissing accusatory instruments, the Court

construed the dismissal to have been accomplished pursuant to Criminal Procedure Law § 210.20 (1) (h), which unlike Criminal Procedure Law § 240.70 -- the provision upon which the trial court purported to rely -- specifically authorizes an indictment's dismissal where there is a legal impediment to conviction of the crime charged. Inasmuch as section 210.20 dismissal orders are appealable pursuant to Criminal Procedure Law § 450.20, the Court held that the People's appeal, which had been dismissed by the Appellate Division as taken from an non-appealable order, should be reinstated.

People v Martin (16 NY3d 607)

During jury selection at defendant's trial, Supreme Court ejected defendant's father from the courtroom, citing both space constraints and a concern that defendant's father would unduly influence the prospective jurors. The Court reversed defendant's conviction and ordered a new trial, holding that the closure of the courtroom during the voir dire proceedings was a violation of defendant's Sixth Amendment right to a public trial. Citing the United States Supreme Court's decision in Presley v Georgia (558 US __, 130 S Ct 721 [2010]), the Court concluded that, although courtroom overcrowding and the improper influencing of prospective jurors are legitimate concerns, a trial court must first consider reasonable alternatives to the closing of a courtroom. Supreme Court's failure to do so here was a per se violation of defendant's constitutional right to a public trial.

Matter of Dylan C. (16 NY3d 614)

Dylan C. eloped from a nonsecure detention facility to which he had been remanded pending the adjudication of juvenile deliquency charges against him. He was separately charged with escape in the second degree, an offense which, if committed by an adult, would be punishable as a class E felony. Consistent with People v Ortega (69 NY2d 763 [1987]), where the Court held that elopement of an involuntarily committed patient from a nonsecure psychiatric facility was not punishable as escape in the second degree, and recognizing the distinction specifically drawn in article 3 of the Family Court Act between secure and nonsecure detention facilities, the latter having as their dominant purpose rehabilitation rather than punishment and imprisonment, the Court reaffirmed, in the qualitatively distinct context of juvenile detention, that elopement from a nonsecure detention facility does not constitute an escape within the meaning of the second degree escape statute.

People v Lingle (16 NY3d 621)

In People v Sparber (10 NY3d 457 [2008]), the Court held that defendants subject to postrelease supervision (PRS) have a statutory right under CPL 380.20 and 380.40 for a judge to pronounce the PRS sentence in their presence in open court, and that the remedy when a judge neglects to do this is resentencing to correct the error. Defendants in these six consolidated appeals argued that double jeopardy and/or due process barred their resentencing because they had already served "significant" or "substantial" portions of their originally imposed sentences. Citing People v Williams (14 NY3d 198 [2010]), however, the Court observed that defendants were presumed to have been aware that a determinate prison sentence without a PRS term was illegal and subject to

correction, and so an expectation of finality did not arise for purposes of double jeopardy before completion of the lawful portion of an illegal sentence and exhaustion of any appeal taken. Further, defendants did not establish that the government's conduct shocked the conscience so as to make out a substantive due process violation. Finally, the Court held that because a trial court lacks discretion to reconsider the incarceratory component of a defendant's sentence at a Sparber resentencing, the Appellate Division may not reduce the prison sentence on appeal in the interest of justice -- i.e., the resentencing court's failure to consider a lesser sentence would not be "an error or defect" subject to reversal or modification (CPL 470.20).

People v Fernandez (17 NY3d 70)

Defendant was indicted for first-degree rape, first- and second-degree course of sexual conduct against a child, first- and second-degree sexual abuse and other related charges for allegedly engaging in sexual conduct with complainant, defendant's then eight-year-old niece. The material issue at trial was complainant's credibility. At trial, defendant sought to introduce evidence related to complainant's reputation for truthfulness within the family. Supreme Court excluded this evidence. While acquitting defendant of the more serious charges, the jury convicted defendant of first- and second-degree sexual abuse. In reversing defendant's conviction, the Court held that Supreme Court abused its discretion as a matter of law when it excluded the admission of this reputation evidence. The Court concluded that, assuming the proper foundation has been laid, family and family friends could constitute a relevant community for purposes of introducing testimony pertaining to an opposing witness's bad reputation for truth and veracity.

People v Steward (17 NY3d 104)

In this case in which defendant was charged with multiple serious felony offenses, the Court determined, after review of a number of factors, that the trial court abused its discretion in imposing a five-minute limitation on the attorneys' questioning of prospective jurors during voir dire. Because CPL 270.15 does not set forth specific guidelines for the conduct of voir dire, the Court has recognized the broad discretion afforded trial courts in supervising the examination of prospective jurors. But the time allotment to the parties for questioning should be determined after consideration of a number of factors particular to the case. Here, although the trial judge engaged in worthwhile, extensive questioning of the venire panel, the restriction on counsel questioning to five minutes for each round of voir dire proved too short to permit adequate investigation of several issues that arose during voir dire. After determining that there was an abuse of discretion, the Court turned to the prejudice inquiry and, unable to discount defendant's claim of prejudice due to the lack of clarity in the record as to which prospective jurors were discharged and which were sworn to serve, the Court reversed defendant's conviction and remitted for a new trial.

People v Concepcion (17 NY3d 192)

When defendant moved to suppress cocaine discovered in his vehicle, the People argued that he consented to the search or, alternatively, that the drugs were admissible under the inevitable discovery doctrine. Supreme Court denied the motion, concluding that the People did not establish

consent, but that the cocaine inevitably would have been discovered during an inventory search. Following a trial, defendant was convicted of weapon possession, drug possession and assault charges. On appeal, the People conceded that the inevitable discovery doctrine was not applicable, but again argued that defendant consented to the search. The Appellate Division agreed, thus denying suppression on a basis that Supreme Court had squarely rejected, and affirmed the judgment. The Court of Appeals held that the Appellate Division's decision was clearly erroneous under People v LaFontaine (92 NY2d 470 [1998]), which construed CPL 470.15 (1) to bar that court from affirming a judgment, sentence or order on a ground not decided adversely to the appellant by the trial court. With respect to the remedy for the LaFontaine error, the Court concluded that suppression, if granted upon remittal, would not require reversal of defendant's convictions for weapon possession and assault because there was no reasonable possibility that the evidence supporting the potentially tainted drug possession count had a spillover effect on these guilty verdicts, where the proof was supplied by the victim's testimony.

People v Lewie (17 NY3d 349)

This case analyzed the meaning of the term "depraved indifference to human life" as used in the homicide statutes. Over a period of six weeks, defendant left her baby at home with a man who abused him and ultimately caused his death. Defendant was charged with manslaughter and reckless endangerment of a child, was convicted, and appealed those convictions on sufficiency of the evidence grounds. The manslaughter conviction required the jury to find that defendant was aware of and consciously disregarded the risk that leaving her baby with the abuser would lead to the baby's death. Finding that defendant was, among other things, aware that the man was hitting, shaking, and biting the baby, the Court held the evidence sufficient to support the manslaughter conviction. The reckless endangerment charge required the jury to find a different state of mind: defendant must have, under circumstances evincing a depraved indifference to human life, recklessly engaged in conduct that created a grave risk of death to the baby. Holding that "depraved indifference" means that defendant not only knowingly ignored a grave risk to human life, but also that she did not care how that risk turned out, the Court reversed the reckless endangerment conviction. The evidence did not support a finding that defendant did not care at all about her child's safety.

Donald v State of New York; Eanes v State of New York; Orellanes v State of New York; Ortiz v State of New York (17 NY3d 389)

Four people were convicted of felonies and sentenced to determinate prison terms that were required by law to include post-release supervision (PRS); however, the sentencing judge failed to pronounce the PRS term. All four were made to serve their PRS terms, and three were imprisoned for PRS violations. They sued for damages, claiming the PRS was wrongly imposed. The Court held that none of the four claimants had valid claims. In one case, the commitment sheet included PRS, so the Department of Correctional Services was not at fault for imposing it. One claimant was never imprisoned as a result of the imposition of PRS, and so could not claim false imprisonment. The other two failed to allege that their detention was not privileged under Broughton v State of New York (37 NY2d 451, 456 [1975]). To the extent that claimants claimed negligence by the State, the

State was immune under Tango v Tulevech, (61 NY2d 34, 40 [1983]), because DOCS's actions in imposing PRS terms were discretionary.

People v Rodriguez (17 NY3d 486)

The issue in this case was whether there was legally sufficient evidence to establish that defendant intended to defraud, deceive, or injure someone within the meaning of Penal Law § 170.25. A conviction for criminal possession of a forged instrument in the second degree requires both knowing possession and intent, but only the latter element was at issue in this case. Defendant was arrested after a police officer recognized him on a public street as a person with whom the officer wished to speak about an ongoing official investigation. During a search incident to arrest, a driver's license, Social Security card, non-driver identification card, and permanent resident card were found in defendant's possession, all of which were forged and bore defendant's photograph and the name of an alias. The arresting officer also found loose ID-sized photographs of defendant in his pocket and discovered in defendant's wallet, separate from the other materials, authentic identification documents matching defendant's true identity. The officer also observed that defendant appeared to be wearing the same corduroy suit jacket that he was wearing in the photographs. The Court revisited People v Bailey (13 NY3d 67 [2009]), which held that intent cannot be inferred from knowing possession alone. Contrasting the situation in this case with that in Bailey, the Court affirmed the Appellate Division's order affirming the judgment of conviction, holding that the jury could rationally have inferred from defendant's actions and the surrounding circumstances that he indeed had the requisite intent to deceive, defraud, or injure someone.

People v Muhammad; *People v Hill* (17 NY3d 532)

The Court held that a jury verdict convicting defendants of assault but acquitting them of criminal possession of a weapon was not a repugnant verdict. The Court noted that, in New York, the standard for determining whether a verdict is legally repugnant was established in People v Tucker (55 NY2d 1 [1981]): a verdict as to a particular count is repugnant only when it is inherently inconsistent when viewed in light of the elements of each crime as charged to the jury, without regard to the accuracy of those instructions. Tucker recognized that a jury may extend mercy to a defendant, decide on a compromise, or reject certain evidence. Hence, a jury may decide not to convict a defendant of one or more charges, notwithstanding the factual interrelationship of that offense to other charges for which defendant is convicted. Therefore, the repugnancy test devised in Tucker does not rely on the particular facts of a case but instead is dependent upon the application of a theoretical impossibility test. That is, a verdict is repugnant where it is legally impossible for the jury to have convicted a defendant on one count but not the other. If, viewing only the elements of the offenses as charged to the jury, there is a possible theory under which a split verdict could be legally permissible, even if not supported by the evidence in the case, the jury's verdict is not repugnant. In such cases, the verdict will not be disturbed as it may well arise from a jury compromise or represent the jury's permissible extension of leniency.

People v Credle (17 NY3d 556)

Following two inconclusive votes, the charges against defendant were withdrawn from the grand jury to which they had first been submitted and, without leave of the Court, presented to a second panel, which returned an indictment. On appeal, defendant argued that the prosecutor's resubmission of the charges without judicial leave was improper, since the withdrawal of the fully presented charges from the first grand jury was tantamount to a dismissal, triggering the prosecutor's obligation under Criminal Procedure Law § 190.75 (3) to obtain judicial authorization for the charges' resubmission. The Appellate Division, however, citing People v Aarons (2 NY3d 547 [2004]), held that there could not be a dismissal, except by vote of 12 grand jurors, and that, in the absence of a voted dismissal, no obligation arose under Criminal Procedure Law § 190.75 (3) to seek leave from the Court to resubmit the charges. The Court reversed, holding in accordance with its prior construction of Criminal Procedure Law § 190.75 (3) in People v Wilkins (68 NY2d 269 [1986]) that, although the grand jury itself may not except by 12 votes dismiss charges, when a matter has been fully presented to a grand jury, the act of a prosecutor in taking the fully committed matter from a panel is the equivalent of a dismissal. A different rule, the Court noted, as it had in Wilkins, would, by allowing serial presentations to different grand juries without limitation, undermine the grand jury's institutional role as a check on prosecutorial power.

People v Grant (17 NY3d 613)

Defendant was indicted for first-degree robbery under a theory that he forcibly stole property and, in the course of the commission of the crime, threatened the use of a dangerous instrument (see Penal Law § 160.15 [3]). During the grand jury proceeding, the People adduced evidence that defendant entered a bank and passed a demand note to a teller, stating, "I have a gun, fill the bag. Don't say anything or I'll shoot." The Court held that defendant's written statement, by itself, was legally insufficient to establish that defendant was in actual possession of a dangerous instrument. Accordingly, the Court reduced the defendant's conviction to third-degree robbery (see Penal Law § 160.05).

People v Edwin Santiago (17 NY3d 661)

In this case concerning eyewitness recognition of an assailant whose face was partially concealed by his clothing, the Court held that two additional eyewitness identifications did not sufficiently corroborate the assault victim's identification of defendant so as to render expert testimony on recognition memory unnecessary. The victim identified her attacker in a police lineup with subjective certainty, but no physical evidence linked defendant to the assault. Defendant attempted to secure testimony from an expert on psychological factors affecting the accuracy of human recognition memory, including the principle that subjective confidence is not a good predictor of accuracy. The trial court denied the request without holding a Frye hearing. Subsequently, two eyewitnesses to the assault identified defendant in lineups. During trial, defendant renewed his objection to the court's refusal to admit the expert testimony. The trial court denied the motion. Defendant was convicted of first-degree assault. The Court ruled that the trial court abused its discretion in denying defendant's request for expert testimony on eyewitness identification. The

Court explained that People v LeGrand (8 NY3d 449 [2007]) established a two-stage inquiry for considering a motion to admit such testimony. The first stage requires the trial court to decide whether the case before it turns on the accuracy of an eyewitness identification, or whether, on the other hand, the eyewitness identification is sufficiently corroborated by other evidence, including other eyewitness identifications, to obviate the need for expert testimony. The Court noted, with respect to the corroborating evidence in this case, that one eyewitness identification may have been tainted by the witness's memory of a photograph of defendant he had seen in a newspaper and the other's identification may have been influenced by his memory of a police artist's sketch of the assailant created with the victim's assistance. In the circumstances, there was not sufficient corroboration of the victim's identification, and it was incumbent on the trial court to proceed to the second stage of LeGrand analysis. This stage involves determining whether the requested testimony is relevant; based on generally accepted, scientific principles; proffered by a qualified expert; and beyond an average juror's ken. Applying these criteria, the Court found that the trial court's exclusion of expert testimony was improper with respect to several principles concerning eyewitness recognition memory, including eyewitness confidence issues, although it was proper with respect to other principles that would have been irrelevant to the case.

People v Ventura; *People v Gardner* (17 NY3d 675)

The common issue presented was whether the Appellate Division abused its discretion in dismissing the timely appeals of defendants who were involuntarily deported by U.S. Immigration and Customs Enforcement following their criminal convictions, but prior to resolution of their appeals. The Court reversed, concluding that the defendants, who have an absolute right to an appeal of their convictions pursuant to Criminal Procedure Law § 450.10, did not voluntarily abscond or otherwise engage in affirmative conduct that would forfeit their right to intermediate appellate review (see People v Taveras, 10 NY3d 227, 232 [2008]). Unlike People v Genet (59 NY 80 [1874]), People v Del Rio (14 NY2d 165 [1964]) and People v Diaz (7 NY3d 831 [2006]), where the Court dismissed the appeals of absent defendants, the defendants here had not received intermediate appellate review in satisfaction of their statutory right. The Court further observed that intermediate appellate review is essential, particularly in light of the broader fact-finding and interest-of-justice powers of the Appellate Division (see CPL 470.15 [6]).

People v Bueno (18 NY3d 160)

Two uniformed EMTs were dispatched at 2:20 a.m. on the day before Christmas to a residential address in Brooklyn to treat individuals reportedly injured in a fight. After treating a woman who had injured her hand, one of the EMTs was climbing into the driver's side of the ambulance when defendant blindsided him with a blow to the head, threw him to the ground and pummeled him repeatedly about the face and head. A second unidentified individual attacked the other EMT. Defendant was subsequently convicted of violating Penal Law § 120.05 (3), which provides that a person is guilty of second-degree assault, a class D felony, when "[w]ith intent to prevent" an EMT "from performing a lawful duty" he causes the EMT to suffer physical injury. The Court held that there was sufficient circumstantial evidence from which a reasonable jury could infer that defendant intended to interfere with the EMT's performance of his job duties as an EMT, which

he was performing in a lawful manner when he attempted to leave premises where he had furnished medical assistance.

People v Rivers (18 NY3d 222)

Defendant was charged with, among other offenses, three counts of arson in the first degree in connection with two fires set five days apart in a four-story apartment building located in Brooklyn, New York. At trial, expert testimony was adduced concerning the origins of the fires. Relying primarily on People v Grutz (212 NY 72 [1914]), defendant argued that the testimony was inadmissible because it invaded the jury's province. The Court held that any error in admitting such testimony was harmless. Significantly, the Court put the Grutz proposition to rest, stating that New York's well-established body of case law concerning the admissibility and limits of expert testimony should be brought to bear in resolving whether such testimony is admissible in a particular arson case.

People v Hightower (18 NY3d 249)

Defendant was arrested after a police officer observed him swiping an Unlimited MetroCard in a midtown Manhattan subway station, letting an unknown person pass through the turnstile in exchange for an unknown amount of money. He was convicted, upon a guilty plea, of petit larceny. The Court reversed the Appellate Term's affirmance of the judgment of conviction, holding that the misdemeanor information used to prosecute defendant was jurisdictionally deficient on the basis that it failed to establish reasonable cause that defendant had committed the crime charged (under CPL 100.40 [4] [b]), because his actions, as alleged, did not constitute petit larceny within the meaning of Penal Law § 155.25. Citing People v Nappo (94 NY2d 564 [2000]), which held that the State was not the "owner" of unpaid taxes within the meaning of the larceny statute, the Court held that the New York City Transit Authority was similarly not the "owner" of the money paid to defendant in exchange for the swipe of the unlimited MetroCard. The Court concluded that while the accusatory instrument adequately described events consistent with the other offenses with which defendant was charged (unauthorized sale of certain transportation services, pursuant to Penal Law § 165.16 [1], and illegal access to Transit Authority services, pursuant to 21 NYCRR 1050.4), it was deficient as to the petit larceny charge.

DOMESTIC RELATIONS LAW

Commodity Futures Trading Commn. v Walsh (17 NY3d 162)

The United States Court of Appeals for the Second Circuit presented the Court with certified questions that arose from the efforts of federal agencies to obtain the disgorgement of assets from the former spouse of a person alleged to have engaged in massive securities fraud against numerous public and private investors. The issue here was whether the innocent former spouse -- who had been married to the accused defrauder -- could legitimately retain assets transferred to her as a result

of a divorce settlement, thereby preventing disgorgement by federal authorities. After noting that there was no allegation in this case that the accused's former wife had participated in or had any knowledge of her ex-husband's wrongdoing, the Court began its analysis by reviewing several general principles underlying the equitable distribution provisions of the Domestic Relations Law -- the broad definition of marital property, the various types of consideration that may be provided by spouses entering into divorce settlements and the need for finality of divorce decrees. Based on the statutory scheme governing property distribution in New York, the Court determined that an innocent spouse who received possession of tainted property in good faith as a consequence of an equitable distribution award and who gave fair consideration for that property should prevail over the claims of the original owners. The Court clarified, however, that this would not be true if it was demonstrated that the transferee-spouse was aware of or participated in the illegal activities or otherwise failed to act in good faith, such as entering into a collusive agreement aimed at concealing the stolen monies and assets from the rightful owners, because, in that event, the former spouse would not constitute a good faith purchaser for value.

ELECTIONS -- REDISTRICTING

Yatauro v Mangano (17 NY3d 420)

This case addressed the legislative redistricting provisions in the Nassau County Charter. The Court determined that the Charter called for an integrated three-step process for redistricting. Specifically, although the Charter allowed for new metes and bounds descriptions to be generated based on the decennial census results, that was only the initial step of the process. The Charter also contemplated consideration of recommendations from a bipartisan commission and public input before culminating in the adoption of a redistricting plan. For these reasons, the Court held that Supreme Court properly declared that Local Law No. 3-2011 of the County of Nassau is in accord with Nassau County Charter § 112, but that its implementation is null and void in connection with the November 8, 2011 general election for lack of compliance with Nassau County Charter §§ 113 and 114.

ENVIRONMENTAL LAW

Matter of New York State Superfund Coalition, Inc. v New York State Dept. of Envtl. Conservation (18 NY3d 289)

In a prior case, petitioner, New York State Superfund Coalition, Inc. (Superfund), challenged Department of Environmental Conservation regulations concerning the identification of inactive hazardous waste disposal sites in New York State (Matter of New York State Superfund Coalition v New York State Dept. of Envtl. Conservation, 75 NY2d 88 [1989]). In this appeal, Superfund commenced a hybrid article 78 and declaratory judgment proceeding to annul certain regulations

promulgated by the Department concerning the scope of remedial programs intended to clean inactive hazardous waste disposal sites, following their identification. The Court held that regulations 6 NYCRR 375-2.8 (a) and 6 NYCRR 375-1.8 (f) (9) (i), which set a cleanup goal of restoring a site to "pre-disposal conditions," did not exceed Environmental Conservation Law § 27-1313 (5), which provides for a "complete cleanup." The regulations set forth aspirational goals of remediation, grounded in the authority of the statutes but tempered by the practicalities of technological feasibility and cost-effectiveness.

EVIDENCE

People v Spicola (16 NY3d 441)

A 13-year-old boy disclosed to his mother that seven years earlier defendant had begun to molest him, and that the abuse continued for more than a year. At trial, the defense attacked the boy's credibility, focusing on his failure to report the alleged abuse promptly and his continued association with defendant after the abuse was claimed to have ended. The Court concluded that the trial court did not abuse its discretion by allowing an expert to testify regarding child sexual abuse accommodation syndrome to explain why a child might delay reporting sexual abuse. Further, the Court decided that the boy's responses to a nurse's inquiries about why he was being examined were germane to diagnosis and treatment, and therefore were properly admitted as an exception to the hearsay rule, while her observations of his demeanor and manner were admissible because they were relevant to her medical decisions about the necessity for counseling or psychological therapy or other treatment.

FEDERAL PREEMPTION

Doomes v Best Tr. Corp. (17 NY3d 594)

Plaintiffs -- passengers in a single-vehicle bus accident -- claimed that the failure of defendant manufacturer Warrick Industries, Inc. to install passenger seatbelts, among other things, caused their injuries. The Appellate Division reversed trial judgments in plaintiffs' favor and dismissed the complaints, holding the seatbelt claim was preempted by federal regulations promulgated by the National Highway Traffic Safety Administration. The Court reversed, holding that Federal Motor Vehicle Safety Standard 208 (49 CFR 571.208), which only mandates the installation of a safety device at the bus driver's seat, did not preempt plaintiffs' claims. Moreover, as no preemptive intent could be discerned from the pertinent federal regulations, there was no implied conflict preemption of plaintiffs' seatbelt claims.

GOVERNMENTAL IMMUNITY

Matter of World Trade Ctr. Bombing Litig. (17 NY3d 428)

In litigation arising from the 1993 terrorist bombing in the subterranean parking garage of the World Trade Center (WTC), the parties disputed whether the provision of security within the WTC by the Port Authority of New York and New Jersey (Authority) involved the performance of a governmental or proprietary function. As an initial matter, the Court rejected plaintiffs' argument that Unconsolidated Laws of New York § 7106 was a statutory waiver of governmental immunity, determining that the statute merely waived the Authority's sovereign immunity. Then, relying on Miller v State of New York (62 NY2d 506 [1984]), the Court held that the Authority was engaged in the performance of a governmental function because the alleged injury-causing acts or omissions concerned lapses in examining risks of terrorist attack and adopting appropriate safeguards to deter such intrusion. Because the Authority allocated police resources for the exhaustive study, planning and implementation of security at the WTC -- which involved policy-based decision making -- its activities were decidedly governmental in nature. And, as discretion was exercised in the Authority's decision making, it was entitled to governmental immunity.

INDEMNIFICATION

McCarthy v Turner Constr., Inc. (17 NY3d 369)

Plaintiff, an electrician employed by a subcontractor, brought an action against the property owners and general contractor to recover damages for personal injuries he sustained when he fell from a ladder while working at a construction site. The owners filed indemnity cross claims against the general contractor. After summary judgment was awarded in favor of plaintiff on his Labor Law § 240 (1) claim, with the owners found vicariously liable, Supreme Court denied the owners' motion for summary judgment on their indemnity claims. At issue before this Court was whether the owners were entitled to common law indemnification from the general contractor. The Court held that the owners were not, notwithstanding an agreement between the general contractor and a nonparty tenant under which the general contractor was engaged as construction manager and contractually required to supervise and control the work and implement safety precautions. Consistent with the equitable purpose underlying common law indemnification, which is to impose the duty to indemnify on parties who were actively at fault in bringing about the injury, the Court ruled that liability for indemnification may only be imposed against those parties who exercise actual supervision over the injury-producing work. Here, the agreement between the general contractor and the tenant was insufficient alone to establish that the general contractor actually supervised or directed plaintiff's work, especially in light of the fact that the electrical work was contracted out to subcontractors, and the trial court's findings that the general contractor had no supervisory authority over the subcontractor which employed plaintiff, would not have directed plaintiff as to how to perform his work, and did not provide any tools or ladders to the subcontractors who worked at the site.

INSURANCE LAW

State Farm Mut. Auto Ins. Co. v Langan (16 NY3d 349)

At issue in this appeal was whether the occurrence -- the insured decedent was intentionally struck by a person driving a motor vehicle -- was an accident within the meaning of the insured's uninsured motorist endorsement and certain other policy provisions. The Court determined that the incident should be viewed from the perspective of the insured and, from that perspective, the occurrence was an unexpected or unintended event and therefore was a covered accident. The Court also found that the insured was entitled to uninsured motorist benefits, as that result was consistent with the expectations of the insured and with the purpose of such benefits -- to provide compensation for damage caused by uninsured motorists.

ABN AMRO Bank N.V. v MBIA Inc. (17 NY3d 208)

In this dispute between MBIA Insurance Corporation (MBIA Insurance) and certain of its policyholders, the Court held that the 2009 restructuring of MBIA Insurance and its related subsidiaries did not preclude policyholders from asserting claims against MBIA Insurance under the Debtor and Creditor Law and the common law.

Perl v Meher (18 NY3d 208)

The No–Fault Law (Insurance Law § 5101 et seq.) bars recovery in automobile accident cases for "non-economic loss" unless the plaintiff suffers a "serious injury" as defined in the statute. In Toure v Avis Rent A Car Sys. (98 NY2d 345 [2002]), the Court held that a claim of serious injury must be supported with "objective proof"; subjective complaints alone are insufficient. In the three cases consolidated in this appeal, each of the plaintiffs alleged serious injuries in the form of a "permanent consequential limitation of use of a body organ or member" or a "significant limitation of use of a body function or system." In each case, the Appellate Division found the plaintiff's allegations insufficient as a matter of law, on the ground that the plaintiff failed to demonstrate restricted range of motion based on objective quantitative measurements contemporaneous to the accident. The Court rejected this rule, noting that quantitative, contemporaneous findings were not required by Toure, and that to require such a showing would create perverse results. While the Court reaffirmed Toure's holding that a plaintiff must present objective evidence to support a claim of serious injury, it noted that the "quantitative, contemporaneous findings" rule would penalize those plaintiffs who seek medical attention immediately after an accident from doctors who are more concerned with treating their injuries than creating the right kind of record for litigation.

LABOR AND EMPLOYMENT

St. Louis v Town of N. Elba (16 NY3d 411)

Plaintiff commenced this action under Labor Law § 241 (6) after he was injured while helping to construct a drainage pipeline, due to the malfunction of a front-end loader being used to suspend an unsecured section of pipe. The Court held that, in order to effectuate the purpose of the Industrial Code and provide protection to laborers from workplace hazards, the applicability of a particular regulation should not depend merely on the name of the piece of equipment, but should also consider its function. Although a front-end loader was not one of the specifically enumerated machines in the section of the Industrial Code pertaining to "Power Operated Equipment" alleged to have been violated, the Court held that it should be subject to the same safety precautions required of other heavy equipment that was used to perform the same functions.

Wilinski v 334 E. 92nd Hous. Dev. Fund Corp. (18 NY3d 1)

In this appeal, the Court held that a worker who sustains an injury caused by a falling object is not categorically barred from recovery under Labor Law § 240 (1) simply because the base of the object stood at the same level as the worker. In so holding, the Court abrogated several Appellate Division decisions which, relying on a flawed reading of Misseritti v Mark IV Constr. Co. (86 NY2d 487 [1987]), dismissed plaintiffs' section 240 (1) claims that arose out of such circumstances.

LIBEL AND SLANDER

Shiamili v Real Estate Group of N.Y., Inc. (17 NY3d 281)

Addressing a novel issue, the Court held that plaintiff's claims against a web site operator arising from allegedly defamatory comments posted to the web site were barred by the Communications Decency Act (CDA) (47 USC § 230). The CDA provides immunity for providers or users of interactive computer services from suit seeking to hold such providers or users liable in tort as a publisher or speaker of defamatory statements made by another "information content provider" (47 USC § 230 [c] [1]).

MEDICARE REIMBURSEMENT

Matter of Balzarini v Suffolk County Dept. of Social Servs. (16 NY3d 135)

The spousal impoverishment provisions of the Medicare Catastrophic Coverage Act of 1988 (42 USC § 1396-r) were designed to prevent pauperizing the spouse remaining in the community

after a husband or wife residing in a nursing home becomes eligible for Medicaid. At issue on this appeal was whether outlays for items such as a mortgage, homeowners' insurance, a car loan, food, clothing, prescription drugs, utilities and minimum monthly payments to liquidate credit-card debt qualified as "exceptional circumstances" causing "significant financial distress" so as to justify an increase in the minimum monthly maintenance needs allowance that the Medicaid program provides for the community spouse. The Court concluded that these were the kinds of everyday living expenses meant to be covered by the allowance itself, and that the Medicaid program does not guarantee the community spouse the same standard of living -- even if not a lavish one -- enjoyed before the institutionalized spouse entered a nursing home. Rather, "exceptional circumstances" causing "significant distress" contemplates a situation where true financial hardship is thrust upon the community spouse by circumstances over which he or she exercises no control, such as extraordinary medical expenses or the costs of major repairs to the homestead.

MENTAL HYGIENE LAW

Matter of Miguel M. (Barron) (17 NY3d 37)

Petitioner challenged the disclosure of his medical records to state officials and the State's subsequent use of those records in a proceeding which ultimately resulted in his mandated participation in "assisted outpatient treatment," i.e., compulsory medication. The case hinged on whether the federal Health Insurance Portability and Accountability Act (HIPAA) preempted a provision of the State Mental Hygiene Law permitting the disclosure of medical records to state health officials. HIPAA generally prohibits disclosure of patient information, with two relevant exceptions: the public health exception and the treatment exception. The Court held that neither exception was intended to apply to the disclosure of petitioner's private records, and therefore HIPAA's general privacy protections prohibited the disclosure at issue.

Matter of Rueda v Charmaine D. (17 NY3d 522)

Mental Hygiene Law § 9.27 authorizes the involuntary commitment of a mentally ill patient in need of hospitalization. In this case, an emergency room patient was involuntarily committed to a hospital by an attending psychiatrist in accordance with the procedures set forth in that statute. The patient challenged her commitment on the ground that the attending physician was not a proper applicant under section 9.27. She also contended that the only proper means of committing her was in accordance with the "emergency procedures" described under Mental Hygiene Law § 9.39. The Court found that the attending psychiatrist had standing to apply for the patient's involuntary commitment under section 9.27 (b) (11), which authorizes an application by "a qualified psychiatrist who is either supervising the treatment of or treating such person for a mental illness in a facility licensed or operated by the office of mental health." The Court also rejected the patient's contention that she could be committed only under Mental Hygiene Law § 9.39, holding that section 9.39 was intended to apply only in extreme cases where the patient's alleged mental illness is likely to cause "serious harm" to the mentally ill person or to others. The Court found no reason to require a person

seeking commitment to resort to the emergency provision of Mental Hygiene Law in a case where section 9.27's procedures would adequately protect the patient and the public.

MILITARY LAW

Matter of Woods v New York City Dept. of Citywide Admin. Servs. (16 NY3d 505)

After the petitioner had passed a civil service examination, his name was placed on a list maintained by the New York City Department of Citywide Administrative Services (DCAS) for appointment as a New York City firefighter. At the time his name was reached on the list, he was on military duty. The Court held that Military Law § 243 (7) required DCAS to place petitioner on a "special eligible list," from which he could be certified for appointment. The fact that petitioner did not meet the qualifications for appointment when his name was first reached was found to be irrelevant, so long as he met them when the time to certify him for appointment arrived.

MUNICIPAL CORPORATIONS

Matter of AAA Carting and Rubbish Removal, Inc. v Town of Southeast (17 NY3d 136)

The Court held that in an open bidding process governed by General Municipal Law § 103 and Town Law § 122, the contract must be awarded to the lowest responsible bidder and a Town is precluded from selecting a higher bid based on a subjective belief that the higher bidder is more responsible. Further, the Court concluded that the determination whether a bidder is qualified must be based on the criteria set forth in the bid proposal.

NEGLIGENCE

Kabir v County of Monroe (16 NY3d 217)

While patrolling in a marked police vehicle, a deputy received a radio dispatch requesting response to a burglary alarm. The deputy told the dispatcher that he would assist, but did not activate the vehicle's emergency lights or siren. The deputy glanced down at his terminal display to view the names of the cross streets of the location of the burglary alarm. When he lifted his gaze, he realized too late that traffic had slowed, and he rear-ended the vehicle ahead of him. The driver of that vehicle sued the deputy and others, alleging serious injury under New York's No-Fault Law. The parties disputed whether the deputy was liable for the accident only if he acted with "reckless disregard for the safety of others" (Vehicle and Traffic Law § 1104 [e]). The Court held that the

reckless disregard standard of care in Vehicle and Traffic Law § 1104 (e) only applies when a driver of an authorized emergency vehicle involved in an emergency operation engages in the specific conduct exempted from the rules of the road by Vehicle and Traffic Law § 1104 (b). Because the deputy was not exercising any of the privileges enumerated in subdivision (b) at the time of the accident, the Court concluded that principles of ordinary negligence governed his conduct.

Lifson v City of Syracuse (17 NY3d 492)

Defendant driver accidentally struck plaintiff's decedent with his vehicle while she was attempting to cross the street. Defendant claimed that he had not seen the decedent because he was temporarily blinded by sun glare, and the jury was instructed on the emergency doctrine in his favor. The Court determined that, under the circumstances presented, where defendant was turning to the west at dusk, it was error to give the instruction because the presence of sun glare could not be considered a sudden and unexpected circumstance.

NO-FAULT AUTOMOBILE INSURANCE

New York and Presbyt. Hosp. v Country-Wide Ins. Co. (17 NY3d 586)

The issue before the Court was whether a health care services provider, as assignee of a person injured in a motor vehicle accident, could recover no-fault benefits by timely submitting the required proof of claim after the 30-day period for providing written notice of the accident had expired. Reversing the Appellate Division, which ruled that the "notice of accident" provision was satisfied based on the plain language of 11 NYCRR 65-3.3 (d), the Court held that the submission of the proof of claim within 45 days of the date health care services were rendered could not serve as timely written notice of the accident after the 30-day period for providing such written notice had expired.

PRODUCTS LIABILITY

Yun Tun Chow v Reckitt & Colman, Inc. (17 NY3d 29)

In this products liability/defective design case, the Court determined that defendants -- entities responsible for the manufacture, distribution and package design of a brand of lye -- failed to establish that they were entitled to summary judgment dismissal of the complaint as a matter of law. Defendants failed to demonstrate that it was reasonable for them to place the product in the stream of commerce as a drain cleaner for use by a layperson or that it was not feasible to design a safer, similarly effective and reasonably priced alternative. It was insufficient for defendants, through an attorney's affirmation, to merely state that the dangers of lye were well known and that any variation in it would result in a different, less effective product. Relatedly, the Court also held that defendants failed to show that the utility of the product outweighed its inherent danger or that plaintiff's handling was the sole proximate cause of his injuries.

PUBLIC OFFICERS

Matter of Meegan v Brown (16 NY3d 395)

Upon the lifting of a wage freeze imposed by the Buffalo Fiscal Stability Authority (BFSA), City employees and members of City unions brought these CPLR article 78 proceedings and declaratory judgment action against respondents challenging, among other things, the suspension of step-up plan wage increases. This Court held that the relevant provisions of the Public Officers Law empowered the BFSA to freeze wages and salary increments until the City's growth and stability were renewed. The statutory interpretation taken by the City, that the employees were only entitled to a one-step salary increase and not entitled to advance the four salary steps they would have had the freeze not been imposed, comported most with the meaning and purpose of the statute.

REAL PROPERTY LAW

Bleecker St. Tenants Corp. v Bleeker Jones LLC (16 NY3d 272)

In this dispute between a landlord and commercial tenant, this Court held that EPTL 9-1.1 (b), New York's rule against perpetuities, does not apply to options to renew leases. The Court recognized that, although "[u]nder the common law, options to purchase land are subject to the rule against remote vesting," options to renew leases had been consistently held valid. Thus, the Court concluded that "because the rule against perpetuities has not applied to options to renew leases under the American common law and EPTL 9-1.1 (b) codifies the American common law . . . options to renew leases also fall outside of the scope of EPTL 9-1.1 (b)."

RELIGIOUS CORPORATIONS AND ASSOCIATIONS

Blaudziunas v Egan (18 NY3d 275)

At issue was the authority of former parishioners of a Roman Catholic Church, incorporated as a religious corporation, to challenge the demolition of the church building. Plaintiffs asserted that they were "members of the corporation" and their authorization of the demolition was required pursuant to Religious Corporations Law § 5. The Court rejected plaintiffs' contentions. Applying the neutral principles of law doctrine to the property dispute, the Court concluded, pursuant to the by-laws of the church corporation, that the parishioners were members of the ecclesiastical body -- not members of the corporation. The Court also observed that the Religious Corporations Law, church canon laws and the church corporation's by-laws granted the trustees of the church corporation the power to control and administer the property of the church corporation. The deed

to the church building was issued to the church corporation. Thus, the Court concluded that plaintiffs had no basis to challenge the board of trustees' decision to demolish the church building.

TORTS

People v Wells Fargo Ins. Servs., Inc. (16 NY3d 166)

The Attorney General brought a civil claim against the defendant insurance company, alleging a breach of fiduciary duty. The Court held that an insurance broker had no common law fiduciary duty to disclose to its customers that insurance companies had agreed to reward the broker for bringing the companies business. Accordingly, absent any claim of bad faith or misrepresentation, the People's complaint failed to state a cause of action.

Assured Guar. (UK) Ltd. v J.P. Morgan Inv. Mgt. Inc. (18 NY3d 341)

The issue in this case was whether the Martin Act -- General Business Law article 23-A -- preempts private common law causes of action, such as breach of fiduciary duty and gross negligence. The complaint alleged mismanagement of an investment portfolio. The defendant moved to dismiss the common law claims, asserting that such causes of action were supplanted by the Attorney General's exclusive enforcement powers under the Martin Act. Based on the text of the statute and its legislative history, the Court concluded that the Legislature did not intend to abrogate common law causes of action when it gave the Attorney General broad regulatory and remedial powers to prevent fraudulent securities practices. Although a private litigant may not pursue a common law claim that is predicated solely on a violation of the Martin Act, an injured investor may seek a common law remedy that is not dependent on the statute.

Smith v Sherwood (16 NY3d 130)

In this negligence case, a school district contracted with a private bus company to provide transportation services for school children. The buses were not the typical yellow school buses but were private buses posted with signs reading "special" to alert the public that they were not engaged in regular public routes. The injured party in this lawsuit was a 12-year-old boy who was hit by an approaching vehicle when he attempted to cross the street after safely exiting a bus. The action against the bus company and others alleged a breach of duty and violations of the regulations pertaining to school buses. The Court concluded that the bus driver had fulfilled the limited duty of a common carrier to provide a safe place for a passenger to disembark and that the special regulations governing the operation of school buses could not be applied to a private bus that lacked the special safety equipment required for school buses under the Vehicle and Traffic Law. Hence, the Court dismissed the common law negligence claim against the bus company.

Warney v State of New York (16 NY3d 428)

Claimant spent over nine years incarcerated for a murder he did not commit. After Supreme Court vacated his conviction and set aside his sentence, claimant sought damages under Court of Claims Act § 8-b, the Unjust Conviction and Imprisonment Act, for the years he spent wrongfully imprisoned. The State moved to dismiss the claim, which the Court of Claims granted. To survive a motion to dismiss, the Court observed, as relevant here, a claimant must set forth facts in sufficient detail that "he did not by his own conduct cause or bring about his conviction" (Court of Claims Act § 8-b [3]). In reinstating claimant's claim, the Court held that his detailed allegations that his confession was the product of police coercion did not bar recovery under section 8-b because the confession was not his "own conduct" within the meaning of the statute.

Gronski v County of Monroe (2011 NY Slip Op 08227 [decided November 17, 2011])

The Court considered whether the defendant County relinquished control over a recycling center, owned by the County and operated by an independent contractor pursuant to a non-lease agreement, such that the County owed no duty to plaintiff, a recycling center employee injured by a hazardous condition on the premises. The Court declined to apply an out-of-possession landlord standard where no leasehold was created by the agreement. Drawing from Butler v Rafferty (100 NY2d 265 [2003]) and Ritto v Goldberg (27 NY2d 887 [1970]), the Court articulated the rule that "[w]hen a landowner and one in actual possession have committed their rights and obligations with regard to the property to a writing, we look not only to the terms of the agreement but to the parties' course of conduct -- including, but not limited to the landowner's ability to access the premises -- to determine whether the landowner in fact surrendered control over the property such that the landowner's duty is extinguished as a matter of law." The Court reversed the Appellate Division's order granting defendant summary judgment and remanded the matter for a resolution of the dispositive issue of control.

WORKERS' COMPENSATION LAW

Matter of Elrac, Inc. v Exum (18 NY3d 325)

Insurance Law § 3420 (f) (1) requires every motor vehicle liability insurance policy to provide uninsured motorist coverage. In general, motor vehicle liability insurance is mandatory, but some companies are permitted to self-insure. In this case, an employee was injured by an uninsured motorist while driving his self-insured employer's car in the course of employment, and sought to collect uninsured motorist benefits from the employer. The employer, relying on section 11 of the Workers' Compensation Law (the "exclusivity" provision), contended that its sole obligation to the employee was to provide workers' compensation benefits. The Court disagreed, noting that there is no policy reason why the employee's uninsured motorist protection should decrease because he happened to be driving the car of a self-insured employer. Under a previously decided case, Matter of Allstate Ins. Co. v Shaw (52 NY2d 818 [1980]), a self-insurer has the same liability for uninsured

motorist coverage that an insurance company would have. The Court held that a self-insured employer's Shaw liability should not change simply because an employee is the party claiming uninsured motorist coverage. Although section 11 of the Workers' Compensation Law says that workers' compensation shields the employer from "any other liability whatsoever" to an employee, the Court refused to read that provision literally. An action against a self-insurer for uninsured motorist benefits sounds in contract, not tort, and is not barred by section 11 of the Workers' Compensation Law.

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 2011 BY JURISDICTIONAL PREDICATE
January 1, 2011 through December 31, 2011

BASIS OF JURISDICTION: ALL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Dissents in Appellate Division	12	5	1	1	0	19
Permission of Court of Appeals or Judge thereof	80	48	10	1	0	139
Permission of Appellate Division or Justice thereof	39	20	13	2	1	75
Constitutional Question	1	0	0	0	0	1
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	1	0	0	7	8
Totals	**132**	**74**	**24**	**4**	**8**	**242**

BASIS OF JURISDICTION: CIVIL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Dissents in Appellate Division	12	5	1	1	0	19
Permission of Court of Appeals	29	21	2	0	0	52
Permission of Appellate Division	24	13	12	0	1	50
Constitutional Question	1	0	0	0	0	1
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	0	1	0	7	8
Totals	**66**	**39**	**16**	**1**	**8**	**130**

BASIS OF JURISDICTION: CRIMINAL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Permission of Court of Appeals Judge	51	27	8	1	0	87
Permission of Appellate Division Justice	15	7	1	2	0	25
Other [1]	0	0	0	0	0	0
Totals	**66**	**34**	**9**	**3**	**0**	**112**

[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 2011

ALL APPEALS - % CIVIL AND CRIMINAL

	2007	2008	2009	2010	2011
Civil	73% (135 of 185)	76% (172 of 225)	69% (146 of 212)	58% (137 of 236)	54% (130 of 242)
Criminal	27% (50 of 185)	24% (53 of 225)	31% (66 of 212)	42% (99 of 236)	46% (112 of 242)

CIVIL APPEALS - TYPE OF DISPOSITION

	2007	2008	2009	2010	2011
Affirmed	46%	42%	41%	38%	51%
Reversed	22%	37%	35%	35%	30%
Modified	14%	8%	9%	11%	12%
Dismissed	--	--	1%	3%	1%
Other (e.g., judicial suspension; Rule 500.27 certified question)	18%	12%	14%	13%	6%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	2007	2008	2009	2010	2011
Affirmed	69%	70%	71%	62%	59%
Reversed	30%	7%	21%	32%	30%
Modified	4%	23%	8%	4%	8%
Dismissed	--	--	--	2%	3%

CIVIL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2007	2008	2009	2010	2011
Appellate Division Dissents	16% (22 of 135)	15.7% (27 of 172)	20% (29 of 146)	21.2% (29 of 137)	14.6% (19 of 130)
Court of Appeals Leave Grants	39% (53 of 135)	42% (72 of 172)	36.3% (53 of 146)	41.6% (57 of 137)	40% (52 of 130)
Appellate Division Leave Grants	21% (28 of 135)	25.6% (44 of 172)	21.9% (32 of 146)	21.9% (30 of 137)	38.4% (50 of 130)
Constitutional Question	6% (8 of 135)	4.7% (8 of 172)	6.1% (9 of 146)	2.9% (4 of 137)	.8% (1 of 130)
Stipulation for Judgment Absolute	--	--	--	--	--
CPLR 5601(d)	1.5% (2 of 135)	.6% (1 of 172)	1.4% (2 of 146)	--	.8% (1 of 130)
Supreme Court Remand	--	--	2% (3 of 146)	--	--
Judiciary Law § 44 [1]	3.7% (5 of 135)	4% (7 of 172)	3.4% (5 of 146)	.7% (1 of 137)	.8% (1 of 130)
Certified Question from Federal Court (Rule 500.27) [2]	12.6% (17 of 135)	7.6% (13 of 172)	8.9% (13 of 146)	11.7% (16 of 137)	3.8% (5 of 130)
Other	--	--	--	--	.8% (1 of 130)

[1] Includes judicial suspension matters.

[2] Includes decisions accepting/declining certification.

APPENDIX 6

CRIMINAL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2007	2008	2009	2010	2011
Permission of Court of Appeals Judge	76% (38 of 50)	72% (38 of 53)	70% (46 of 66)	77% (76 of 99)	78% (87 of 112)
Permission of Appellate Division Justice	22% (11 of 50)	28% (15 of 53)	30% (20 of 66)	23% (23 of 99)	22% (25 of 112)
Other	2%[1] (1 of 50)	--	--	--	--

[1] People v Taylor, capital appeal.

MOTION STATISTICS (2007 - 2011)

Motions Undecided as of January 1, 2011 - 195

Motions Numbers Used in 2011 -1375

Motions Undecided as of December 31, 2011 - 216

Motion Dispositions During 2011 - 1355

	2007	2008	2009	2010	2011
Motions Submitted for Calendar Year	1481	1421	1397	1380	1375
Motions Decided for Calendar Year	1440	1459	1370	1384	1355
Motions for leave to appeal	1100	1097	1074	1045	1112
granted	77	74	77	63	82
denied	824	830	794	758	822
dismissed	192	189	199	224	203
withdrawn	7	4	4	5	5
Motions to dismiss appeals	11	8	7	5	6
granted	6	1	4	3	2
denied	4	6	2	1	4
dismissed	1	1	1	1	0
withdrawn	0	0	0	0	0
Sua Sponte and Court's Own motion dismissals	89	97	90	96	76
TOTAL DISMISSAL OF APPEALS	95	98	94	99	78
Motions for reargument of appeal	27	28	28	27	20
granted	1	0	0	0	0
Motions for reargument of motion	41	61	38	46	39
granted	2	0	0	2	3
Motions for assignment of counsel	48	48	55	83	51
granted	47	46	55	83	51
Legal Aid	8	13	12	24	8
denied	0	2	0	0	0
dismissed	1	0	0	0	0

APPENDIX 7

APPENDIX 7 (continued)

	2007	2008	2009	2010	2011
Motions to waive rule compliance	0	0	2	0	0
granted	0	0	0	0	0
Motions for poor person status	213	182	191	160	155
granted	4	8	8	6	7
denied	0	0	0	0	0
dismissed	209	174	183	154	148
Motions to vacate dismissal/preclusion	4	6	14	11	17
granted	2	4	12	11	16
Motions for calendar preference	1	0	1	1	0
granted	0	0	1	1	0
Motions for amicus curiae status	108	110	116	98	76
granted	100	102	112	95	76
Motions for Executive Law § 71 Order (AG)	2	0	0	0	0
Motions for leave to intervene	3	3	0	2	0
granted	3	2	0	2	0
Motions to stay/vacate stay	17	30	20	18	26
granted	2	1	4	1	4
denied	1	4	1	2	0
dismissed	14	25	15	15	22
withdrawn	0	0	0	0	0
Motions for CPL 460.30 extension	27	27	25	20	16
granted	20	26	22	17	12
Motions to strike appendix or brief	8	12	3	8	14
granted	3	4	1	1	8
Motions to amend remittitur	2	0	0	0	0
granted	0	0	0	0	0
Motions for miscellaneous relief	14	6	12	16	13
granted	2	1	0	1	0
denied	9	4	7	9	10
dismissed	2	1	5	6	3
withdrawn	1	0	0	0	0
Withdrawals/substitution of counsel	0	0	0	2	1
granted	0	0	0	2	0
denied	0	0	0	0	1

CRIMINAL LEAVE APPLICATIONS ENTERTAINED BY COURT OF APPEALS JUDGES

	2007	2008	2009	2010	2011
TOTAL APPLICATIONS ASSIGNED:	2382	2687	2347	2207	2190
TOTAL APPLICATIONS DECIDED: [1]	2371	2637	2380	2220	2089
TOTAL APPLICATIONS GRANTED:	36	53	81	108	91
TOTAL APPLICATIONS DENIED:	2126	2355	2093	1928	1845
TOTAL APPLICATIONS DISMISSED:	205	220	203	174	142
TOTAL APPLICATIONS WITHDRAWN:	4	9	3	10	11
TOTAL PEOPLE'S APPLICATIONS:	46	60	48	59	70
(a) GRANTED:	3	7	14	16	18
(b) DENIED:	40	51	32	37	42
(c) DISMISSED:	2	1	0	4	2
(d) WITHDRAWN:	1	1	2	2	8
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	349 [2]	400 [3]	335	315	313
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	5	8	12	15	13

[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

2011

THRESHOLD REVIEW OF SUBJECT MATTER JURISDICTION BY THE COURT OF APPEALS

SSD (sua sponte dismissal) - Rule 500.10

	2007	2008	2009	2010	2011
Total Number of Inquiry Letters Sent	75	70	84	86	63
Appeals Withdrawn on Stipulation	5	3	2	2	3
Dismissed by Court sua sponte	44	52	54	61	48
Transferred sua sponte to Appellate Division	3	1	6	3	0
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)	9	8	7	3	6
Jurisdiction Retained - appeals decided	2	2	1	2	0
Inquiries Pending	12	4	14	15	6

COMPARATIVE ANALYSIS OF OFFICE FOR PROFESSIONAL MATTERS STATISTICS

2007 - 2011

	2007	2008	2009	2010	2011
Attorneys Admitted (OCA) [1]	8,906	9,686	10,203	10,132	9,855
Registered In-House Counsel	-	-	-	-	362 [2]
Certificates of Admission	75	130	74	69	57
Clerkship Certificates	7	7	8	5	5
Petitions for Waiver [3]	195	241	208	198	236
Written Inquiries	104	91	94	70	76
Disciplinary Orders	534	1,207 [4]	3,483 [4]	2,295 [4]	605
Name Change Orders	1,031	1,036	968	952	1,072

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

[2] In 2011, the Court amended the Rules for the Admission of Attorneys and Counselors at Law by adding a new Part 522 relating to the registration of in-house counsel.

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

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

APPENDIX 10

APPENDIX 11

NONJUDICIAL STAFF

Asadullah, Sardar, Senior Court Attorney, Court of Appeals (resigned August 2011)

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

Austin, Louis C. - Senior Court Building Guard

Bailey, Keith B. - Court Building Guard (budgetary termination June 2011)

Bentley, Andria L. - Senior Court Attorney, Court of Appeals (resigned April 2011)

Bleshman, Joseph M. - Counsel to the Chief Judge

Bohannon, Lisa - Senior Court Analyst

Bova, Matthew J. - Law Clerk to Judge Smith

Bowman, Jennifer L. - Senior Court Building Guard

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

Brizzie, Gary J. - Principal Custodial Aide

Burry, Benjamin - Senior Law Clerk to Judge Read

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

Byrne, Cynthia D. - Criminal Leave Applications Clerk

Carro, Christine - Secretary to Judge Ciparick

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

Coleman, Lillian M. - Principal Custodial Aide

Cooper, Jenna B. - Law Clerk to Judge Smith

Appendix 11 (Continued)

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 - Senior Law Clerk to Judge Read

Danner, Scott M. - Senior Law Clerk to Judge Smith (resigned July 2011)

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

Davis, Heather A. - Chief Motion Clerk

Dewar, Keith A.J. - Law Clerk to Judge Ciparick

Donnelly, William E. - Assistant Building Superintendent I

Dragonette, John M. - Senior Court Building Guard

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

Duncan, Priscilla - Secretary to Judge Read

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

Eddy, Margery Corbin - Senior Deputy Chief Court Attorney, Court of Appeals

Emigh, Brian J. - Building Manager

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

Farrell, Laurence - Deputy Chief Security Attendant, Court of Appeals (retired August 2011)

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

Fludd, Christopher - Senior Court Building Guard

Appendix 11 (Continued)

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

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

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

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

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

Kaiser, Warren - PC Analyst

Kandel, Erin P. - Court Attorney, Court of Appeals

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

Kearns, Ronald J. - HVAC Assistant Building Superintendent

Kim, Jay - Senior Law Clerk to Judge Jones

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

Appendix 11 (Continued)

Kong, Yongjun - Principal Custodial Aide

Kornreich, Mollie M. - Senior Law Clerk to Judge Ciparick (resigned August 2011)

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 (resigned June 2011)

Lee-Clark, Meredith G. - Court Attorney, Court of Appeals

Levine, Allyson B. - Senior Court Attorney, Court of Appeals (resigned October 2011)

Liberati-Conant, Christopher - Senior Court Attorney, Court of Appeals (resigned March 2011)

Lusignan, Brian M. - Court Attorney, Court of Appeals

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

MacVean, Rachael M. - Principal Court Attorney, Court of Appeals

Mann, Greg E. - Court Attorney, Court of Appeals

Mascia, Henry M. - Senior Court Attorney, Court of Appeals (resigned August 2011)

Mason, Marissa K. - Clerical Assistant, 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 (resigned August 2011)

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

McMillen, Donna J. - Principal Stenographer, Court of Appeals

Mendez, Noel - Court Attorney, Court of Appeals

Appendix 11 (Continued)

Michaels, Alexander - Senior Law Clerk to Judge Smith (resigned August 2011)

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

Moxley, D. Cameron - Principal Law Clerk to Chief Judge Lippman (resigned June 2011)

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

Ohiorhenuan, Zara - Law Clerk to Chief Judge Lippman

Pasquarelli, Angela M. - Senior Services Aide

Pepper, Francis W. - Principal Custodial Aide

Perry, Joseph C. - Senior Law Clerk to Judge Ciparick

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

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

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

Riordan, Elizabeth M. - Law Clerk to Judge Ciparick

Roberta, Lauren K. - Senior Law Clerk to Judge Smith (resigned December 2011)

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

Schrantz, Matthew J. - Court Attorney, Court of Appeals

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

Appendix 11 (Continued)

Siffert, David A. - Law Clerk to Judge Smith

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. - Senior Court Attorney, Court of Appeals

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

Tierney, Inez M. - Principal Court Analyst

Turon, Kristin L. - Stenographer, Court of Appeals

VanDeloo, James F. - Senior Assistant Building Superintendent

Volpov, Vitaliy - Senior 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. - Senior Court Attorney, Court of Appeals

Wodzinski, Esther T. - Secretary to Judge Smith

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

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


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