Court of Appeals
of the
State of New York

2014

Annual Report
of the
Clerk of the Court

2014

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

***

Andrew W. Klein
Clerk of the Court
Court of Appeals

C O N T E N T S

State of New York
Court of Appeals

230 Park Avenue Suite 826
New York, New York 10169

Jonathan Lippman
Chief Judge

March 2015

The past few years have been marked by a great deal of change for our Court, and 2014 was no exception. Two of our esteemed colleagues, Victoria A. Graffeo and Robert S. Smith left us this year -- Judge Graffeo by the expiration of her 14-year term in November and Judge Smith at the end of the year by reaching the age of mandatory retirement. In addition to her first-rate legal scholarship, our Senior Associate Judge, Vicki Graffeo, was an indispensable part of so many initiatives outside the courtroom, including, among others, the Fifty Hour Rule and the Pro Bono Scholars program. The courtroom is not the same without Judge Smith, who was a master of the hypothetical question and a truly gifted jurist. We miss them both and honor their contributions. We anticipate equally outstanding things from their replacements, Judges Leslie E. Stein and Eugene M. Fahey, who we are so pleased to welcome (even if they technically joined us in 2015).

I would be remiss if I did not also mention that 2014 marked the retirement of the incomparable Frances Murray -- our long-time librarian. Frances was a fantastic librarian, a really lovely person, and, we thank her for her many years of dedicated service. Our new librarian, Julianne Claydon, has enormous shoes to fill, but has provided a seamless transition, ably picking up where Frances left off.

In addition, and as always, I express my most sincere appreciation to our exceptional Clerk of the Court, Andy Klein, and the rest of our nonjudicial staff, who keep each and every aspect of the Court operating at such a high level. Our ability to maintain a tradition of excellence is based on the contributions of every individual in the building, and the dedication and professionalism of all of our employees -- from the Clerk's office, to the security staff, to the central staff attorneys and supervisors -- is evident in all that they do.

Finally, this year will be my last on the Court, since I must retire at the end of December. It has been the experience of a lifetime and something I could not have ever dreamed about over 40 years ago when I entered the court system in an entry-level legal position. Although nothing could top sitting in the middle seat of our majestic courtroom at 20 Eagle Street, I look forward to what the future holds.

Jonathan Lippman

2014

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

***

Introduction

Each of my introductions the last two years began with a discussion of the significant personnel changes that occurred during the year, and this introduction again follows suit.

In November 2014, Senior Associate Judge Victoria A. Graffeo's 14-year term expired. Additionally, on December 31, 2014, Judge Robert S. Smith retired from the Court by virtue of reaching the constitutionally-mandated retirement age of 70. Judge Smith had served on the Court for 11 years. Both were remarkable Judges on the Court, shining in every respect -- their opinions, questioning from the bench, participation in conference, and activity in the legal community -- and the loss of their collective judicial experience cannot be understated.

Among the nonjudicial staff, there were also several noteworthy departures. Our Chief Legal Reference Attorney, Frances Murray, retired after more than 20 years of service. It is difficult to find sufficient words to convey how important she was to the Court. Additionally, her librarian assistant, Marissa Mason, who was an excellent complement to Frances, completed her Masters in Library Science, secured a position as a librarian at another state's highest court, and resigned her position at this Court. Also retiring this year was the administrative assistant to our Consultation Clerks, June Herrington. June was an invaluable part of our Clerk's staff for many years. One of the Court's LAN Administrators, Keith Spiewak, who was an integral member of our IT team, relocated and thus resigned. Finally, two of our longtime building guards, Christopher Fludd and Louis Austin, both of whom had provided their able security services to the Court for over 10 years, retired.

Addressing the Court's Rules, in 2014, the Court again amended the Rules for the Admission of Attorneys and Counselors at Law. In June, the Court added section 520.17 to provide for the Pro Bono Scholars Program, a legal education initiative announced by Chief Judge Lippman in his 2014 State of the Judiciary Address. And in November, the Court amended section 520.3 of the Rules, which pertains to the study of law in an approved law

school. These amendments are discussed in greater detail later in the report.

While the Court did not amend its Rules of Practice in any respect in 2014, Court personnel spent significant time on the Court-PASS e-filing system, refining this innovative program that has been functioning since 2013. Further, additional measures were taken to supplement the Clerk's Office staff to ensure that the needs of the public and the bar are always fully met.

Before concluding, I briefly would like to note some of the projected initiatives for 2015, especially since some will be implemented before publication of this 2014 Annual Report. In a continuing effort by the Court and the Clerk's Office to make this Court's processes more transparent and to increase public access to the Court's operation, in 2015 the Court will operate a Twitter account to promptly publicize Court news; create a downloadable app for the most popular features of the Court's website; launch a virtual tour of the Court on its website; hear argument on one of its March Session days at the Syracuse University College of Law; have one full week of argument in April at the New York State Judicial Institute in White Plains; and begin expanding Court-PASS to include the e-filing of civil motions.

As in the past, this year's 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 2014. The third section highlights selected decisions of 2014. 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 on 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 2014, the Court and its Judges disposed of 3,625 matters, including 235 appeals, 1,300 motions and 2,090 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 121 notices of appeal received by the Court in 2014, 72 were subject to Rule 500.10 inquiries. In addition, one Appellate Division order granting leave to appeal to the Court of Appeals was subject to a Rule 500.10 inquiry. Of those, all but eight were dismissed sua sponte or on motion, withdrawn, or transferred to the Appellate Division. Seven inquiries were pending at year's end. The Rule 500.10 sua sponte dismissal (SSD) screening process is valuable to the Court, the bar and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

2. Normal Course Appeals

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

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

3. Alternative Track Appeals

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

Of the 310 appeals filed in 2014, 39 (12.6%) were initially selected to receive SSM consideration, a slight decrease from the percentage initially selected in 2013 (14.3%). Twenty-two were civil matters and 17 were criminal matters. Three appeals initially selected to receive SSM consideration in 2014 were directed to full briefing and oral argument. Of the 235 appeals decided in 2014, 29 (12.3%) were decided upon SSM review (11.6% were so decided in 2013; 15% were so decided in 2012). Nineteen were civil matters and 10 were criminal matters.

4. Promptness in Deciding Appeals

In 2014, litigants and the public continued to benefit from the Court's tradition of prompt calendaring, hearing and disposition of appeals. The average time from argument or submission to disposition of an appeal decided in the normal course was 40 days; for all appeals, the average time from argument or submission to disposition was 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 12 months. The average period from readiness (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 2014 (including SSM appeals tracked to normal course) was 403 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 299 days. Thus, by every measure, in 2014 the Court maintained its long tradition of currency in calendaring and deciding appeals.

B. The Court's 2014 Docket

1. Filings

Three hundred ten (310) notices of appeal and orders granting leave to appeal were filed in 2014 (350 were filed in 2013). Two hundred nineteen (219) filings were civil matters (compared to 261 in 2013), and 91 were criminal matters (compared to 89 in 2013). The Appellate Division departments issued 57 of the orders granting leave to appeal filed in 2014 (35 were civil, 22 were criminal).

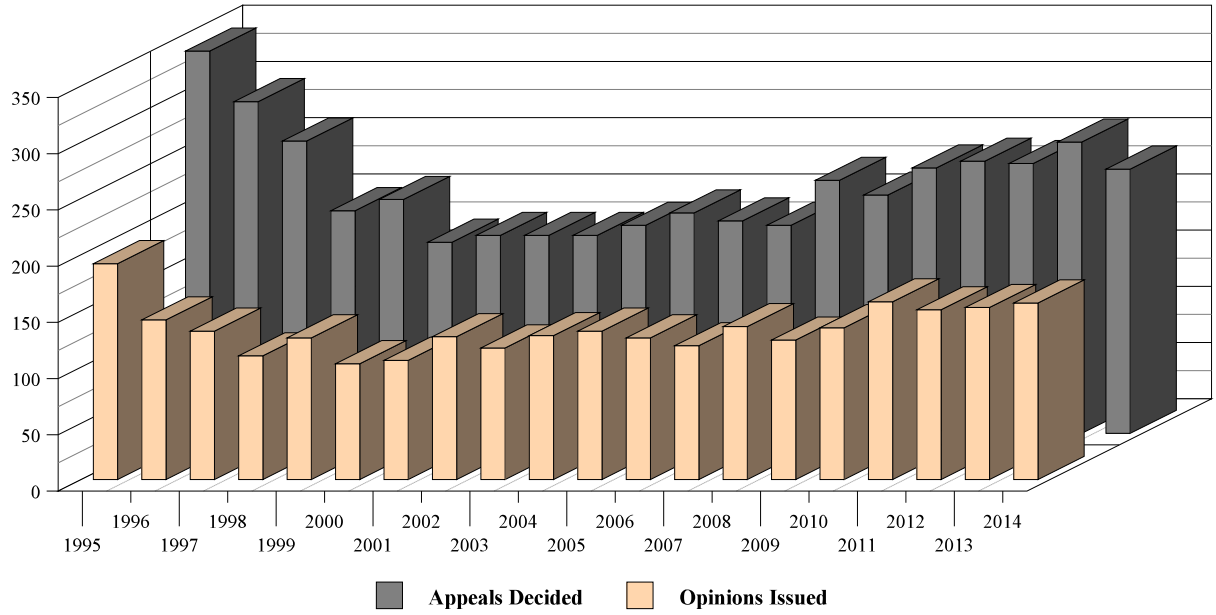
Motion filings remained steady in 2014. During the year, 1,293 motions were submitted to the Court, compared to the 1,292 submitted in 2013. Criminal leave applications increased slightly in 2014. Two thousand one hundred (2,100) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 56 more than in 2013. On average, each Judge was assigned 325 such applications during the year.

2. Dispositions

(a) Appeals and Writings

In 2014, the Court decided 235 appeals (144 civil and 91 criminal, compared to 148 civil and 111 criminal in 2013). Of these appeals, 100 were decided unanimously. The Court issued 153 signed opinions, 4 per curiam opinions, 86 dissenting opinions, 36 concurring opinions, 41 memoranda and 46 decision list entries (5 of which were dissenting entries and 4 of which were concurring entries). The chart on the next page tracks appeals decided and full opinions (signed and per curiam) issued over the past 20 years.

Appeals Decided and Opinions Issued
1995-2014

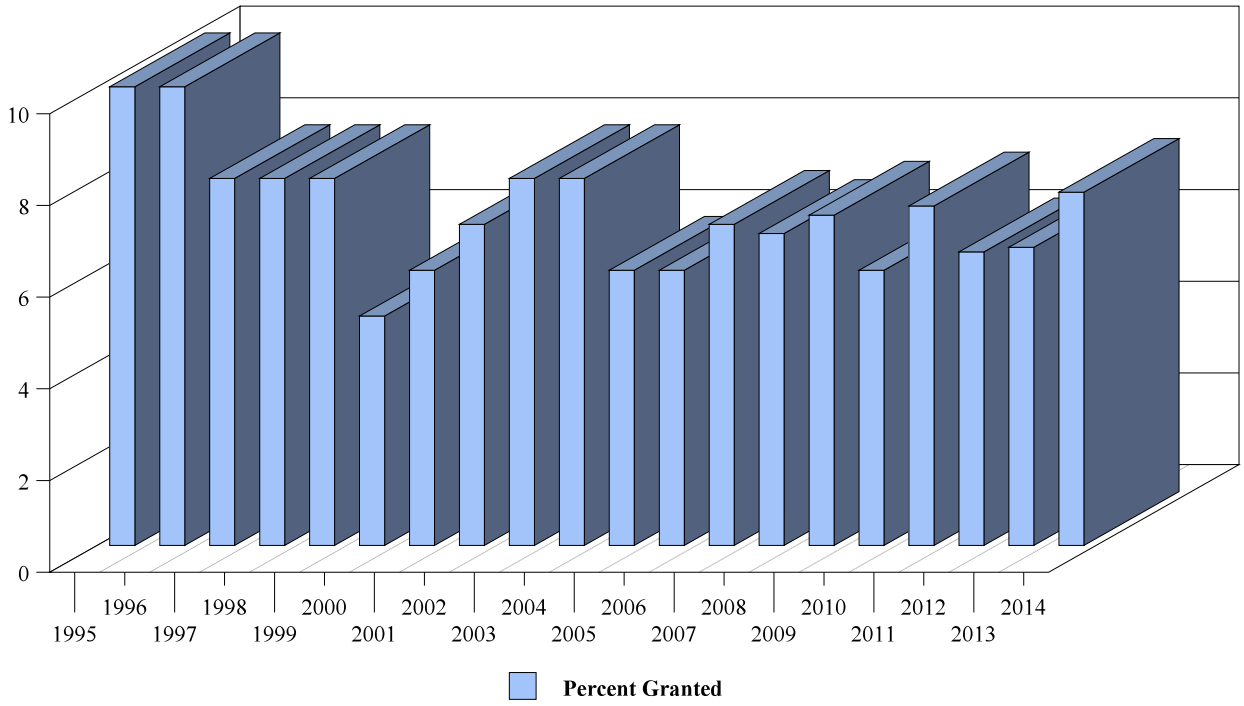


(b) Motions

The Court decided 1300 motions in 2014, a slight decrease from the 1310 decided in 2013. Of the 934 motions for leave to appeal decided in 2014, 7.7% were granted, 70.9% were denied, 20.7% were dismissed, and 0.7% were withdrawn.

The average period of time from return date to disposition for civil motions for leave to appeal was 52 days, while the average period of time from return date to disposition for all motions was 45 days. The chart on the next page shows the percentage of civil motions for leave to appeal granted over the past 20 years.

Motions for Leave to Appeal Granted by Year
1995-2014



Seventy-two motions for leave to appeal were granted in 2014. The Court's leave grants covered a wide range of subjects. The Court granted leave in several proceedings to consider the appropriate legal standards, burdens of proof and evidentiary determinations applicable to Mental Hygiene Law article 10 proceedings involving the confinement of sex offenders in secure treatment facilities. The Court also granted leave in several Sex Offender Registration Act proceedings to determine, among other issues, the correct assessment of points under the various factors used to assess the risk of a repeat offense. In the context of parole hearings, the Court granted leave to address whether the Parole Board was required to promulgate COMPAS Reentry Risk Assessment regulations pursuant to Executive Law § 259-c(4).

The Court's leave grants in "disciplinary" proceedings ranged from prison disciplinary proceedings (whether a prisoner was erroneously found guilty of violating a local facility rule that was not filed with the secretary of state and whether the proper remedy for a violation of a prisoner's right to call a witness was expungement or remittal for a new hearing), to Civil Service Law article 75 proceedings (whether the terminated teacher's actions involved grave moral turpitude), to license revocation proceedings (whether the penalty of revocation of a Master Plumber License shocked the conscience). The Court also granted leave in several tax assessment proceedings to determine whether the assessed property was used exclusively for charitable or religious purposes and whether the operation of public parking facilities to

accomplish the not-for-profit corporation's goal of promoting business development constituted a charitable purpose.

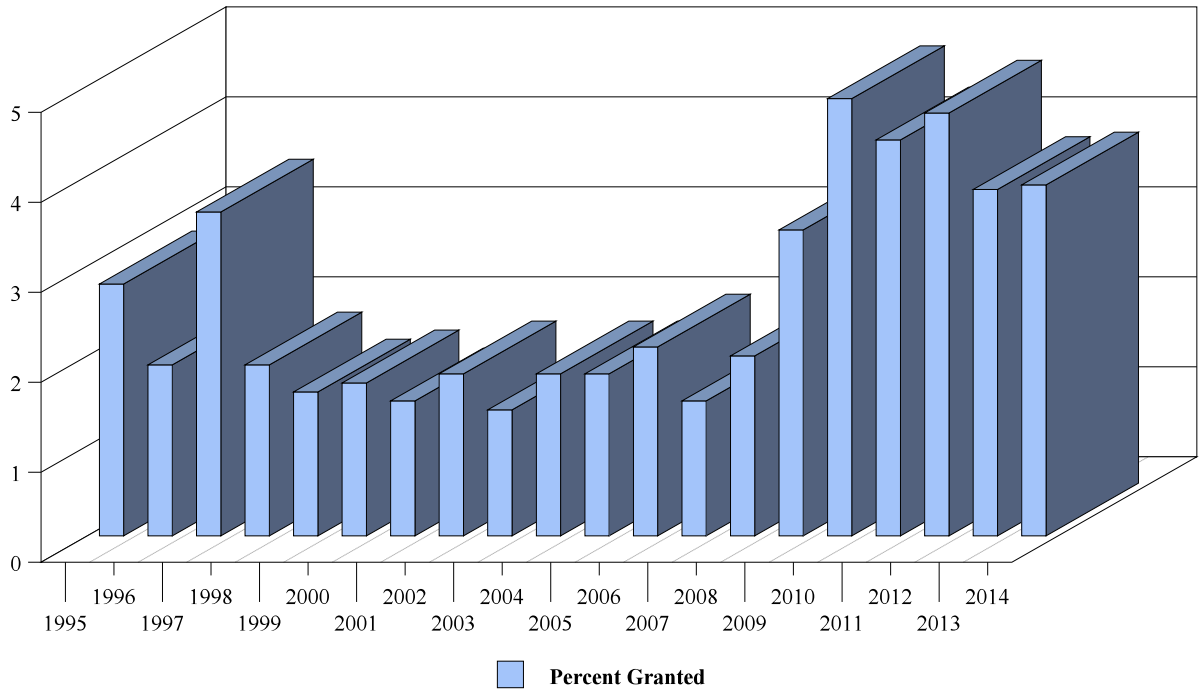
The Court further granted leave to consider: whether a piece of a catheter left in plaintiff's heart after cardiac surgery constituted a foreign object; whether defendant County owed a duty of care to decedent Community College attendee based on the County's status as a local sponsor of the Community College; the accrual date of a cause of action premised on a breach of representations and warranties contained in agreements related to the securitization of residential mortgages; the duty to warn of asbestos in defective valves that were neither manufactured nor sold by defendant; and whether a cause of action for ordinary negligence lies against the owners of stray household pets.

Other leave grants included whether: "affiliates" of a limited liability company are compelled to arbitrate under an agreement signed by the limited liability company; the Department of Conservation is required to provide oversight to a statewide program for a general permit for storm water discharge; the term "motor vehicle," for purposes of supplementary uninsured/underinsured insurance endorsements included police vehicles; applying a new advertisement to the face of a billboard constituted an "alteration" under Labor Law § 240; health care facilities are entitled to a writ of mandamus compelling the Commissioner of Health to determine Medicaid Reimbursement Rate appeals; a District Attorney may unilaterally terminate a criminal action by refusing to pursue further prosecution; an application for disability retirement benefits is timely filed if received on the date of the member's death; and an individual's participation in New York City's Work Experience Program as a condition of receiving public assistance benefits constituted "employment" subject to the minimum wage requirements of the Federal Fair Labor Standards Act.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 81 of the 2,090 applications for leave to appeal in criminal cases decided in 2014 -- up slightly, on a percentage basis, from the grant of 74 of the 1,923 applications made in 2013. One hundred fifty-four (154) applications were dismissed for lack of jurisdiction, and 12 were withdrawn. Eleven of the 47 applications filed by the People were granted. Of the 195 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, one was granted. The chart on the next page reflects the percentage of applications for leave to appeal granted in criminal cases over the past 20 years.

Criminal Leave Applications Granted by Year
1995-2014



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 2014, on average, 105 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 2014, the Court reviewed one determination of the State Commission on Judicial Conduct, accepting the recommended sanction (removal). Pursuant to Judiciary Law § 44 (8), the Court suspended one judge with pay.

(e) Certifications Pursuant to Section 500.27 of the Rules

Section 500.27 of the Court's Rules of Practice provides that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals or a court of last resort of any other state that determinative questions of New York law are involved in a case pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court. After a court certifies a question to this Court pursuant to section 500.27, the matter is referred to an individual Judge, who circulates a written report for the entire Court analyzing whether the certification should be accepted. When the Court of Appeals accepts a certified question, the matter is treated similarly to an appeal. Although the certified question may be determined pursuant to the Court's alternative "sua sponte merits" procedure (see section 500.11), the preferred method of handling is full briefing and oral argument on an expedited schedule. In 2014, the period from receipt of initial certification papers to the Court's order accepting or rejecting review was 27 days. The average period from acceptance of a certification to disposition was 7 months.

Six cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2013. In 2014, the Court answered the questions certified in five of those cases. The questions certified in the sixth case were marked withdrawn after the United States Court of Appeals for the Second Circuit withdrew its certification. Also in 2014, the Court accepted 10 new cases involving questions certified by the United States Court of Appeals for the Second Circuit. Four of those cases remained pending at the end of 2014.

C. Court Rules

In 2014, the Court issued two orders amending its Rules for the Admission of Attorneys and Counselors at Law (22 NYCRR Part 520). It added section 500.17 to provide for the Pro Bono Scholars Program. It amended section 520.3, which pertains to the study of law in an approved law school, changing the provisions regarding distance education in light of recent changes to the ABA Standards for Approval of Law Schools, and clarifying the requirements for students who earn credit toward their J.D. degree by the study of law in a foreign country. The Court also slightly modified section 520.6(b)(3)(vi), which pertains to the courses that a foreign-educated applicant must complete in an LL.M. program.

II. Administrative Functions and Accomplishments

A. Court of Appeals Hall

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

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

B. Case Management

The expressions of gratitude I regularly receive from litigants and the bar attest to the expertise and professionalism of the Clerk's Office staff. Counsel and self-represented litigants will find a wealth of Court of Appeals practice aids on the Court's website (http://www.nycourts.gov/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, academics and court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. Members of the Clerk's Office staff also regularly participate in, and consult on, programs and publications designed to educate the bar about Court of Appeals practice.

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

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

C. Public Information

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

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

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

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

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

D. Office for Professional Matters

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

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

The office responds to written and telephone inquiries related to the Court's admission rules, reviews submissions from U.S. law schools seeking approval of courses as satisfying the requirements of the Court's rules, and prepares certificates of admission upon request.

The Court amended the Rules for the Admission of Attorneys and Counselors at Law twice in 2014. In June, the Court added section 520.17 to provide for the Pro Bono Scholars Program (PBSP), a legal education initiative announced by Chief Judge Lippman in his 2014 State of the Judiciary Address. The PBSP allows students at ABA-approved law schools to devote their final semester of study to performing full-time pro bono service for the poor through an approved externship program, law school clinic, legal services provider, law firm or corporation. Students who are chosen for the program are permitted to take the New York bar examination in February of their final year of law school, allowing them to accelerate their admission to practice. In November, the Court amended section 520.3 of the Rules, which pertains to the study of law in an approved law school. Section 520.3 now allows students to earn up to 15 credits in distance education courses that are conducted synchronously or asynchronously. The section 520.3 amendment also removed certain program and course of study requirements that unnecessarily duplicated ABA standards.

Also in November, the Chief Judge formed an Advisory Committee to consider a proposal by the State Board of Law Examiners to replace the current New York bar exam with the Uniform Bar Examination (UBE). At year's end, the Committee, which is chaired by an Associate Judge of the Court and comprised of members of the judiciary, law schools, and the bar, was in the preliminary stages of studying the potential transition to the UBE.

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) and selected appeals for the full Court's review and deliberation. From December Decision Days 2013 through December Decision Days 2014, Central Staff completed 929 motion

reports, 74 SSD reports and 18 SSM reports. Throughout 2014, Central Staff remained current in its work.

Staff attorneys also write and research materials for use by the Judges' chambers and Clerk's staff, and perform other research tasks as requested. During 2014, the staff continued to revise and expand work on an existing substantive law manual -- covering areas of law frequently encountered in the Court's civil motion practice. Also during 2014, 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 2014 were graduates of Albany, the State University of New York at Buffalo, Cardozo, the University of Connecticut, Fordham University, Harvard University, the University of Maryland, New York, the City University of New York at Queens, St. John's University, Syracuse University and Wake Forest University law schools. Staff attorneys hired for work beginning in 2015 will represent the following law schools: Albany, Boston University, the State University of New York at Buffalo, the City University of New York at Queens and St. John's 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.

Commercial and in-house databases continued to be pivotal in the provision of legal information in 2014. The Court's subscriptions to print materials were reviewed. Select titles easily accessible in the major commercial legal research databases were not renewed, which will result in savings in 2015. In addition to commercial and in-house databases, the New York State Library gateway provides the Court with free access to a wide range of non-legal academic and news databases.

The Court of Appeals Library staff continued to expand the in-house databases that provide full-text access to the Court's internal reports, as well as adding to the Court's internal Bill Jacket database. In 2014, the Library staff worked on various aspects of the Court-PASS database, an important public information and research tool developed by the Court.

The Library staff is providing a new service to Judges' clerks by researching and making electronically available those secondary source authorities cited in the parties' briefs but not provided to the Court.

The Chief Legal Reference Attorney participated in the CLE-certified orientation for new Judges' clerks and Central Staff attorneys and planned a Lexis skills credit CLE training for January 2015. In October 2014, she attended the American Association of Law Libraries of

Upstate New York conference in Syracuse. She also revived a Capitol Area Legal Research Group of local law librarians and archivists who meet and share information on local legal resources, collections, and archival plans.

G. Continuing Legal Education Committee

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

During 2014, the CLE Committee provided numerous programs for the Court-associated attorneys -- including new staff training and orientation -- totaling 14.5 credit hours. Attorneys also attended classes offered by the Appellate Division, Third Department; Albany Law School; and various state and local bar groups. These programs accounted for more than 13 additional credit hours. Several experienced/non-transitional attorneys viewed recorded programs from the JI and other sources at their desktops.

H. Management and Operations

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

I. Budget and Finance

The Director of Court of Appeals Management and Operations is responsible for initial preparation, administration, implementation and monitoring of the Court's annual budget. The

proposed annual budget is reviewed by the Clerk and Deputy Clerk before submission to the Judges of the Court for their approval.

1. Expenditures

The work of the Court and all its ancillary agencies was performed within the 2014-2015 fiscal year budget appropriation of $14.9 million, 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 2015-2016 for the Court and its ancillary agencies is $14.9 million. The 2015-2016 personal services request is $13 million. This includes funding for all judicial positions and all filled nonjudicial positions. Funding is also included for the payment of increments, longevity bonuses, uniform allowance and location pay, as required by law, for all eligible employees. The 2015-2016 nonpersonal services request is $1.85 million.

Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2015-2016 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 2014, the Court reported filing fees for civil appeals totaling $31,500. Also, the Court reported filing fees for motions totaling $33,490. 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 ($1,500) and miscellaneous collections ($6,179.74). For calendar year 2014, revenue collections totaled $72,669.74.

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. Maintenance calls to the help desk were estimated at approximately 2,500 for the year.

The Department is also responsible for the upkeep of three web sites: an intranet web site, the Court's main internet site located at http://www.nycourts.gov/ctapps and the new Court-PASS website (http://www.nycourts.gov/ctapps/courtpass). Over 1,038,486 visits were recorded to the main internet site in 2014, averaging approximately 2,845 visits per day while the Court-PASS site recorded 79,195 visits in the first ten months of its rollout.

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.

The Security Unit conducts a variety of security functions, including magnetometer/ security screening for the visiting public. Other functions include judicial escorts, security patrols, video monitoring, and providing a security presence in the courtroom when the Court is in session. In 2014, 34 vouchers were generated for items held at the screening post. Mail and package screening of items received by the Court identified eight items that were deemed inappropriate communications.

The members of the Security Unit completed several mandatory training programs during 2014, including firearms, pepper spray, first aid, CPR, automated external defibrillator (AED), and baton recertification. 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 redeployed to any court facility.

L. Personnel

The following personnel changes occurred during 2014:

APPOINTMENTS:

Byer, Ann - appointed as Principal Stenographer, July 2014.

Claydon, Julianne - appointed as Chief Legal Reference Attorney, July 2014.

Costa, Gary - appointed as Court Building Guard, December 2014.

Deppermann, Lee - appointed as Law Clerk to COA Judge, August 2014.

Herman, Lisa - appointed as Law Clerk to COA Judge, August 2014.

Lane, Brian - appointed as Court Building Guard, December 2014.

LaGrave, Trevor - appointed as Court Building Guard, July 2014.

Panchok-Berry, Janine - appointed as Law Clerk to Chief Judge, August 2014.

Penn, Robert - appointed as Law Clerk to COA Judge, August 2014.

Radley, Kelly - appointed as Senior Custodial Aide, August 2014.

Stuart, Ansley - appointed as Clerical Assistant, December 2014.

Valenti, Kyle - appointed as Law Clerk to COA Judge, August 2014.

Zahn, Gabriella - appointed as Law Clerk to Chief Judge, October 2014.

PROMOTIONS:

Fernandez, Raymond - promoted to Senior Law Clerk to COA Judge, March 2014.

Holman, Cynthia - promoted to Senior Stenographer, January 2014.

Kenny, Krysten - promoted to Senior Law Clerk to COA Judge, August 2014.

Lacovara, Christopher - promoted to Senior Law Clerk to COA Judge, August 2014.

LeCours, Lisa - promoted to Assistant Consultation Clerk, January 2014.

Martin, John - promoted to Senior Law Clerk to COA Judge, August 2014.

Saint-Fort, Dominique - promoted to Senior Law Clerk to COA Judge, August 2014.

RESIGNATIONS AND RETIREMENTS:

Austin, Louis - retired as Senior Court Building Guard, December 2014.

Bova, Matthew - resigned as Principal Law Clerk to COA Judge, December 2014.

Drury, Lisa - resigned as Senior Principal Law Clerk to COA Judge, December 2014.

Fludd, Christopher - retired as Senior Building Guard, June 2014.

Freeman, Clark - resigned as Law Clerk to Chief Judge, July 2014.

Herrington, June - retired as Principal Stenographer, June 2014.

Hopkins, Gabriel - resigned as Law Clerk to COA Judge, August 2014.

Isaacs, Elizabeth Langston - resigned as Law Clerk to Chief Judge, September 2014.

Lacovara, Christopher - resigned as Senior Law Clerk to COA Judge, December 2014.

Mason, Marissa - resigned as Senior Clerical Assistant, October 2014.

Mendez, Noel - resigned as Senior Law Clerk to COA Judge, March 2014.

Minutello, Kathleen - resigned as Senior Custodial Aide, April 2014.

Murray, E. Frances - retired as Chief Legal Reference Attorney, June 2014.

Sawyer, Richard - resigned as Law Clerk to COA Judge, August 2014.

Spiewak, Keith - resigned as Local Area Network Administrator, December 2014.

Waisnor, Jonathan - resigned as Senior Law Clerk to COA Judge, December 2014.

Walthall, Claiborne - resigned as Senior Law Clerk to COA Judge, August 2014.

CENTRAL LEGAL RESEARCH STAFF

Appointments:

Kanika Johar was appointed Court Attorney in January 2014. Mary Armistead, David Morgen, Julie Nociolo, Joshua Tallent, Michael Schoeneberger and Hannah Scoville were appointed as Court Attorneys in August 2014.

Promotions:

Joseph Fornadel, Carrie Scrufari and Jaclyn Sheltry were promoted to Senior Court Attorneys in August 2014. Krysten Kenny joined the staff of the Honorable Victoria A. Graffeo from April through November 2014, and Ivan Pavlenko joined the staff of the Honorable Susan Phillips Read in December 2014.

Completion of Clerkships:

Senior Court Attorney Anya Endsley completed her Central Staff Clerkship in April 2014. Senior Court Attorneys Chelsea A. Cerutti, Steven M. Cunningham and Nicole J. Ettlinger completed their Central Staff clerkships in August 2014, and Carrie Scrufari completed her Central Staff Clerkship in December 2014. Diana Schaffner joined the staff of the Honorable Jenny Rivera from April through August 2014. Dominique Saint-Fort joined the staff of the Honorable Sheila Abdus-Salaam beginning in August 2014.

***

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 John Asiello, who edited the Report, and Andrea Ignazio and Bryan Lawrence, who prepared the detailed appendices. I also thank the many members of the Clerk's staff who otherwise contributed to the Report, particularly Cynthia Byrne, Julianne Claydon, James Costello, Heather Davis, Margery Corbin Eddy, Brian Emigh, Rachael MacVean, Cynthia McCormick, Paul McGrath, Stephen Sherwin and Margaret Wood.

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

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

***

III. 2014: Year in Review

This section -- a summary of Court of Appeals decisions handed down in 2014 -- reflects the range of constitutional, statutory, regulatory, and common law issues reaching the Court each year.

ADMINISTRATIVE LAW

Matter of Ford v New York State Racing & Wagering Bd. (24 NY3d 488)

Petitioners brought this proceeding to invalidate regulations promulgated by respondent Board mandating that they make the race horses they own and train available for out-of-competition drug testing well in advance of any race in which those horses will compete. Observing that the rationale for out-of-competition drug testing -- namely, to prevent the use of certain prohibited sophisticated and hazardous doping agents capable of unnaturally enhancing competitive performance while eluding race-day detection -- had been established by respondent, and that respondent's enabling legislation had historically afforded it near plenary authority over horse racing, the Court found that respondent possessed authority to mandate out-of-competition testing. The Court further held that the administrative intrusions incident to out-of-competition testing -- a veterinarian obtaining equine blood and urine samples at off-track stabling premises -- would not generally implicate a privacy interest triggering the requirement of a warrant or prior consent by the stable owner.

Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v New York City Dept. of Health & Mental Hygiene (23 NY3d 681)

In 2012, the New York City Board of Health adopted the "Sugary Drinks Portion Cap Rule," restricting the size of cups and containers used by certain City food service establishments for the provision of sugary beverages. The Court upheld the lower courts' rulings invalidating the Rule. The Court observed that the City Council is the sole legislative branch of New York City government, and that the Board of Health lacks law-making powers separate and apart from the Council. The Court then addressed the primary issue of whether the Board had exceeded the scope of its regulatory authority, applying the factors set out in *Boreali v Axelrod* (71 NY2d 1 [1987]) and holding that the Board had exceeded its authority. The Board's regulation involved policy-making, rather than administrative rule-making.

ATTORNEY AND CLIENT

Matter of Lawrence (24 NY3d 320)

After more than 20 years of estate litigation came to an abrupt and unexpected end in 2005, a dispute arose between a beneficiary of the estate and her longtime law firm over the validity of the firm's fee and certain gifts made by the beneficiary to three of the law firm's partners in 1998. The Court held that the parties' retainer agreement, which generally provided for a fee of 40% of the recovery, was neither procedurally nor substantively unconscionable, and that the claim for return of the gifts was time-barred because the continuous representation doctrine does not toll disputes between professionals and their clients over fees and the like. Rather, continuous representation tolling is limited to claims of deficient performance where the professional continues to render services to the client with respect to the objected-to matter or transaction.

Grace v Law (24 NY3d 203)

This appeal presented an issue of first impression to the Court: what effect does a client's failure to pursue an appeal in an underlying action have on his or her ability to maintain a legal malpractice lawsuit? Plaintiff commenced a legal malpractice suit against his former attorneys, arguing that they failed to timely commence the underlying medical malpractice action against a doctor who had treated plaintiff. His former attorneys moved for summary judgment contending that plaintiff's complaint should be dismissed for his failure to pursue an appeal in the underlying action. After reviewing the various tests applied by certain sister states, the Court held that prior to commencing a legal malpractice action, a party who is likely to succeed on appeal of the underlying action should be required to press an appeal. However, if the client is not likely to succeed, he or she may bring a legal malpractice action without first pursuing an appeal of the underlying action. The Court concluded that plaintiff raised triable issues of fact as to whether (1) he was likely to succeed in the underlying action and (2) the continuous representation doctrine applied to his claims against his former attorneys.

BANKING

Motorola Credit Corp. v Standard Chartered Bank (24 NY3d 149)

In this federal lawsuit, plaintiff was a judgment creditor who sought to restrain approximately $30 million of the judgment debtor's assets located in foreign branches of the defendant garnishee bank. Plaintiff served a CPLR 5222 postjudgment restraining notice on the New York branch of the garnishee bank, which was headquartered in the United Kingdom. The garnishee bank sought relief from the order, asserting that service of the restraining notice on its

New York branch could not freeze funds located in branches outside the United States. Upon certification from the United States Court of Appeals for the Second Circuit, the Court agreed with the bank, holding that under the "separate entity" rule -- a principle that promotes international comity and protects New York's position as a global financial center -- a judgment creditor's service of a restraining notice on a garnishee bank's New York branch is ineffective to freeze assets held in the bank's foreign branches.

Clemente Bros. Contr. Corp. v Hafner-Milazzo (23 NY3d 277)

Plaintiffs executed a corporate resolution which provided that Jeffrey Clemente was the only authorized signatory on the accounts plaintiffs held with defendant bank, and the only one authorized to sign drawdown requests on plaintiffs' line of credit with the bank. The resolution also provided that plaintiffs were required to notify the bank of any claimed errors in the bank statements within 14 days of delivery of such statements. Defendant Hafner-Milazzo worked as a secretary for plaintiffs until it was discovered that she had been forging Clemente's signature on drawdown requests on the line of credit and checks paid from one of plaintiffs' accounts. Plaintiffs subsequently commenced this action against the bank and former secretary to recover damages resulting from the forgeries and prevent the bank from forcing repayment on the loans, and the bank counterclaimed to recover the amounts due. The primary issue was whether a bank and its customer may agree to shorten the statutory time period under UCC 4-406 (4), within which a customer must notify its bank of an improperly paid item, from one year to 14 days. The Court held that the parties' agreement to shorten the period was not manifestly unreasonable given the plaintiff corporation's numerous employees and hundreds of thousands of dollars under its control, and concluded that the agreement was permissible.

CIVIL PROCEDURE

Melcher v Greenberg Traurig, LLP (23 NY3d 10)

Judiciary Law § 487 exposes an attorney who "[i]s guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party" to criminal (misdemeanor) liability and treble damages, to be recovered by the injured party in a civil action. The lower courts held that the timeliness of this action for attorney deceit was to be measured by CPLR 214 (2), which specifies a three-year limitations period for a cause of action created by statute. They reached this conclusion because the first Statute of Westminster, adopted by the Parliament summoned by King Edward I in 1275, codified a claim for attorney deceit. The Court reversed, noting that English statutes in force at the time of the emigration of the colonists were received into New York's common law. Since common law liability for attorney deceit existed in New York prior to the adoption in 1787 of the first predecessor statute to section 487, the Court held that CPLR 213 (1), the residual six-year limitations period, applied to actions for attorney deceit.

Norex Petroleum Ltd. v Blavatnik (23 NY3d 665)

In this dramatic and long-running contest over control of a lucrative oil field in Western Siberia, the Court resolved an open question involving the interplay of CPLR 202, New York's "borrowing" statute, and CPLR 205 (a), New York's "savings" statute. When a cause of action accrues outside New York and the plaintiff is a nonresident, section 202 "borrows" the statute of limitations of the jurisdiction where the claim accrued, if shorter than New York's, to measure timeliness. New York's "savings" statute, section 205 (a), allows a plaintiff to refile a timely commenced action within six months of its termination for reasons other than the merits or plaintiff's unwillingness to prosecute in a diligent manner. The Court held that a nonresident plaintiff who timely files an action in a New York court may commence a new action upon the same transaction or occurrence within six months of the original action's termination within the meaning of CPLR 205 (a), even if the refiled action was by then untimely in the out-of-state jurisdiction where the underlying claim accrued.

Paterno v Laser Spine Inst. (24 NY3d 370)

Plaintiff, a resident of New York, sued a Florida-based surgical facility and several of its physicians alleging medical malpractice after he underwent several surgeries at the facility for back pain. Defendants moved to dismiss the action for lack of personal jurisdiction. Plaintiff, who first contacted the facility after viewing its online advertisement, contended that the facility's contacts with him in New York prior to and immediately following the surgeries via phone and e-mail constituted transacting business for purposes of New York's long-arm jurisdiction statute, CPLR 302 (a) (1). The Court held that the facility's contacts with New York were insufficient to confer New York courts with long-arm jurisdiction. In reaching its decision, the Court rejected the plaintiff's invitation to consider as part of the long-arm jurisdiction analysis the facility's contacts with New York following the surgeries. The Court also rejected plaintiff's alternative argument that jurisdiction under CPLR 302 (a) (3) was proper, concluding that his claimed injury occurred outside the state.

Kimso Apts., LLC v Gandhi (24 NY3d 403)

Plaintiffs commenced suit alleging defendant breached a payment obligation on a loan received before the parties' business relationship dissolved. Plaintiffs sought to offset the payments owed to defendant. At trial, defendant moved to amend his pleadings, pursuant to CPLR 3025, to assert an additional counterclaim for payment under a settlement agreement of those same funds which plaintiffs sought to offset. Plaintiffs opposed, citing the lateness of the application. Supreme Court allowed the amendment. The Court held that since the plaintiffs had not suffered prejudice, Supreme Court correctly allowed the amendment.

CDR Créances S.A.S. v Cohen (23 NY3d 307)

Plaintiff financing company accused defendants of diverting and concealing the proceeds of a loan agreement, and sought recovery of the funds. During the pendency of the New York action, criminal charges were commenced against defendants in the United States District Court for the Southern District of Florida based on the same financial scheme. In those federal proceedings, defendants' former employee testified that she had lied before the New York State Supreme Court as part of an elaborate and calculated effort to deceive the court as to defendants' assets. After the employee testified to defendants' fraudulent behavior and statements in Supreme Court, the court struck defendants' pleadings and entered a default judgment. The Court held that where clear and convincing evidence establishes conduct that constitutes fraud on the court, a court may impose sanctions including, but not limited to, striking the offending party's pleadings and entering default judgment.

Matter of Kapon v Koch (23 NY3d 32)

This appeal involved the service of a subpoena by a party seeking discovery from a nonparty pursuant to CPLR 3101 (a) (4), the subpoenaing party's notice obligation in that respect, and the nonparty witness's burden when moving to quash the subpoena. The Court held that the subpoenaing party is required to sufficiently set forth the "circumstances or reasons" underlying the subpoena, and the nonparty witness, in moving to quash the same, must establish either that the discovery sought is "utterly irrelevant" to the action or that the "futility of the process to uncover anything legitimate is inevitable or obvious." Should that burden be met, the subpoenaing party is charged with establishing that the discovery sought is "material and necessary" to the prosecution or defense of an action, i.e., relevant.

COMMERCIAL LAW

In re Thelen LLP; In re Coudert Brothers LLP (24 NY3d 16)

The United States Court of Appeals for the Second Circuit asked the Court whether, for purposes of administering a related bankruptcy, New York law treats a dissolved law firm's pending hourly fee matters as its property. The question arose out of disputes between the bankruptcy estates of two defunct law firms and the law firms that hired the defunct firms' former partners, who brought unfinished client matters with them to their new firms. The Court held that pending hourly fee matters are not partnership "property" or "unfinished business" within the meaning of New York's Partnership Law, and are therefore not part of a defunct law firm's bankruptcy estate. The Court reasoned that law firms do not have a property interest in future hourly legal fees because they are too contingent and speculative in nature, given a client's unfettered right to hire and fire counsel.

CONSTITUTIONAL LAW

Matter of Baldwin Union Free Sch. Dist. v County of Nassau (22 NY3d 606)

Nassau County passed Local Law 18 of 2010, which purported to supersede a special state tax law called the County Guaranty. The County Guaranty made the County, rather than its local subdivisions, responsible for paying real property tax refunds resulting from erroneous assessments. Various localities and individuals in Nassau County sought a declaration that Local Law 18 was unconstitutional and unenforceable. The Court held that articles IX and XVI of the State Constitution, as well as statutes implementing those constitutional provisions, prohibit the County from superseding a special state tax law. Observing that the State's preeminent governmental power and its unique taxation authority prevent localities from passing certain kinds of tax legislation without an express delegation of the power to do so, the Court determined that the State has never explicitly delegated to Nassau County the power to supersede a special state tax law.

Matter of Santer v Board of Educ. of E. Meadow Union Free Sch. Dist.; *Matter of Lucia v Board of Educ. of E. Meadow Union Free Sch. Dist.* (23 NY3d 251)

These appeals involved a teachers' union picketing demonstration during which petitioners and other union members displayed picketing signs from their cars parked on a public street where parents were dropping their children off at school. Respondent School District charged petitioners with misconduct, alleging that they created a health and safety risk by parking their cars so that students had to be dropped off in the middle of the street. Petitioners were found guilty of misconduct and thereafter sought to vacate the arbitration awards, arguing that the District violated their rights to free speech under the First Amendment to the United States Constitution. Applying the two-part balancing test from *Pickering v Board of Educ. of Township High School Dist. 205, Will County Ill.* (391 US 563 [1968]), the Court determined that, under the first step of the *Pickering* test, the picketing demonstration was a form of speech protected by the First Amendment and the speech addressed a matter of public concern. However, on the second step of the *Pickering* test, viewing the evidence in light of established federal precedent, the Court concluded that petitioners' interests in engaging in constitutionally protected speech in the particular manner employed during the demonstration were outweighed by the District's interests in safeguarding students and maintaining effective operations at the school. The Court further determined that the District satisfied its burden of proving that the discipline imposed against petitioners was justified because they created a potential yet substantial risk to student safety and an actual disruption to school operations.

CONTRACTS

Quadrant Structured Prods. Co., Ltd. v Vertin (23 NY3d 549)

Plaintiff sued in the Delaware Court of Chancery for alleged wrongdoing related to notes purchased by plaintiff and issued by one of the defendants. Defendants moved to dismiss the suit as barred by a "no-action" clause contained in the indenture agreement covering the notes. On a certified question from the Supreme Court of the State of Delaware, the Court held that a trust indenture's "no-action" clause that specifically precludes enforcement of contractual claims arising under the indenture, but omits reference to "the Securities," does not bar a security holder's independent common-law or statutory claims. Applying the maxim *expressio unis est exclusio alterius*, the Court concluded that defendants, being sophisticated drafters of trust indentures, must be presumed to have intended the omission.

CRIMINAL LAW

People v Washington (23 NY3d 228)

After defendant struck and killed a pedestrian while driving an automobile, she failed sobriety tests, was arrested and brought to police headquarters. In the meantime, her family retained an attorney who telephoned headquarters and instructed the police not to question or test his client. Defendant was not informed about the attorney's communication and signed a form authorizing a chemical test to ascertain her blood alcohol content. She was later indicted for manslaughter and moved to suppress the test results on the basis that the test had been administered in violation of her right to counsel. The Court agreed and, expanding on *People v Gursey* (22 NY2d 224 [1968]) -- which held that a defendant facing an alcohol-related motor vehicle charge has a limited, statutory right to request legal consultation before consenting to a chemical test -- concluded that, even though defendant did not request counsel, the failure of the police to notify her about counsel's intervention violated her statutory right to counsel. As a result, defendant was entitled to suppression of the test results.

People v Rivera (23 NY3d 827)

Defendant was charged with murder and weapon possession after he shot an acquaintance during an exchange of gunfire following a verbal altercation. Defendant asserted at trial that he had acted in self-defense, and the jury was instructed on the defense of justification. During deliberations, the trial court engaged in an on-the-record robing-room colloquy with a single deliberating juror, with the consent of the attorneys but outside of their presence or that of defendant. The court then summarized this exchange to the attorneys and defendant. No objection was voiced by any party. The jury subsequently acquitted defendant of homicide but

convicted him of weapon possession. Upon the Appellate Division's reversal of defendant's conviction, the People appealed, arguing that defendant's challenge to the robing-room colloquy was unpreserved. The Court held that a defendant has a fundamental constitutional right to be present at all material stages of a trial, including supplemental jury instructions, as embodied in CPL 310.30. Concluding that a defendant's absence during non-ministerial instructions is a mode of proceedings error that does not require preservation and to which counsel may not consent, the Court rejected the People's argument that the error was "cured" by the trial court's later summary of the colloquy to defendant. As a result, defendant was entitled to a new trial.

People v Marquan M. (24 NY3d 1)

After defendant -- a 16-year-old high school student -- anonymously posted sexual information about other students on the Internet, he was prosecuted for "cyberbullying" under a law passed by the Albany County Legislature. Defendant moved to dismiss the accusatory instrument, claiming that the statute violated his First Amendment right to free speech. The Court agreed, concluding that the statute was unconstitutionally overbroad because it prohibited a wide array of protected speech beyond the cyberbullying of children. The Court further commented that it could not judicially rewrite the statute to make it compatible with the First Amendment.

Matter of Allen B. v Sproat; Matter of Robert T. v Sproat (23 NY3d 364)

Allen B. set fire to an occupied building and was charged with second-degree arson and first-degree reckless endangerment; he was found not responsible for these crimes by reason of mental disease or defect. Robert T., in an apparent suicide attempt, intentionally drove his car into oncoming traffic and killed another motorist; he was charged with second-degree manslaughter and found not responsible by reason of mental disease or defect. Both Allen B. and Robert T. were subsequently determined by their respective trial judges to suffer from a dangerous mental disorder, and so were classified as track-one defendants under the statutory scheme establishing procedures following a verdict or plea of not responsible by reason of mental disease or defect (CPL 330.20). Section 330.20 mandates an order of conditions whenever a track-one defendant moves from secure to nonsecure confinement, or is no longer institutionalized. The Court held that a supervising court may include in an order of conditions a provision allowing the New York State Office of Mental Health (OMH) to seek judicial approval of a mandatory psychiatric evaluation in a secure facility when a track-one defendant fails to comply with the conditions of his release and refuses to undergo a voluntary examination. In so holding, the Court rejected the argument that OMH could only obtain such an involuntary psychiatric evaluation by following the statute's recommitment procedures.

People v Baret (23 NY3d 777)

The United States Supreme Court held in *Padilla v Kentucky* (559 US 356 [2010]) that the Sixth Amendment requires criminal defense counsel to advise their noncitizen clients about

the risk of deportation arising from a guilty plea. The Supreme Court subsequently held in *Chaidez v United States* (568 U.S. __, 133 S Ct 1103 [2013]) that *Padilla* did not apply retroactively in federal collateral review. After examining various federal and state retroactivity principles, the Court held that *Padilla* does not apply retroactively in state court postconviction proceedings. In particular, the Court noted that *Padilla* established a new rule in New York in light of the contrary holding of *People v Ford* (86 NY2d 397 [1995] [excluding advice about the immigration consequences of a guilty plea from the scope of the Sixth Amendment right to effective assistance of counsel]), and this new rule was not central to an accurate determination of a defendant's guilt or innocence.

People v DeLee (24 NY3d 603)

The jury convicted defendant of first-degree manslaughter as a hate crime and acquitted him of first-degree manslaughter. This verdict was inconsistent because by acquitting defendant of first-degree manslaughter the jury necessarily found that the People failed to prove beyond a reasonable doubt at least one element of first-degree manslaughter; however, to convict defendant of first-degree manslaughter as a hate crime, the jury necessarily found that the People proved beyond a reasonable doubt all of the elements of first-degree manslaughter, plus the added element that defendant selected the victim on the basis of sexual orientation. Observing that no constitutional or statutory provision mandates dismissal as the remedy for a repugnant verdict, the Court held that the People were free to resubmit the charge of first-degree manslaughter as a hate crime to another grand jury.

People v Gonzalez (22 NY3d 539)

CPL 250.10 requires that a defendant provide notice of intent to offer evidence in connection with the affirmative defense of extreme emotional disturbance (EED). The question presented on this appeal was whether CPL 250.10 applied where defendant did not seek to admit evidence of EED but requested an EED jury charge based on evidence presented by the People. Relying on the statutory language and legislative history of CPL 250.10, as well as its prior decisions interpreting that statute, the Court determined that the notice requirement applied only where the defendant was the proponent of psychiatric evidence and not where, as here, the defendant merely relied on the People's direct proof to support an EED defense. The Court therefore concluded that defendant was not required to give statutory notice of his EED defense and that the trial court abused its discretion by allowing the People to present rebuttal evidence in exchange for issuing the EED charge.

People v Smart (23 NY3d 213)

Defendant's girlfriend, who had witnessed the burglary at issue, asserted, through a lawyer, that she would invoke her Fifth Amendment privilege against self-incrimination and refuse to testify at trial under any circumstances. At the end of a hearing, the trial court ruled that the girlfriend's grand jury testimony was admissible because defendant had procured her

unavailability and thereby forfeited his right to exclude her grand jury testimony under the Sixth Amendment's confrontation clause. This Court held that the record supported the lower courts' rulings that the grand jury testimony was admissible. The Court determined that, although defendant never directly ordered his girlfriend not to testify, the totality of the circumstances, including defendant's threatening statements in recorded conversations, the girlfriend's reactions to those statements, her disappearance, her convenient reappearance at the hearing and her refusal to testify, demonstrated that defendant had procured her unavailability by wrongdoing. The Court rejected defendant's argument that he could not have caused the girlfriend's unavailability because she had an independent lawful basis for invoking her right to remain silent.

People v Golb (23 NY3d 455)

Defendant, the son of a Dead Sea Scrolls scholar, used an internet campaign to attack the integrity and harm the reputation of other Dead Sea Scroll academics, while promoting the views of his father. Using pseudonyms and impersonating real academics and scholars, he sent emails to museum administrators, academics and reporters, and published anonymous blogs. Defendant was convicted of multiple counts of identity theft in the second degree, forgery in the third degree and aggravated harassment in the second degree, and one count of unauthorized use of a computer. The Court sustained the convictions for nine counts of criminal impersonation in the second degree, holding that injury to reputation is within the "injury" contemplated by Penal Law § 190.25 (1) and that there was sufficient evidence to support the jury's finding that defendant's emails impersonating other individuals were intended to inflict real harm. The remaining convictions for criminal impersonation were vacated on the ground that the mere creation of email accounts in the name of other individuals (in contrast to the use of those accounts to send emails) does not constitute criminal conduct. Further, as to the convictions for forgery in the third degree (Penal Law § 170.05), the Court held that there was sufficient evidence to show that defendant deceived people by sending emails in the names of other individuals. The Court vacated the conviction for unauthorized use of a computer (Penal Law § 156.05), rejecting the People's argument that using a New York University computer to commit a crime cannot be an authorized use. The Court held that the statute is intended to reach a person who accesses a computer system without permission (i.e. a hacker), and not defendant's conduct. Finally, the Court vacated defendant's convictions for aggravated harassment in the second degree (Penal Law § 240.30 [1][a]), holding that the statute, which criminalizes, in broad terms, any communication that has the intent to annoy, is vague, overbroad, and unconstitutional under both the State and Federal Constitutions.

People v Gillotti; People v Fazio (23 NY3d 841)

Defendants challenged the assessment of points under risk factor 3 (number of victims) and risk factor 7 (relationship to victims) of the Sex Offender Registration Act guidelines. Defendants asserted that factor 3 was not designed to authorize point scores based on the number of children depicted in pornographic videos or photos and that the recent position statement of

the Board of Examiners of Sex Offenders precluded the scoring of points under factors 3 and 7 in child pornography cases. The Court held that, under the plain language of the guidelines and *People v Johnson* (11 NY3d 416 [2008]), the children depicted in child pornography materials are "victims" of sex offenses within the meaning of SORA and the guidelines, and that therefore points can be assigned to a child pornography offender based on the number of children in the pornographic images and their relationship to the offender. Furthermore, the Court determined that the statute does not obligate the courts to follow the Board's position statement, that the position statement does not amend the guidelines and that, in any event, the statement does not purport to absolutely bar courts from scoring points in child pornography cases under factors 3 and 7. Resolving a split in the Departments of the Appellate Division, the Court held that a defendant may prove the existence of facts warranting a downward departure by a simple preponderance of the evidence, and consequently, the Appellate Division had erred by evaluating Gillotti's departure request under a clear and convincing evidence standard.

People v Garrett (23 NY3d 878)

Defendant was convicted after trial of two counts of murder in the second degree. The evidence against defendant included his confession, which he maintained was false and had been coerced by police. Defendant moved to vacate his judgment of conviction on the ground that the People committed a constitutional violation under *Brady v Maryland* (373 US 83 [1963]) by failing to disclose that a federal civil action had been brought against a homicide detective who interrogated defendant. The lawsuit alleged that the detective had engaged in police misconduct in an unrelated case. The Court held that defendant's *Brady* claim must fail because, although the civil allegations were favorable to him, he did not prove that the People suppressed that information or that he was prejudiced by its nondisclosure. The detective's knowledge of his own alleged misconduct and the civil action against him could not be imputed to the People for *Brady* purposes since the allegations were not directly related to defendant's prosecution and did not arise out of the detective's participation in defendant's case. Even if the civil allegations had been suppressed, there was no reasonable probability their disclosure would have changed the outcome of defendant's murder prosecution.

People v Coleman (24 NY3d 114)

Defendant was serving a sentence for a drug crime that, based on the conviction itself, would not have prevented him from receiving a merit time allowance. However, the sentencing court adjudicated defendant a persistent felony offender, resulting in a sentence that barred him from obtaining a merit time allowance. Subsequently, defendant moved for resentencing under the Drug Law Reform Act of 2009 (2009 DLRA). Addressing a split in the lower courts, the Court held that, as long as he or she has not been convicted of a crime that categorically precludes a merit time allowance under Correction Law § 803 (1) (d) (ii), a persistent felony offender is eligible for resentencing under the 2009 DLRA, notwithstanding that the offender's sentencing adjudication prevents him or her from actually accruing merit time.

People v Finch (23 NY3d 408)

This criminal trespass case involved two issues. The first was an issue of appellate procedure: if a lawyer gives the court a reason for dismissing a criminal charge before trial, must the lawyer repeat that argument during the trial in order to get appellate review of the claim? The Court answered "no" because the pre-trial court ruled "definitively on the legal argument that defendant makes on this appeal." Turning to the merits of the appeal, the Court considered whether a police officer has probable cause to arrest for criminal trespass into a public housing complex if the complex's manager tells the arresting officer that a person is barred from the property while a resident tells the officer that the person is an invited guest. The Court ruled that absent evidence that the manager had the contractual/legal authority to override the tenant's invitation, the officer lacked probable cause to arrest for trespass.

People v McLean (24 NY3d 125)

Defendant was represented by counsel in connection with a robbery charge. He told counsel that he had information about an unrelated murder, and counsel negotiated a plea bargain which included a reduced sentence on the robbery if he provided helpful information about the other crime. Counsel also appeared with defendant when he spoke with police about the murder. Two years later, police had reason to believe that defendant had committed the murder and wanted to question him in prison. They spoke with the attorney who had represented defendant on the robbery, and he told them the representation had ended. Police then questioned defendant, and he was subsequently convicted of the murder. Defendant moved to set aside his conviction on the ground that the prison interview violated his right to counsel. The Court observed that, where police wish to question a defendant after his right to counsel has attached, they bear the burden of determining whether the attorney-client relationship has terminated. The Court held that the police had discharged that burden when they asked counsel whether he still represented defendant and he answered unequivocally that he did not.

People v McCray (23 NY3d 621)

Burglary of a "dwelling" is subject to a more severe punishment than traditional burglary. Here, the defendant trespassed into a hotel employee locker room and a wax museum -- two non-dwelling units that shared a large building with a hotel (a dwelling unit). The question here was whether a defendant commits burglary of a "dwelling" when he burglarizes a non-dwelling "unit" located within the same building as a dwelling unit. Drawing on old precedents, the Court held that a defendant commits burglary of a dwelling under these circumstances unless the non-dwelling unit is "so remote and inaccessible from the living quarters that the special dangers inherent in the burglary of a dwelling" -- frightening of sleeping residents and the resulting potential for violence --"do not exist." Finding that the hotel locker room and wax museum were neither remote nor inaccessible from the hotel, the Court affirmed defendant's conviction for burglary of a dwelling.

People v Reid (24 NY3d 615)

One exception to the rule that the police need a warrant to perform a search is the "search incident to arrest" exception. The police can search an arrestee's person to prevent the problems associated with arrests, including armed violence during the transfer of the arrestee to the jail or police headquarters. In this appeal, an officer had probable cause to arrest the suspect for driving while intoxicated, but the officer searched the suspect before arresting him. The officer testified that at the time of this search, he did not intend to make an arrest. The Court held that if an officer does not intend to arrest the suspect when he performs the search, the search incident to arrest exception does not apply.

People v Johnson (24 NY3d 639)

Under New York law, if a suspect is represented by counsel on a charge, the police cannot question him about that charge absent the suspect's waiver in counsel's presence. This appeal presented the question of what happens when the defendant has a lawyer on Charge "A" (here a burglary) and agrees to cooperate on an unrelated Charge "B" (here a stabbing) in exchange for leniency on Charge "A." Must the police secure a waiver in counsel's presence before interrogation on Charge "B"? The Court held that such a waiver was required because the lawyer's duty to his client on Charge "A" required him to ensure that the client did not undermine his ability to cooperate on Charge "B." As the Court explained, "No responsible lawyer . . . would concern himself with the burglary case alone, indifferent to the disaster that might strike defendant if he incriminated himself in the stabbing."

People v Sweat (24 NY3d 348)

Defendant refused to testify against his brother despite receiving transactional immunity, prompting a summary contempt proceeding. County Court found defendant in contempt and incarcerated him for the pendency of trial. Defendant repeatedly refused to testify when summoned by the court. Defendant was released at the conclusion of trial and the People promptly charged him with criminal contempt in the second degree (Penal Law § 215.50 [4]) based on his refusal to testify. County Court dismissed the information, citing double jeopardy in the wake of defendant having already been incarcerated for contempt. The Court held that where a court subjects defendant to conditional imprisonment in an attempt to compel him to testify, but does not otherwise impose punishment that is criminal in nature, double jeopardy will not bar a subsequent prosecution for contempt under the Penal Law.

People v Kims (24 NY3d 422)

In this case, the Court set forth factors addressing when possession of narcotics may be presumed based on the observation of narcotics and narcotics distribution materials in close proximity to an individual (Penal Law § 220.25 [2]). Parole and police officers had observed defendant leave his duplex apartment building and enter his car, which was in the driveway

adjacent to his residence. The officers approached the car, prevented defendant from backing out of the driveway, and removed and arrested him. A subsequent search of the apartment revealed quantities of cocaine and narcotic distribution materials. He was charged, among other crimes, with criminal possession of a controlled substance, and the trial court instructed the jury on the "drug factory" presumption. The Court held that, once defendant exited the building and entered his vehicle, he was not within close proximity to drugs found in his apartment. In setting parameters for the "drug factory" presumption, the Court found dispositive the fact that defendant was not in the apartment nor on the premises where the drugs were found, and that there was no evidence to suggest that he was in immediate flight in an attempt to escape arrest.

People v Schreier (22 NY3d 494)

The Court addressed, for the first time, the sufficiency of the evidence necessary to establish the elements of unlawful surveillance in the second degree under Penal Law § 250.45 (1). In particular, the Court determined that defendant's conduct -- standing outside before dawn, holding a small black camera over his head in his black-gloved hand and using the zoom function -- was surreptitious in nature even though he was standing on complainant's front step. It also held that complainant had a reasonable expectation of privacy in her second floor bathroom. Although she had the bathroom door open, the Court held that, under the circumstances, one would reasonably expect to be able to disrobe in privacy in one's own bathroom.

People v Thomas (22 NY3d 629)

At issue on this appeal from an order affirming defendant's conviction of murdering his infant son was the admissibility of defendant's confession to inflicting fatal injuries upon the child by repeatedly hurling him down on a mattress. The confession, exacted after some 9½ hours of videotaped interrogation, was, the Court held, elicited by means of false and highly coercive representations, among them that defendant's wife would be arrested if he refused to take responsibility for the child's injuries and that the already brain-dead child might be saved if defendant disclosed the manner in which he had injured him. Contributing to defendant's decision to inculpate himself were materially misleading assurances that the particular course of conduct he was being urged to acknowledge as his own would be understood as accidental, and that once he had confirmed that he had treated the child as his interrogators suggested, he would be released and allowed to go home. In combination, these deceptions rendered it impossible to conclude as a matter of law that the prosecution had met its burden to prove beyond a reasonable doubt the voluntariness of defendant's ensuing incriminating statements.

People v Jimenez (22 NY3d 717)

While responding to a radio run reporting a burglary at an apartment building and describing two male suspects, police observed female defendant seemingly trespassing in the building. Defendant was carrying a large purse, which one of the officers removed from defendant's shoulder. The officer opened the purse and found a loaded handgun inside. The

Court held that no exigency justified the warrantless search of the purse where there were at least four armed officers present on the scene, there was no indication that defendant was threatening, and there was nothing connecting defendant to the burglary.

People v Allen (24 NY3d 441)

Defendant attempted to shoot the victim while they were in the street, but the gun did not fire. Later, by the stoop in front of the victim's house, defendant fired two shots, one missing and one hitting the victim in the head and killing him. Defendant was charged with one count of second-degree murder and one count of attempted second-degree murder. The indictment, as amplified by the bill of particulars, referenced only the second incident. During opening arguments, however, the People raised both incidents of defendant attempting to shoot the victim, and elicited testimony regarding both incidents throughout the People's case. In closing argument, the People did not clarify which incident formed the basis of the attempted murder count. The court also did not specify which conduct formed the basis of the attempted murder charge. Defendant did not object at any point during the trial, and was subsequently convicted on all counts. Expanding on the holding in *People v Becoats* (17 NY3d 643 [2011]) -- in which the Court concluded that issues of facial duplicity must be preserved for review -- the Court rejected defendant's duplicity arguments and held that issues of non-facial duplicity arising at trial must also be preserved.

People v Jones (24 NY3d 623)

Defendant sought an evidentiary hearing as part of his postjudgment motion to vacate his conviction on the ground of newly-discovered DNA evidence (CPL 440.10 [1] [g]), which excluded him as the perpetrator of a crime of which he was convicted in 1981. Supreme Court and the Appellate Division, in the exercise of their discretion, summarily denied defendant's motion without first conducting an evidentiary hearing, which defendant had requested. In *People v Crimmins* (38 NY2d 407 [1975]), the Court held that it lacked the power to review a discretionary order denying a defendant's motion to vacate his conviction based on newly-discovered evidence. The Court overruled that part of the *Crimmins* holding, concluded that the Appellate Division abused its discretion in summarily denying defendant's motion for an evidentiary hearing, and remanded the matter to Supreme Court for further proceedings.

DEBTOR AND CREDITOR

Matter of Santiago-Monteverde (24 NY3d 283)

The United States Court of Appeals for the Second Circuit certified a question to the Court requiring resolution of whether a bankruptcy debtor's interest in her rent-stabilized lease may be exempted from her bankruptcy estate pursuant to New York State Debtor and Creditor

Law § 282 (2) as a "local public assistance benefit." The Court held that section 282 (2) exempts the tenant's interest in a rent-stabilized lease. Noting that the Legislature has concluded that rent stabilization is necessary to preserve affordable housing for low-income, working poor and middle-class residents in New York City, the Court concluded that the rent stabilization program has all of the characteristics of a local public assistance benefit. The Court reasoned that while many such benefits are administered through programs that provide periodic payments, such payments are not a prerequisite to a benefit being in the nature of public assistance. The Court held that the government, finding that housing protection is necessary to benefit a specific group of tenants, has created a public assistance benefit through a unique regulatory scheme applied to private owners of real property. Mindful that exemption statutes are to be construed liberally in favor of debtors, the Court held in favor of the debtor.

ENVIRONMENTAL LAW

Matter of Association for a Better Long Is., Inc. v New York State Dept. of Envtl. Conservation (23 NY3d 1)

Petitioners brought a combined article 78 proceeding/declaratory judgment action raising both procedural and substantive challenges to DEC's promulgation of amendments to regulations governing the incidental taking of endangered species. The Court held that petitioners had established standing to assert their procedural claims against DEC. Petitioners owned property that was deeded to them by the United States government for the express purpose of redevelopment and which was subject to the amended regulations. They had an actual stake in the litigation and had alleged that they would suffer harm different from the public at large. Finally, the Court noted that, given the four-month statute of limitations, a holding that petitioners lacked standing would erect an "impenetrable barrier" to review of the procedural claims. They lacked standing, however, as to the substantive claims, which were not yet ripe in the absence of final agency action on a permit application by petitioners.

INSURANCE

Voss v Netherlands Ins. Co. (22 NY3d 728)

The primary question was whether a special relationship arose between the insureds and their insurance broker, such that the broker could be liable for failing to advise the insureds to obtain additional business interruption coverage. After three separate roof breaches caused substantial losses to the insureds' businesses, they brought an action against the broker alleging that the broker negligently secured inadequate insurance coverage limits. The broker moved for summary judgment dismissing the complaint, asserting that no special relationship existed and,

absent such a relationship, it had no duty to advise and could not be liable. The Court held that summary judgment was not warranted because the proof suggested that there were particularized interactions between the insureds and the broker regarding the coverage question and that the insureds may have reasonably relied on the expertise of the broker.

K2 Inv. Group, LLC v American Guar. & Liab. Ins. Co. (22 NY3d 578 [upon reargument, vacating 21 NY3d 384 (2013)])

Defendant unjustifiably refused to defend its insured, a lawyer, against plaintiffs' legal malpractice claim. The lawyer subsequently defaulted and assigned all of his rights against the insurer to plaintiffs, who commenced a declaratory judgment action against the insurer. The insurer asserted that coverage was barred because the insured's business relationship with plaintiffs came within two exclusions for acts based upon or arising out of non-legal business activity. In its 2013 decision, *K2 I* (21 NY3d 384 [2013]), the Court held that the insurer was barred from relying on those exclusions because it had unjustifiably failed to defend its insured. On reargument, the Court acknowledged that *K2-I* conflicted with the decision in *Servidone Constr. Corp. v Security Ins. Co. of Hartford* (64 NY2d 419 [1985]), which said that an insurer could raise policy exclusions as part of a defense to indemnification even if it had breached the duty to defend. Finding that the *Servidone* rule had not proved unworkable or unjust, the Court upheld it by overruling *K2 I*. It then determined that there were issues of fact as to whether the relationship between the lawyer and the insured came within the scope of the exclusions.

Sierra v 4401 Sunset Park, LLC (24 NY3d 514)

An owner and managing agent of an apartment building were insured under a general liability policy issued by GNY. They were also named insureds under a policy issued by an insurer, Scottsdale, to a third-party contractor performing work on the building. After an employee of the contractor was injured during his work on the building, he brought an action for damages against the owner and managing agent, who notified GNY. In turn, GNY notified Scottsdale. Scottsdale disclaimed coverage by notifying GNY, but failed to send its disclaimer directly to the insureds. The Court held that notice to a named insured's primary insurance carrier was insufficient to discharge an insurer's obligation to disclaim liability under Insurance Law 3420(d)(2) "as soon as is reasonably possible…to the insured."

Nesmith v Allstate Ins. Co. (24 NY3d 520)

Defendant provided liability insurance to the owner of a two-family house under a policy with a $500,000 coverage limit for each occurrence. The policy also contained a so-called "non-cumulation clause," under which all bodily injury resulting from continuous or repeated exposure to the same general conditions constituted a single occurrence. Children who lived in one of the apartments sustained injuries from alleged exposure to lead paint, and later moved out. Another family, including plaintiff's young grandchildren, then moved into the apartment, and those children also sustained injuries from alleged lead paint exposure. Both families sought to

recover against the policy. Defendant settled the first family's claim for $350,000, and informed plaintiff that only $150,000 of coverage was available as a result of the non-cumulation clause. Plaintiff brought a declaratory judgment action, arguing that the injuries to the two families' children were separate losses because the landlord had attempted to remediate the lead paint hazard between the tenancies. The Court noted that plaintiff did not argue, and the record provided no basis for inferring, that a new lead paint hazard had been introduced into the apartment. The Court therefore concluded that the two families' children were injured by exposure to the same general conditions -- the presence of lead paint in the apartment -- and that plaintiff's claim was subject to the single policy limit.

LABOR AND EMPLOYMENT

Jacobsen v New York City Health & Hosps. Corp. (22 NY3d 824)

Plaintiff employee, who was a health facilities planner, developed a serious lung disease as a result of exposure to asbestos or other dust particles. The employee sued the employer for unlawful employment discrimination based on disability under the New York State Human Rights Law and the New York City Human Rights Law. The Court held that "both statutes generally preclude summary judgment in favor of an employer where the employer has failed to demonstrate that it responded to a disabled employee's request for a particular accommodation by engaging in a good faith interactive process regarding the feasibility of that accommodation." Applying the interactive process requirement to this case, the Court found that the employer's failure to engage in a good faith interactive process with respect to the employee's requested accommodations, namely a respirator and a transfer, precluded the employer from winning summary judgment. Finally, the Court reiterated that the state and city statutes provide for different allocations of the burden of proof at trial regarding the reasonable accommodation issue, and thus claims under each statute necessitate distinct analyses at the trial stage.

LANDLORD AND TENANT

172 Van Duzer Realty Corp. v Globe Alumni Student Assistance Assn., Inc. (24 NY3d 528)

Plaintiff-landowner moved for summary judgment to enforce a liquidated damages clause in the amount of accelerated rent for defendant-tenant's breach of its commercial lease. Defendant argued that the lease clause, which permitted the landowner to immediately collect the full balance of unpaid rent for the remainder of the lease and hold possession of the premises, was per se invalid or otherwise a penalty. The Court held that the landowner was under no obligation to mitigate damages and such a clause is not invalid on its face. However, the tenant should have had the opportunity to present evidence showing that the undiscounted acceleration

of all future rents constituted an unenforceable penalty. The Court remanded the case to Supreme Court for a hearing on that issue.

Borden v 400 E. 55th Street Assoc., L.P.; *Gudz v Jemrock Realty Co., LLC*; *Downing v First Lenox Terr. Assoc.* (24 NY3d 382)

These three cases arose in the aftermath of *Roberts v Tishman Speyer Props., L.P.* (13 NY3d 270 [2009]), in which the Court held that a landlord receiving the benefit of a tax abatement for a stabilized building may not deregulate any apartment in the building pursuant to the luxury decontrol laws. Tenants of three buildings filed class-action rent overcharge claims against their common landlords pursuant to CPLR 901 (b). The tenants waived their right to treble damages so as to bring their claim under the class action statute, which prohibits claims for penalties. The Court held that tenants could waive treble damages under certain circumstances and bring the claim as a class, reasoning that although treble damages constitute a penalty, the recovery of rent overcharges constituted actual, compensatory damages and lacked the punitive purpose of a penalty.

MENTAL HYGIENE LAW

Matter of State of New York v Michael M. (24 NY3d 649)

In this Mental Hygiene Law article 10 proceeding, the Court held that the evidence was legally insufficient to justify confining Michael M., a convicted sex offender, in a secure treatment facility pursuant to Mental Hygiene Law § 10.11 (d) (4), after his alleged violation of strict and intensive supervision. The Court based its holding on the distinction between a "sex offender requiring strict and intensive supervision," defined as a "detained sex offender who suffers from a mental abnormality but is not a dangerous sex offender requiring confinement" (MHL § 10.03 [r]) and a "dangerous sex offender requiring confinement," who is "a detained sex offender suffering from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility" (MHL § 10.03 [e]). The testimony indicated that Michael M. was struggling with, but controlling, his urges to have sex with very young girls, not that he was unable to control himself.

Matter of State of New York v Donald DD.; Matter of State of New York v Kenneth T. (24 NY3d 174)

In the appeal of Donald DD., the Court held that in a Mental Hygiene article 10 trial, evidence that a respondent suffers from antisocial personality disorder (ASPD) cannot be used to support a finding that he has a mental abnormality within the meaning of Mental Hygiene Law article 10, when it is not accompanied by any other diagnosis of mental abnormality. A diagnosis

of ASPD alone does not distinguish the sex offender whose mental abnormality may subject him to civil commitment from the typical recidivist convicted in an ordinary criminal case, because it establishes only a general tendency toward criminality, and has no necessary relationship to a difficulty in controlling one's sexual behavior.

In the appeal of Kenneth T., the Court dismissed the proceeding on the ground of legal insufficiency. At the jury trial on whether Kenneth T. suffered from a mental abnormality, an expert pointed to the fact that Kenneth T. carried out two rapes in a way that would allow for identification by his victims and the fact that he committed the second rape despite having spent many years in prison for the earlier crime. The Court held that such evidence, even viewed in the light most favorable to the State, is insufficient to show, by clear and convincing evidence, that a person has serious difficulty in controlling his sexual urges within the meaning of Mental Hygiene Law § 10.03 (i). Similarly, the expert's testimony that Kenneth T. lacked "internal controls such as a conscience" is not a basis from which serious difficulty in controlling sexual conduct may be rationally inferred, because it is as consistent with a rapist who could control himself but, having an impaired conscience, decides to force sex upon someone, as it is with a rapist who cannot control his urges.

MUNICIPAL CORPORATIONS

Matter of Town of N. Hempstead v County of Nassau (24 NY3d 67)

The Court determined that, under the financing system for community colleges established under the Education Law, the County was entitled to seek chargebacks from the Town for amounts the County had paid on behalf of Town residents attending the Fashion Institute of Technology (FIT). Education Law § 6302 (3) expanded the available degree programs for FIT beyond two-year programs but specified that FIT would continue to be financed "in the manner provided for community colleges." Although the Legislature had enacted a provision requiring the state to reimburse the counties for amounts paid on behalf of nonresident FIT students, appropriations have not been made to fund that reimbursement since 2001. Since there was no repeal of the County's statutory authorization to seek chargebacks from the towns and the funding scheme as a whole was intended to provide reimbursement to the counties, the Court determined that the County could look to the Town for repayment of FIT expenses. It further held that the County was entitled to offset the Town's debt by retaining the amount owed to it from the Town's share of sales tax revenue.

SOVEREIGN IMMUNITY OF INDIAN TRIBE

Sue/Perior Concrete & Paving, Inc. v Lewiston Golf Course Corp. (24 NY3d 538)

The Court affirmed an order of the Appellate Division holding that Lewiston Golf Course Corporation, an indirect, wholly owned subsidiary of the Seneca Nation of Indians, a federally recognized Indian tribe, is not protected from suit by the Seneca Nation's common law sovereign immunity. The Court applied the factors set out in *Matter of Ransom v St. Regis Mohawk Educ. & Community Fund* (86 NY2d 553 [1995]), which are used in deciding whether a corporation, agency, or other entity affiliated with an Indian tribe is entitled to sovereign immunity. Since the primary motive for creating the golf course was to act as a regional economic engine and thereby serve the profit-making interests of the Seneca Nation's casino operations in the area, the purposes of the corporation were sufficiently different from tribal goals that they militate against its claim of sovereign immunity.

TAXATION

Matter of Board of Mgrs. of French Oaks Condominium v Town of Amherst (23 NY3d 168)

In this RPTL article 7 tax certiorari proceeding, respondent Town of Amherst assessed a residential complex consisting of 39 units at an aggregate value of $5,176,000 for the relevant tax year. Petitioner -- the board of managers of the property -- challenged the assessment as excessive, submitting an appraisal report applying the income capitalization method and valuing the property at nearly $1 million less. The Town opposed the petition, asserting that petitioner had failed to offer substantial evidence rebutting the presumption that the assessment was correct. The Court agreed with the Town and concluded that the presumption was not overcome because petitioner's expert evidence failed to provide the factual and statistical information necessary to substantiate its calculations.

Trump Vil. Section 3, Inc. v City of New York (24 NY3d 451)

The Court concluded that no taxable event occurs, pursuant to Tax Law § 1201 (b) and section 11-2102 (a) of the Administrative Code of the City of New York, when a residential housing cooperative corporation terminates its participation in the Mitchell-Lama program and amends its certificate of incorporation as part of its voluntary dissolution and reconstitution as a cooperative corporation governed by the Business Corporation Law. The Court rejected the New York City Department of Finance's argument that an amendment to a certificate of incorporation is a "deed," and found no merit to the Department's position that Trump Village became a new corporation and that there was actually a conveyance of real property to a different corporation, with Trump Village being both the grantor and grantee. The Court concluded that

"even if there were any ambiguities regarding the application of the [real property transfer tax] to this situation, 'doubts concerning [a taxing statute's] scope and application are to be resolved in favor of the taxpayer' (*Debevoise & Plimpton v New York State Dept. of Taxation and Fin.*, 80 NY2d 657, 661 [1993])."

Matter of Merry-Go-Round Playhouse, Inc. v Assessor of City of Auburn (24 NY3d 362)

Merry-Go-Round is a not-for-profit theater corporation which operates both a youth theater and a professional summer stock theater. Petitioner purchased two apartment buildings to house its actors and staff and sought a tax exemption for those properties. Petitioner was formed for the tax exempt purpose of the moral and mental improvement of the community by encouraging appreciation of the performing arts. The Court determined that the primary use of the apartment buildings was in furtherance of petitioner's primary purpose as they were used to attract talent that would otherwise seek employment elsewhere, the living arrangement fostered a sense of community and the staff spent a significant portion of its off hours engaged in theater-related pursuits. The Court therefore held that petitioner was entitled to an RPTL 420-a tax exemption.

Matter of Gaied v New York State Tax Appeals Trib. (22 NY3d 592)

In this appeal, the Court was asked to consider New York's "statutory resident" test under Tax Law § 605(b)(1)(B) and, more specifically, the standard to be applied when determining whether a person "maintains a permanent place of abode" in New York. The Court held that in order for an individual to qualify as a statutory resident, there must be some basis to conclude that the dwelling was utilized as the taxpayer's residence.

TORTS

Wittorf v City of New York (23 NY3d 473)

This case required the Court to determine whether the City of New York was engaged in a proprietary activity at the time of plaintiff's injury, thereby allowing a jury to assess the City's actions under ordinary negligence principles. Plaintiff and a companion were riding bicycles on a Central Park road that the City was repairing. A City employee was beginning to close the road to traffic when the bicyclists approached to ask whether they could continue through the park. After the employee answered in the affirmative, plaintiff's bicycle hit a depression and she fell, sustaining injuries. After trial, a jury found that the City employee acted negligently by allowing the bicyclists to pass and awarded damages. The City moved to set aside the verdict, claiming that it was engaged in a governmental function at the time of the accident. The Court disagreed, concluding that the City employee was engaged in a proprietary function when he failed to warn plaintiff of the road conditions because his act of closing the entry to vehicular travel was

integral to the repair job, a quintessential proprietary function.

Cornell v 360 W. 51st St. Realty, LLC (22 NY3d 762)

Claiming personal injuries caused by exposure to indoor dampness and mold, plaintiff sued her landlord and other parties connected with the management of the apartment building in which she had once resided. The landlord argued that it had made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that plaintiff was unable to prove that mold can cause the types of medical conditions that she complained of (general causation), or that mold in her former apartment caused her to suffer from these maladies (specific causation); and that, in response, plaintiff had not come forward with proof sufficient to raise a triable issue of fact on either general or specific causation. The Court agreed, noting that the scientific literature relied upon by plaintiff's expert only purported to show an association between a damp and moldy indoor environment and plaintiff's alleged medical conditions. To satisfy the *Frye* test (*see Frye v United States*, 293 F 1013 [DC Cir 1923]), however, plaintiff was required at a minimum to raise a triable issue of fact as to whether the relevant scientific community generally accepts that molds, in fact, cause these types of adverse health effects. The Court added that, even assuming general causation, plaintiff had not satisfied the test for specific causation delineated in *Parker v Mobil Oil Corp.* (7 NY3d 434 [2006]) because her expert did not identify the particular disease-causing agent to which she was allegedly exposed, or make any effort to quantify her level of exposure.

Williams v Weatherstone (23 NY3d 384)

A school bus driver missed the stop for a student with special needs, a 12-year-old girl, who was waiting to be picked up at the foot of the driveway to her house. After the student saw the bus drive by and then turn around, she ran into the highway and was hit by a car. The student's mother sued the school district, alleging that the bus driver negligently caused her daughter's injuries when he backtracked after missing the stop. The Court reaffirmed the principle that a school only owes a duty of care to students within its physical custody or control. Although a school might be liable in the absence of physical custody in situations where it exercised control over the time, place and conditions of a child's release to the protection of a parent or guardian, here the student was never within the school's physical custody and control.

Hoover v New Holland N. Am., Inc. (23 NY3d 41)

In this products liability action, plaintiff was severely injured by a tractor-driven post hole digger distributed by defendant CNH America LLC and sold by defendant Niagara Frontier Equipment Sales, Inc. Prior to the accident, the owner of the post hole digger removed a plastic safety shield from the machine after years of use had left the shield damaged beyond repair. The main issue to be decided by this Court was whether defendants should have been awarded summary judgment because the owner substantially modified the digger after the product left defendants' hands. The Court concluded that, on this record, plaintiff raised material issues of

fact sufficient to bring her design defect claims and defendants' substantial modification defense before the jury.

Coleson v City of New York (24 NY3d 476)

Plaintiff obtained a restraining order against her husband. When her husband violated that order, he was arrested by the police. Plaintiff was informed by police that her husband would be going away for a while. Later that evening, plaintiff received a phone call from an officer who informed plaintiff that her husband was in front of a judge and was about to be sentenced, and that the officer would stay in contact with plaintiff. Two days later, plaintiff was stabbed in her back by her husband. Her son was locked in a broom closet at the time of the stabbing. Plaintiff, on behalf of herself and her son, commenced a negligence action against the City of New York and the New York City Police Department. The City moved for summary judgment, arguing that plaintiff failed to demonstrate that a special relationship existed between her and the City in order to establish the duty prong of negligence. In applying the factors set out in *Cuffy v City of New York* (69 NY2d 255 [1987]), the Court determined that plaintiff raised a triable issue of fact as to whether a special relationship existed. The court also determined that plaintiff's son was not in the zone of danger at the time of the incident.

Matter of New York City Asbestos Litig. (24 NY3d 275)

A construction worker filed a notice of claim against the Port Authority, alleging that exposure to toxic asbestos during his work on Port Authority projects caused his malignant mesothelioma. One day later, he brought a personal injury action against the Port Authority and several other construction companies. Although the notice of claim contained all the requirements of the Port Authority's enabling statute, the name of the claimant, the time and place where the claim arose, the nature of the claim, and the items of damage or injuries sustained, the complaint was jurisdictionally defective because it was not filed at least 60 days after the notice of claim as required by the statute. After the worker passed away, his estate amended the complaint, converting it to a wrongful death and survivorship action. The Port Authority moved to dismiss, arguing that the estate must serve a new notice of claim reflecting the wrongful death and survivorship actions. The Court concluded that the general rule in New York when a personal injury litigant died was that his estate did not have to file a new notice of claim because the wrongful death action was merely a continuation of the original cause of action. The Port Authority argued that this general rule should not be followed because its enabling statute was a waiver of sovereign immunity, so strict compliance with the notice of claim requirements was necessary. However, the Court held that the original notice of claim was sufficient to allow the state to investigate the claim and estimate its potential liability.

Davis v Boeheim (24 NY3d 262)

Plaintiffs, former "ball boys" for the Syracuse University men's basketball team, sued the team's head coach and the university for defamation based on statements the head coach

made to various news outlets in response to plaintiffs' allegations that the team's longtime associate head coach had sexually abused them. Plaintiffs argued that the head coach's statements that they were lying in order to get money and had done so in the past were actionable because a reasonable reader would view the statements as fact or as implying a basis in undisclosed facts. Defendants responded by arguing that the statements were not actionable because, in context, the statements would be viewed as pure opinion. The Court held that the plaintiffs' complaint sufficiently stated a cause of action for defamation because the head coach's statements constituted actionable mixed opinion.

Gammons v City of New York (24 NY3d 562)

Claiming personal injuries caused by a fall from a police pick-up truck, plaintiff, a police officer, sued the New York City Police Department and the City of New York for damages pursuant to Municipal Law § 205-e for failure to comply with Labor Law § 27-a, the Public Employee Safety and Health Act. Addressing a question left open by *Williams v City of New York* (2 NY3d 352 [2004]), the Court ruled that Labor Law § 27-a is a statutory predicate for a claim under Municipal Law § 205 which permits police officers to maintain negligence actions against their employer for the employer's failure to comply with any statute. In denying the defendants' summary judgment motion, the Court stated that the Legislature's amendments to section 205-e demonstrated the provision should apply expansively. The Court further held that the duty articulated in Labor Law § 27-a was sufficiently clear to provide a basis to determine liability.

WORKERS' COMPENSATION

New York Hosp. Med. Ctr. of Queens v Microtech Contr. Corp. (22 NY3d 501)

Two undocumented aliens were injured while performing demolition work at a hospital for a construction contractor. The injured workers made claims for and received workers' compensation benefits, which the contractor's insurance carrier paid. They also sued the hospital for their personal injuries, as permitted by *Balbuena v IDR Realty LLC* (6 NY3d 338 [2006] [an injured employee's status as an undocumented alien does not preclude recovery of lost wages in a lawsuit against a landowner under the state's Labor Law]), and recovered damages. The hospital brought an action against the contractor for common law and contractual indemnification and contribution for the losses it incurred as a result of the Labor Law litigation. The Court held that the contractor was entitled to the safe harbor provided by section 11 of the Workers' Compensation Law, which generally bars third-party lawsuits for indemnification and contribution against an injured worker's employer, with exceptions not applicable in this case.

Matter of Kigin v State of N. Y. Workers' Compensation Bd. (24 NY3d 459)

The issue presented on this appeal was whether the Workers' Compensation Board exceeded its statutory authority when it promulgated portions of the "Medical Treatment Guidelines." The Guidelines include a list of pre-authorized medical procedures and set forth limitations on the scope and duration of each procedure. It also sets forth a variance procedure, under which the medical treatment provider requesting a variance must demonstrate that the requested treatment is medically necessary. The Court held that the Board did not exceed its statutory authority in promulgating the regulations, the variance procedure does not improperly shift the burden to the claimant's treating physician to prove medical necessity, and the Guidelines do not deny injured workers due process.

ZONING

Matter of Wallach v Town of Dryden; Cooperstown Holstein Corp. v Town of Middlefield (23 NY3d 728)

In these two cases, energy companies that had executed natural gas leases with landowners in the towns of Dryden and Middlefield challenged local zoning laws specifying that all oil and gas exploration, extraction and storage activities -- including hydrofracking -- were not permitted within municipal boundaries. The companies contended that the "supersession clause" set forth in the statewide Oil, Gas and Solution Mining Law (OGSML) expressly preempted all local zoning laws, like those enacted by the towns, that restricted or forbade oil and gas production activities. After reviewing the language, purpose and history of the OGSML, the Court disagreed, holding that towns may ban hydrofracking within municipal borders through the adoption of local zoning laws because the supersession clause in the OGSML did not preempt the home rule authority vested in localities to regulate land use.

Matter of Colin Realty Co., LLC v Town of N. Hempstead (24 NY3d 96)

A building owner and prospective tenant sought approval from the town zoning board of appeals to place a 45-seat restaurant in a vacant storefront most recently occupied by a retail gift shop. Restaurants were permitted in the business district where the storefront was located, subject to issuance of a conditional use permit. Additionally, many years after the storefront was constructed, the town code was amended to require off-street parking spaces and loading/unloading areas, generally based on the number of seats for patrons. After the board granted the applicants a conditional use permit and an area variance from the code's parking/unloading restrictions, a next-door commercial property owner sued, contending that a use variance was required in light of the Court's decision in *Matter of Off Shore Rest. Corp. v Linden* (30 NY2d 160 [1972]). Observing that *Off Shore* had effectively been superseded by statutes enacted in the early 1990's to define and regularize the criteria for evaluating use and

area variances, the Court held that zoning boards of appeals should determine requests for off-street parking variances by applying the standards for an area variance so long as the property involved is intended to be used for a purpose permitted in the zoning district.

IV. Appendices

APPENDICES

APPENDIX 1

JUDGES OF THE COURT OF APPEALS

Hon. Jonathan Lippman
Chief Judge of the Court of Appeals

Hon. Victoria A. Graffeo
Senior Associate Judge of the Court of Appeals
(Term expired November 29, 2014)

Hon. Susan Phillips Read
Senior Associate Judge of the Court of Appeals
(commencing November 30, 2014)
Associate Judge of the Court of Appeals
(January 1 to November 29, 2014)

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

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

Hon. Jenny Rivera
Associate Judge of the Court of Appeals

Hon. Sheila Abdus-Salaam
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
(518) 455-7711

Court of Appeals internet website
http://www.nycourts.gov/ctapps

SUMMARY OF TOTAL APPEALS DECIDED IN 2014 BY JURISDICTIONAL PREDICATE
January 1, 2014 through December 31, 2014

BASIS OF JURISDICTION: ALL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**[1]	**Total**
Dissents in Appellate Division	5	9	0	0	0	14
Permission of Court of Appeals or Judge thereof	64	50	13	3	0	130
Permission of Appellate Division or Justice thereof	27	21	8	2	0	58
Constitutional Question	4	3	0	0	0	7
Stipulation for Judgment Absolute	1	0	0	0	0	1
Other	2	0	0	0	23	25
Totals	**103**	**83**	**21**	**5**	**23**	**235**

BASIS OF JURISDICTION: CIVIL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**[1]	**Total**
Dissents in Appellate Division	5	9	0	0	0	14
Permission of Court of Appeals	22	24	8	1	0	55
Permission of Appellate Division	19	18	5	0	0	42
Constitutional Question	4	3	0	0	0	7
Stipulation for Judgment Absolute	1	0	0	0	0	1
Other	2	0	0	0	23	25
Totals	**53**	**54**	**13**	**1**	**23**	**144**

BASIS OF JURISDICTION: CRIMINAL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**[1]	**Total**
Permission of Court of Appeals Judge	42	26	5	2	0	75
Permission of Appellate Division Justice	8	3	3	2	0	16
Totals	**50**	**29**	**8**	**4**	**0**	**91**

[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 2014

ALL APPEALS - PERCENT CIVIL AND CRIMINAL

	2010	2011	2012	2013	2014
Civil	58% (137 of 236)	54% (130 of 242)	62% (149 of 240)	57% (148 of 259)	61% (144 of 235)
Criminal	42% (99 of 236)	46% (112 of 242)	38% (91 of 240)	43% (111 of 259)	39% (91of 235)

CIVIL APPEALS - TYPE OF DISPOSITION

	2010	2011	2012	2013	2014
Affirmed	38%	51%	54%	49%	37%
Reversed	35%	30%	30%	27%	38%
Modified	11%	12%	10%	6%	9%
Dismissed	3%	1%	0%	2%	1%
Other (e.g., judicial suspension; Rule 500.27 certified question)	13%	6%	6%	16%	15%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	2010	2011	2012	2013	2014
Affirmed	62%	59%	58%	66%	54%
Reversed	32%	30%	29%	28%	33%
Modified	4%	8%	12%	5%	9%
Dismissed	2%	3%	1%	1%	4%

APPENDIX 5

	2010	2011	2012	2013	2014
Appellate Division Dissents	21.2% (29 of 137)	14.6% (19 of 130)	14% (21 of 149)	21% (31 of 148)	9% (14 of 144)
Court of Appeals Leave Grants	41.6% (57 of 137)	40% (52 of 130)	51% (76 of 149)	35% (52 of 148)	38% (55 of 144)
Appellate Division Leave Grants	21.9% (30 of 137)	38.4% (50 of 130)	24% (36 of 149)	17% (25 of 148)	29% (42 of 144)
Constitutional Question	2.9% (4 of 137)	.8% (1 of 130)	4% (6 of 149)	9% (13 of 148)	5% (7 of 144)
Stipulation for Judgment Absolute	--	--	--	.7% (1 of 148)	.7% (1 of 144)
CPLR 5601(d)	--	.8% (1 of 130)	1% (1 of 149)	2% (3 of 148)	1% (2 of 144)
Supreme Court Remand	--	--	--	--	--
Judiciary Law § 44 [1]	.7% (1 of 137)	.8% (1 of 130)	3% (4 of 149)	4% (6 of 148)	1% (2 of 144)
Certified Question (Rule 500.27) [2]	11.7% (16 of 137)	3.8% (5 of 130)	3% (5 of 149)	11% (17 of 148)	16% (23 of 144)
Other	--	.8% (1 of 130)	--	--	--

[1] Includes judicial suspension matters.

[2] Includes decisions accepting/declining certification.

APPENDIX 5

APPENDIX 6

CRIMINAL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2010	2011	2012	2013	2014
Permission of Court of Appeals Judge	77% (76 of 99)	78% (87 of 112)	84% (76 of 91)	84% (93 of 111)	82% (75 of 91)
Permission of Appellate Division Justice	23% (23 of 99)	22% (25 of 112)	16% (15 of 91)	16% (18 of 111)	18% (16 of 91)

MOTION STATISTICS (2010 - 2014)

Motions Undecided as of January 1, 2014 - 164

Motions Submitted in 2014 - 1293

Motions Undecided as of December 31, 2014 - 156

Motion Dispositions During 2014 - 1300

	2010	2011	2012	2013	2014
Motions Submitted for Calendar Year	1380	1375	1296	1292	1293
Motions Decided for Calendar Year	1384 [1]	1355 [1]	1330 [1]	1310 [1]	1300 [1]
Motions for leave to appeal	1045	1112	999	995	934
granted	63	82	64	65	72
denied	758	822	733	739	662
dismissed	224	203	202	190	193
withdrawn	5	5	9	2	7
Motions to dismiss appeals	5	6	9	12	5
granted	3	2	3	2	1
denied	1	4	6	7	4
dismissed	1	0	0	3	0
withdrawn	0	0	0	0	0
Sua Sponte and Court's own motion dismissals	96	76	85	92	96
TOTAL DISMISSAL OF APPEALS	99	78	84	94	97
Motions for reargument of appeal	27	20	28	22	34
granted	0	0	1	3	0
Motions for reargument of motion	46	39	67	54	54
granted	2	3	0	1	0
Motions for assignment of counsel	83	51	86	45	64
granted	83	51	85	45	64
Legal Aid	24	8	13	10	15
denied	0	0	1	0	0
dismissed	0	0	0	0	0

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

APPENDIX 7

APPENDIX 7 (continued)

	2010	2011	2012	2013	2014
Motions to waive rule compliance	0	0	5	0	0
granted	0	0	5	0	0
Motions for poor person status	160	155	126	159	170
granted	6	7	8	6	12
denied	0	0	0	0	0
dismissed	154	148	118	153	158
Motions to vacate dismissal/preclusion	11	17	11	5	9
granted	11	16	8	5	9
Motions for calendar preference	1	0	0	0	0
granted	1	0	0	0	0
Motions for amicus curiae status	98	76	82	124	155
granted	95	76	77	119	152
Motions for Executive Law § 71 Order (AG)	0	0	0	0	0
Motions for leave to intervene	2	0	0	2	0
granted	2	0	0	0	0
Motions to stay/vacate stay	18	26	26	34	22
granted	1	4	3	3	3
denied	2	0	3	0	3
dismissed	15	22	20	31	16
withdrawn	0	0	0	0	0
Motions for CPL 460.30 extension	20	16	18	22	13
granted	17	12	16	21	11
Motions to strike appendix or brief	8	14	5	7	11
granted	1	8	2	3	4
Motions to amend remittitur	0	0	1	1	0
granted	0	0	0	0	0
Motions for miscellaneous relief	16	13	11	9	17
granted	1	0	1	3	2
denied	9	10	8	3	12
dismissed	6	3	2	3	3
withdrawn	0	0	0	0	0
Withdrawals/substitution of counsel	2	1	2	1	0
granted	2	0	0	1	0
denied	0	1	2	0	0

CRIMINAL LEAVE APPLICATIONS ENTERTAINED BY COURT OF APPEALS JUDGES (2010 - 2014)

	2010	2011	2012	2013	2014
TOTAL APPLICATIONS ASSIGNED:	2207	2190	2014	2044	2100
TOTAL APPLICATIONS DECIDED: [1]	2220	2089	2096	1923	2090
TOTAL APPLICATIONS GRANTED:	108	91	99	74	81
TOTAL APPLICATIONS DENIED:	1928	1845	1842	1692	1843
TOTAL APPLICATIONS DISMISSED:	174	142	147	145	154
TOTAL APPLICATIONS WITHDRAWN:	10	11	6	12	12
TOTAL PEOPLE'S APPLICATIONS:	59	70	50	63	47
(a) GRANTED:	16	18	10	14	11
(b) DENIED:	27	42	33	39	29
(c) DISMISSED:	4	2	5	3	2
(d) WITHDRAWN:	2	8	2	7	5
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE:	315	313	287 [2]	324 [3]	325 [4]
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE:	15	13	14 [2]	11	12

[1] Includes some applications assigned in previous year.

[2] Because of the death of one Judge in November 2012 and the retirement of another Judge at the end of 2012, which affected the Court's normal assignment procedures, the computed averages this year are approximated.

[3] This average was calculated by dividing the total number of applications assigned during 7 weeks of the year by 5, during 15 weeks of the year by 6 and during 30 weeks of the year by 7 because only 5 Judges were being assigned applications for 7 weeks, 6 Judges for 15 weeks and 7 Judges for 30 weeks.

[4] This average was calculated by dividing the total number of applications assigned during 287 days of the year by 7, during 17 days of the year by 6 and during 61 days of the year by 5 because only 5 Judges were being assigned for 61 days, 6 Judges for 17 days and 7 Judges for 287 days.

APPENDIX 9

2010 - 2014

THRESHOLD REVIEW OF SUBJECT MATTER JURISDICTION BY THE COURT OF APPEALS

SSD (sua sponte dismissal) - Rule 500.10

	2010	2011	2012	2013	2014
Total number of inquiry letters sent	86	63	71	100	73
Appeals withdrawn on stipulation	2	3	1	2	1
Dismissed by Court sua sponte	61	48	43	69	48
Transferred to Appellate Division sua sponte	3	0	4	2	9
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)	3	6	14	6	8
Jurisdiction retained - appeals decided	2	0	4	1[1]	0
Inquiries pending at year's end	15	6	5	20	7

[1] Withdrawn by stipulation

OFFICE FOR PROFESSIONAL MATTERS STATISTICS

2010 - 2014

	2010	2011	2012	2013	2014
Attorneys Admitted (OCA) [1]	10,132	9,855	9,657	10,251	10,748
Registered In-House Counsel	-	362 [2]	118	91	100
Certificates of Admission	69	57	78	91	142
Clerkship Certificates	5	5	9	4	3
Petitions for Waiver [3]	198	236	357	313	361
Written Inquiries	70	76	98	82	71
Disciplinary Orders	2,295 [4]	605	527	3,012 [4]	2,172 [4]
Name Change Orders	952	1,072	1,074	923	803

[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 J.D. and LL.M. programs under Rules 520.3 and 520.6.

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

APPENDIX 11

NONJUDICIAL STAFF

Armistead, Mary - Court Attorney

Asiello, John P. - Deputy Clerk of the Court

Austin, Louis C. - Senior Court Building Guard (retired December 2014)

Bleshman, Joseph M. - Counsel to the Chief Judge

Bohannon, Lisa - Senior Court Analyst

Bova, Matthew J. - Principal Law Clerk to Judge Smith (resigned December 2014)

Bowman, Jennifer L. - Senior Court Building Guard

Brizzie, Gary J. - Principal Custodial Aide

Byer, Ann - Principal Stenographer

Byrne, Cynthia D. - Criminal Leave Applications Clerk

Cerutti, Chelsea A. - Senior Court Attorney (resigned August 2014)

Claydon, Julianne - Chief Legal Reference Attorney

Cleary, Lisa M. - Principal Stenographer

Costa, Gary Q. - Court Building Guard

Costello, James A. - Assistant Deputy Clerk

Cross, Robert J. - Senior Court Building Guard

Culligan, David O. - Clerical Assistant

Cunningham, Steven M. - Senior Court Attorney (resigned August 2014)

Dautel, Susan S. - Assistant Deputy Clerk

Appendix 11 (Continued)

Davis, Heather A. - Chief Motion Clerk

Deppermann, Lee - Law Clerk to Judge Read

Donnelly, William E. - Assistant Building Superintendent I

Dragonette, John M. - Senior Court Building Guard

Drury, Lisa A. - Senior Principal Law Clerk to Judge Read (resigned December 2014)

Duncan, Priscilla - Secretary to Judge Read

Dunn, Matthew R. - Senior Principal Law Clerk to Judge Graffeo (transferred December 2014)

Eddy, Margery Corbin - Senior Deputy Chief Court Attorney

Emigh, Brian J. - Building Manager

Endsley, Anya Ferris - Senior Court Attorney (resigned April 2014)

Engel, Hope B. - Consultation Clerk

Ettlinger, Nicole J. - Senior Court Attorney (resigned August 2014)

Fernandez, Raymond - Senior Law Clerk to Judge Rivera

Fix-Mossman, Lori E. - Principal Stenographer

Fludd, Christopher - Senior Court Building Guard (retired June 2014)

Fornadel, Joseph - Senior Court Attorney

Freeman, Clark - Law Clerk to Chief Judge Lippman (resigned July 2014)

Garcia, Heather A. - Senior Security Attendant

Gerber, Matthew - Security Attendant

Gilbert, Marianne - Principal Stenographer

Appendix 11 (Continued)

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

Haas, Tammy L. - Principal Assistant Building Superintendent

Hartnagle, Mary C. - Senior Custodial Aide

Heaney, Denise C. - Senior Security Attendant

Herman, Lisa M. - Law Clerk to Judge Read

Herrington, June A. - Principal Stenographer (retired June 2014)

Holman, Cynthia M. - Senior Stenographer

Hopkins, Gabriel - Law Clerk to Judge Read (resigned August 2014)

Hosang-Brown, Yanique - Principal Court Analyst

Ignazio, Andrea R. - Principal Stenographer

Irwin, Nancy J. - Principal Stenographer

Isaacs, Elizabeth Langston - Law Clerk to Chief Judge Lippman (resigned September 2014)

Johar, Kanika - Court Attorney

Kaiser, Warren - PC Analyst

Kandel, Erin P. - Senior Law Clerk to Judge Abdus-Salaam (resigned August 2014)

Kane, Suzanne M. - Principal Stenographer

Kearns, Ronald J. - HVAC Assistant Building Superintendent

Kenny, Krysten - Senior Law Clerk to Judge Graffeo

Klein, Andrew W. - Clerk of the Court

Kong, Yongjun - Principal Custodial Aide

Appendix 11 (Continued)

Lacovara, Christopher - Law Clerk to Judge Smith (resigned December 2014)

LaGrave, Trevor - Court Building Guard

Lane, Brian C. - Court Building Guard

LaPorte, Azahar - Secretary to Judge Rivera

Lawrence, Bryan D. - Principal Local Area Network Administrator

LeCours, Lisa A. - Assistant Consultation Clerk

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

MacVean, Rachael M. - Principal Court Attorney

Martin, John - Senior Law Clerk to Judge Abdus-Salaam

Mason, Marissa K. - Senior Clerical Assistant (resigned October 2014)

Mayo, Michael J. - Deputy Building Superintendent

McCormick, Cynthia A. - Director of Management and Operations

McGrath, Paul J. - Chief Court Attorney

Mendez, Noel - Senior Law Clerk to Judge Rivera (resigned March 2014)

Minutello, Kathleen - Senior Custodial Aide (resigned April 2014)

Moore, Travis R. - Senior Security Attendant

Morgen, David - Court Attorney

Muller, Joseph J. - Senior Security Attendant

Mulyca, Jonathan A. - Clerical Assistant

Murray, Elizabeth F. - Chief Legal Reference Attorney (retired June 2014)

Appendix 11 (Continued)

Nina, Eddie A. - Senior Security Attendant

Nociolo, Julie - Court Attorney

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

Pace, Lisa A. - Clerical Assistant

Panchok-Berry, Janine - Law Clerk to Chief Judge Lippman

Pasquarelli, Angela M. - Senior Services Aide

Pavlenko, Ivan - Senior Court Attorney

Penn, Robert - Law Clerk to Judge Rivera

Pepper, Francis W. - Principal Custodial Aide

Radley, Kelly - Senior Custodial Aide

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

Saint-Fort, Dominique F. - Senior Law Clerk to Judge Abdus-Salaam

Sawyer, Richard - Law Clerk to Judge Rivera (resigned August 2014)

Schaffner, Diana E. - Senior Court Attorney (resigned August 2014)

Schoeneberger, Michael - Court Attorney

Scoville, Hannah - Court Attorney

Scrufari, Carrie - Senior Court Attorney (resigned December 2014)

Sheltry, Jaclyn - Senior Court Attorney

Sherwin, Stephen P. - Principal Court Attorney

Somerville, Robert - Senior Court Building Guard

Appendix 11 (Continued)

Spencer, Gary H. - Public Information Officer

Spiewak, Keith J. - Local Area Network Administrator (resigned December 2014)

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

Stuart, Ansley - Clerical Assistant

Tallent, Joshua -- Court Attorney

Tierney, Inez M. - Principal Court Analyst

Turon, Kristin L. - Stenographer

Valenti, Kyle - Law Clerk to Judge Rivera

VanDeloo, James F. - Senior Assistant Building Superintendent

Villaronga, Genoveva - Secretary to Judge Abdus-Salaam

Waddell, Maureen A. - Secretary to Judge Pigott

Waisnor, Jonathan D. - Senior Law Clerk to Judge Smith (resigned December 2014)

Waithe, Nelvon H. - Senior Court Building Guard

Walthall, Claiborne - Senior Law Clerk to Judge Read (resigned August 2014)

Warenchak, Andrew R. - Principal Custodial Aide

Wasserbach, Debra C. - Principal Court Analyst

Welch, Joseph H. - Senior Clerical Assistant

Wodzinski, Esther T. - Secretary to Judge Smith

Woll, Deborah - Senior Principal Law Clerk to Judge Abdus-Salaam

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

Yalamas, George C. - Chief Security Attendant

Zahn, Gabriella - Law Clerk to Chief Judge Lippman