COURT OF APPEALS OF THE STATE OF NEW YORK

2017 ANNUAL REPORT OF THE CLERK OF THE COURT

2017
Annual Report of the Clerk of the Court to the Judges of the Court of Appeals of the State of New York

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Honorable Janet DiFiore

Chief Judge

Foreword

March 2018

The year 2017 was a memorable one for the Court of Appeals, marked by the arrival of Judge Rowan D. Wilson in February, the tragic, untimely loss of our beloved colleague, Sheila Abdus-Salaam, in April, and, finally, the addition of our newest member, Paul G. Feinman, in June.

Through it all, the Court of Appeals carried on with its work of collectively clarifying and pronouncing the law of our State on a broad range of novel constitutional, statutory and common law issues. In our decisions, we strive always to give proper meaning to our laws and to balance the need for sensible, incremental change with continuity and stability. The Judges of the Court could not carry out this intellectually challenging work without the highly competent legal and administrative support we receive from the Clerk of the Court, John Asiello, and his able staff. It is their hard work, professionalism and high legal acumen that provide the foundation of excellence upon which we are able to consistently deliver fair and timely justice.

Among the many highlights of 2017 was our Court's road trip to White Plains, where we held a three-day session from April 25 to April 27 at the Richard J. Daronco Westchester County Courthouse. My colleagues and I relished the opportunity to host and interact with dozens of students and teachers from six area high schools and one college. Our ability to make the work of the Court of Appeals accessible and transparent to the public, and to our young people in particular, is enormously satisfying and important to each of us.

As we look back on these pages reflecting the work of the Court in 2017, every single Judge

appreciates to the fullest the extraordinary privilege we have of spending our days hearing oral arguments, conferencing motions and appeals, and preparing written decisions in an atmosphere of efficiency, civility and excellence. We are so fortunate to have the opportunity to work together to develop a strong and predictable body of law to guide our communities, our economy, and the personal and professional lives of our citizenry. We look forward in the year ahead to continuing our work of deciding the many hundreds of appeals and motions that come before us with the same commitment to excellence that has long been the hallmark of the New York Court of Appeals.

2017
Annual Report of the Clerk of the Court to the Judges of the Court of Appeals of the State of New York

Introduction

Again in 2017, two Judges joined the Court to fill vacancies, the third consecutive year that has occurred. The Court and its staff welcomed Judges Rowan D. Wilson and Paul G. Feinman, and we were saddened by the passing of Judge Sheila Abdus-Salaam. There were no vacancies on the bench at the end of 2017, the first time that has occurred since 2013.

The Court designated 10 Justices of the Appellate Division to participate in the consideration of appeals heard and decided in 2017. Such designations have been relatively rare. There were none in 2016 and only one in 2015. However, for some appeals pending in 2017, a combination of recurring vacancies and recusals left the Court without the constitutionally required number of Judges to hear and decide those cases (*see* NY Const, art VI, § 2[a]). When the Court was restored to its full complement, it exercised its constitutional authority to designate temporary replacements for recused Court of Appeals Judges. The contributions of those Appellate Division Justices to the work of the Court are very much appreciated.

The staff of the Court of Appeals should be recognized for facilitating the participation of the designated Judges, especially during the October 2017 session, when seven Appellate Division Justices participated in various arguments and conferences of the Court, and for attending to all of the details of the Court's April session in Westchester County.

In a continuing effort to provide helpful information to the bar and public, the Practice Outlines and Guides posted in the Practice Aids section of the Court's website were updated in 2017. For pro se applicants, a new Criminal Leave Form Letter Application, with instructions, was added to the website and is available by mail upon request to the Clerk's Office. To enhance the quality of the live oral argument webcasts, the Court installed new cameras, audio equipment and recording equipment.

The Court's Rules of Practice were not changed in 2017. Effective July 12, 2017, the Court's Rules for the Licensing of Legal Consultants (Part 521) were amended to authorize the Chief Administrator of the Courts to implement procedures for the biennial registration and reporting of foreign legal consultants with the Office of Court Administration.

The format of this year's Annual Report, divided into five parts, follows the format of the 2016 report. The first section is a narrative 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 2017. The third section highlights selected decisions of 2017. The fourth part covers some of the Court's 2017 notable events. The fifth part consists of appendices with detailed statistics and other information.

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. The primary role of the Court of Appeals is to unify, clarify, and pronounce the law of New York State.

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, granted upon civil motion or criminal leave application. Appeals by permission typically present novel and difficult questions of law having statewide importance or 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. 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, oral argument is heard in the afternoon and the Court meets in conference in the mornings to discuss the argued appeals, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters.

In 2017, the Court and its Judges disposed of 3,582 matters, including 142 appeals, 1,196 motions and 2,244 criminal leave applications. A detailed analysis of the Court's work follows.

Appeals Management

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 a preliminary appeal statement in accordance with Rule 500.9. Pursuant to Rule 500.10, the Clerk examines all filed preliminary appeal statements for issues related to subject matter jurisdiction. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issues identified. After the parties respond to the Clerk's inquiry, the Clerk may direct the parties to proceed to argue the merits of the appeal or refer the matter to the Central Legal Research Staff to prepare a report on jurisdiction for review and disposition by the full Court. The Rule 500.10 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.

Of the 130 notices of appeal received by the Court in 2017, 80 were subject to Rule 500.10 inquiries. Of those, 53 were dismissed sua sponte (SSD) or transferred to the Appellate Division. Seventeen inquiries were pending at year's end.

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 material 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. Each appeal argued or submitted is assigned by random draw to one member of the Court for reporting to the full Court.

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 for review and consideration. After further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next scheduled session of the Court.

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 appeals on letter submissions without oral argument, saving the litigants and the Court the time and expense of full briefing and oral argument. Parties may request SSM review. A case may be placed on SSM review if, for example, it involves narrow issues of law or issues decided by a recent appeal. As with normal course 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 248 appeals filed in 2017, 52 (20.9%) were initially selected to receive SSM consideration, a slight increase from the percentage so selected in 2016 (19%). Thirty-three were civil matters and 19 were criminal matters. Three appeals initially selected to receive SSM consideration in 2017 were directed to full briefing and oral argument. Of the 142 appeals decided in 2017, 32 (22.5%) were decided upon SSM review (15.5% were so decided in 2016). Twenty were civil matters and 12 were criminal matters. Two civil appeals were withdrawn. Twenty-four matters remained pending on SSM review at the end of 2017 (11 civil and 13 criminal).

Promptness in Deciding Appeals

The Court continued its tradition of prompt disposition of appeals following oral argument or submission. In 2017, the average time from argument or submission to disposition of a normal course appeal was 31 days; for all appeals, the average time from argument or submission to disposition was 25 days.

The average period from filing a notice of appeal or an order granting leave to appeal to oral argument was approximately 16 months. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately 10 months.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release of a decision in a normal course appeal (including SSM appeals tracked to normal course) was 516 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 325 days.

The Court's 2017 Docket

Filings

Two hundred forty-eight (248) notices of appeal and orders granting leave to appeal were filed in 2017 (227 were filed in 2016). Two hundred and two (202) filings were civil matters (compared to 178 in 2016), and 46 were criminal matters (compared to 49 in 2016). The Appellate Division Departments issued 63 of the orders granting leave to appeal filed in 2017 (41 were civil, 22 were criminal).

Motion filings increased in 2017. During the year, 1,237 motions were submitted to the Court, compared to the 1,183 submitted in 2016. Criminal leave application filings also increased in 2017. In 2017, 2,275 applications for leave to appeal in criminal cases were assigned to individual Judges of the Court, compared to the 2,211 assigned in 2016. On average, each Judge was assigned 374 such applications during the year.

Dispositions

Appeals and Writings

In 2017, the Court decided 142 appeals (80 civil and 62 criminal, compared to 118 civil and 107 criminal in 2016). Of these appeals, 94 were decided without dissent. The Court issued 84 signed opinions, 5 per curiam opinions, 42 dissenting opinions, 17 concurring opinions, 35 memoranda, and 18 decision list entries.

Motions

The Court decided 1,196 motions in 2017, a decrease from the 1,232 decided in 2016. Of the 920 motions for leave to appeal decided in 2017, 4.1% were granted, 78% were denied, 17.8% were dismissed, and less than 1% were withdrawn. Thirty-eight motions for leave to appeal were granted in 2017. The Court's leave grants covered a wide range of subjects and reflect the Court's commitment to grant leave in cases presenting issues that are of great public importance, are novel, or present a split in authority among the Appellate Division Departments.

The average period of time from return date to disposition for civil motions for leave to appeal was 67 days, while the average period of time from return date to disposition for all motions was 59 days.

CPL 460.20 Applications

Individual Judges of the Court granted 25 of the 2,244 applications for leave to appeal in criminal cases decided in 2017. One hundred seventy-two (172) applications were dismissed for lack of jurisdiction and 5 were withdrawn. Seven of the 65 applications filed by the People were granted. Of the 202 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, one was granted.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court. The period during which such applications are pending includes several weeks for the parties to prepare and file their written arguments. In 2017, on average, 65 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

Review of Determinations of the State Commission on Judicial Conduct

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 2017, pursuant to Judiciary Law § 44(8), the Court suspended one judge with pay, accepted the removal determination of the Commission regarding that judge, and removed him from office. The court suspended a second judge without pay after the judge was charged with a crime punishable as a felony.

Certifications Pursuant to Rule 500.27

Rule 500.27 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 Rule 500.27, the Court first decides whether the certification should be accepted. When the Court accepts a certified question, the matter is treated similarly to an appeal. In 2017, the period from receipt of initial certification papers to the Court's order accepting or rejecting review was 19 days. The average period from acceptance of a certification to disposition was 8.5 months.

The Court answered six certified questions in 2017. Three of those questions were accepted in 2016 and three were accepted in 2017. At the end of 2017, one question that was accepted in 2017 remained pending.

Petitions for Waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law

In 2017, the Court decided 270 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a decrease from the 314 petitions decided in 2016. Petitions typically are decided four to eight weeks after submission.

Court Rules

Effective July 12, 2017, the Court's Rules for the Licensing of Legal Consultants (Part 521) were amended to authorize the Chief Administrator of the Court to implement procedures for the biennial registration and reporting of foreign legal consultants with the Office of Court Administration.

Administrative Functions and Accomplishments

Court of Appeals Hall

Court of Appeals Hall at 20 Eagle Street has been the Court's home for 100 years. The 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 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 Deputy Building Superintendent oversees all services and operations performed by the Court's maintenance staff and by outside contractors at Court of Appeals Hall.

Clerk's Office

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, Criminal Leave Applications Clerk, several secretaries, court attendants, and clerical aides perform the many and varied tasks involved in appellate case management. Their responsibilities include receiving and reviewing all papers, filing and distributing to 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. The Court's document reproduction unit handles most of the Court's internal document reproduction needs, as well as reproducing decision lists and slip opinions for release to the public. 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.

Court of Appeals Website

The Court's comprehensive website (http://www.nycourts.gov/ctapps) posts information about the Court, its Judges, its history, summaries of pending cases and news items, as well as recent Court of Appeals decisions. The latest decisions are posted at the time of their official release. During Court sessions, the website offers live webcasts of all oral arguments. 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. Since September 2012, transcripts of oral arguments are also 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, court forms, session calendars, and undecided lists of argued appeals and civil motions — and provides links to other judiciary-related websites. A virtual tour of the Court and a video orientation for arguing counsel also are available.

Court of Appeals Public Access and Search System (Court-PASS)

The Court of Appeals Public Access and Search System (Court-PASS) is the method for filing records and briefs in digital format on appeals to the Court of Appeals, and offers universal online access to publicly available documents through a searchable database (www.nycourts.gov/ctapps/courtpass). Anyone may search or browse the Court-PASS database free of charge, and may view or download documents from every stage of a case at the Court, including motion papers for civil motions in which leave to appeal has been granted by the Court of Appeals, and briefs and records in civil and criminal appeals. The docket function of Court-PASS contains a snapshot of frequently requested information for all undecided appeals, including the due dates set for filings on appeals, scheduled dates of oral argument, and attorney contact information.

Public Information Office

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.

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.

Office for Professional Matters

Special Projects Counsel manages the Office for Professional Matters. A court analyst provides administrative, research, and drafting support for the office. Special Projects Counsel 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 relating to admission and licensing rules, 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.

Central Legal Research Staff

Under the supervision of the Judges and the Clerk and Deputy Clerk of the Court, the Central Legal Research Staff prepares reports on civil motions and selected appeals for the full Court's review and deliberation. From December 2016 through December 2017, Central Staff completed 944 motion reports, 65 SSD reports, and 21 SSM reports.

Attorneys usually, but not invariably, join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed during part or all of 2017 were graduates of Albany, American University (Washington, D.C.), Brooklyn, Cornell, Ohio State University, St. John's University, Syracuse University, Touro, University of Maryland, Western New England University and Wake Forest University law schools. Staff attorneys hired for work beginning in 2018 represent the following law schools: Albany, Brooklyn, CUNY, Notre Dame, St. John's University and University of California (Irvine).

Library

The Chief Legal Reference Attorney provides legal and general research and reference services to the Judges, their law clerks, and the Clerk's Office staff. In 2017, the Court of Appeals Library staff completed the physical reorganization of resources within the library and an inventory of its holdings, and continued the work to update and create catalog records to reflect those holdings.

The Library staff also continued to provide the secondary source authorities research service. The Chief Legal Reference Attorney presented at the CLE-certified orientation for new Judges' clerks and Central Staff attorneys.

Continuing Legal Education Committee

The Continuing Legal Education (CLE) Committee coordinates professional training for Court of Appeals, Law Reporting Bureau, and Board of Law Examiners attorneys. The Committee meets on an as-needed basis and issues credit for suitable programs it and its affiliates plan. In 2017, the CLE Committee provided numerous programs for Court-associated attorneys — including new staff training and orientation — totaling 8.5 credit hours. Attorneys also attended classes offered by the New York Supreme Court, Appellate Division, Third Department; Albany Law School; and various state and local bar groups. These programs accounted for over 19 additional credit hours of live programming.

Management and Operations

A Chief Management Analyst, aided by a secretarial assistant, 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.

Budget and Finance

A Chief Management Analyst 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.

Expenditures

The work of the Court and its ancillary agencies (the New York State Law Reporting Bureau and the New York State Board of Law Examiners) was performed within the 2017-2018 fiscal year budget appropriation of $1.86 million for non-personal services costs, including in-house maintenance of Court of Appeals Hall.

Budget Requests

The total request for fiscal year 2018-2019 for the Court and its ancillary agencies is $1.86 million for non-personal services. Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2018-2019 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.

Revenues

In calendar year 2017, the Court reported filing fees for civil appeals totaling $24,750 and for motions totaling $29,704. 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 miscellaneous collections ($1,833.18). For calendar year 2017, revenue collections totaled $56,107.18.

Information Technology

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Chief Management Analyst, assisted by a LAN Administrator, a PC Analyst, and a Senior Associate Computer Applications Programmer. These operations include all software and hardware used by the Court and a statewide network connecting the remote Judges' chambers with Court of Appeals Hall. The Department also 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 Court or via outside agencies. Maintenance calls to the help desk were estimated at 3,100 for the year.

The Department is also responsible for the upkeep of three websites: an intranet website, the Court's main internet site, located at http://www.nycourts.gov/ctapps, and the Court-PASS website, located at http://www.nycourts.gov/ctapps/courtpass. Over 1,107,710 visits were recorded to the main internet site in 2017, averaging 3,034 visits per day. The Court-PASS site recorded 156,580 visits in 2017.

Security Services

The Court Security Unit provides for the safety, security, and protection of 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 who 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 Court is in session.

ACKNOWLEDGMENT

Although submitted to the Court under the name of the Clerk, the Annual Report is a joint effort of Court staff who provide numerical data, narrative content, graphics, editing, and proofreading necessary for its production. In conveying my appreciation to each member of the staff who contributed, I thank especially Ann Byer, Cynthia Byrne, Julianne Claydon, Susan Dautel, Heather Davis, Lisa Drury, Margery Corbin Eddy, Hope Engel, Antonio Galvao, Suzanne Kane, Bryan Lawrence, Rachael MacVean, Marissa Mason, Cynthia McCormick, Stephen Sherwin, Inez Tierney and Margaret Wood.

The Annual Report is but one example of the extraordinary service the staff provides to the Judges of the Court, the bar, and the public throughout the year. The staff is to be commended for recognizing that such public service is both a privilege and a responsibility. A complete list of the Court's nonjudicial staff appears in Appendix 2.

Finally, I acknowledge the individuals in the Office of Court Administration and throughout the Unified Court System who continue to provide expert assistance to the Judges and staff of the Court of Appeals. I thank in particular Laura Weigley for her assistance, again this year, in the publication of this report.

Year in Review: Decisions

Below is a summary of significant 2017 decisions, reflecting the range of constitutional, statutory, regulatory, and common law issues decided by the Court each year.

ADMINISTRATIVE LAW

Matter of Acevedo v New York State Dept. of Motor Vehs. (29 NY3d 202)

Petitioners, 3 drunk driving offenders with a combined total of 12 drunk driving convictions, challenged the validity of regulations promulgated by the New York State Department of Motor Vehicles governing the relicensing of recidivist drunk drivers. The Court upheld the regulations. With regard to petitioners' statutory conflict argument, the Court explained that the regulations were not inconsistent with the provisions of the Vehicle and Traffic Law. The Court also rejected petitioners' constitutional challenge and held, pursuant to *Boreali v Axelrod* (71 NY2d 1 [1987]) and its progeny, that the regulations did not violate the separation of powers doctrine. The regulations further survived rational basis scrutiny and were not improperly applied retroactively to petitioners' relicensing applications.

APPEALS

Matter of 381 Search Warrants Directed to Facebook, Inc. (New York County Dist. Attorney's Off.) (29 NY3d 231)

The Court held that orders denying motions to quash warrants issued pursuant to the Federal Stored Communications Act were not appealable because such orders were related to warrants issued in a criminal proceeding, not civil subpoenas. As the Court explained, the Criminal Procedure Law does not authorize an appeal from an order denying a motion to quash a search warrant, and no civil appeal may be brought from an order entered in a criminal action or proceeding.

BAIL

Gevorkyan v Judelson (29 NY3d 452)

On this certified question from the United States Court of Appeals for the Second Circuit, the Court held that a bail bond surety may not retain the premium paid on a criminal defendant's behalf when bail is denied and defendant is never released from custody. Insurance Law § 6804 provides that the surety may receive a premium only upon "giving bail bond," a term that is equated elsewhere in the Insurance Law with "executing a bail bond." A bail bond is not deemed executed, or given, when a court rejects the bond. Thus, when defendant remains in custody, the surety may not retain the bail bond premium. This result comports with the insurance law principle that premium follows risk.

CIVIL PROCEDURE—JURISDICTION

D & R Global Selections, S.L. v Bodega Olegario Falcon Pineiro (29 NY3d 292)

Plaintiff, a Spanish company, commenced a lawsuit in New York against a Spanish winery for breaching an oral contract, entered into in Spain, to pay commissions on wine sold to an American distributor. The Court held that Supreme Court had personal jurisdiction over defendant under CPLR 302 (a) (1)'s "transacts any business" ground. Defendant "purposefully availed" itself of the privilege of conducting business in New York by contracting for

plaintiff to solicit a distributor to import wine into the United States and by attending promotional events in New York in furtherance of that contract. An "articulable nexus" existed between those New York transactions and plaintiff's claim because the unpaid commissions at the heart of plaintiff's claim were for sales of wine to that American distributor. The Court also held that this exercise of personal jurisdiction comported with federal due process because defendant's multiple visits and interactions with New York established minimum contacts.

CIVIL PROCEDURE — STATUTE OF LIMITATIONS

B.F. v Reproductive Medicine Assoc. of N.Y., LLP (30 NY3d 608)

In *Becker v Schwartz* (46 NY2d 401 [1978]), this Court recognized a narrow cause of action permitting parents to recover the extraordinary expenses incurred to care for a disabled infant who, but for a physician's negligent failure to detect or advise on the risks of impairment, would not have been born. The Court held that the statute of limitations for such a claim runs from the date of the disabled infant's birth. The statute of limitations in negligence cases generally begins to run when a cause of action accrues. Here, the claim's gravamen is that defendants' negligence left the parents in an uninformed state as to whether to avert pregnancy or birth, and the associated costs resulting from birth. Due to these unique circumstances, the Court held that this claim accrues on — and the statute of limitations runs from — the date of birth because prior to that date, it is impossible to ascertain whether parents will bear any extraordinary expenses. CPLR 214-a, which begins the limitations period for a medical malpractice claim from the date of negligence, does not otherwise bar this outcome. Unlike the typical malpractice case, parents are precluded from bringing an extraordinary expenses claim until the date of birth, a scenario not anticipated when the legislature adopted CPLR 214-a, which predated *Becker*.

CIVIL RIGHTS

Chauca v Abraham (30 NY3d 325)

In a pregnancy discrimination case, the Second Circuit asked the Court to determine the applicable standard for when punitive damages may be awarded for violations of the New York City Human Rights Law (NYCHRL). The Court held that the standard for determining the availability of punitive damages under the NYCHRL is whether the wrongdoer has engaged in discrimination with willful or wanton negligence, or recklessness, or "a conscious disregard of the rights of others or conduct so reckless as to amount to such disregard." This test adopts the least stringent common law standard for imposing punitive damages, and is therefore consistent with the City Council's intent that the NYCHRL be "construed liberally." The Court rejected plaintiff's argument that punitive damages are automatically available for any violation of the statute, and rejected defendant's argument that the federal Title VII standard for punitive damages should apply.

Griffin v Sirva, Inc. (29 NY3d 174)

The United States Court of Appeals for the Second Circuit certified three

questions regarding who may be liable under the New York State Human Rights Law for discrimination in employment on the basis of a prior criminal conviction. First, the Court held that Executive Law § 296 (15), which prohibits such discrimination, limits liability to an aggrieved party's employer. Second, the Court held that common-law principles govern who is deemed an employer under the Human Rights Law, with emphasis placed on the employer's power to order and control the employee in the performance of work. Third, the Court held that Executive Law § 296 (6), which provides for aiding and abetting liability under the Human Rights Law, extends liability to an out-of-state non-employer who aids or abets employment discrimination against individuals based on a prior criminal conviction.

CIVIL SERVICE

Matter of City of Schenectady v New York State Pub. Empl. Relations Bd. (30 NY3d 109)

The City of Schenectady brought a CPLR article 78 proceeding to review a determination of the New York State Public Employment Relations Board (PERB), in which PERB had determined that the City of Schenectady committed an improper employer practice by adopting new police disciplinary procedures different from those contained in a previous collective bargaining agreement. The Court held that the statutory grants of local control over police discipline in Schenectady render police discipline a prohibited subject for collective bargaining, and that the Taylor Law's general command regarding collective bargaining is not sufficient to displace the more specific authority granted by the Second Class Cities Law.

CONFLICT OF LAWS

Davis v Scottish Re Group Ltd. (30 NY3d 247)

The Court held that a shareholder seeking to bring a derivative action against a company incorporated in the Cayman Islands is not required under Rule 12A, Order 15 of Cayman Islands Grand Court to apply for leave in that court before commencing an action in New York. Rule 12A, requiring prospective litigants to make a prima facie demonstration at a hearing of the merits of their claims, is procedural and applies only to cases commenced in the Cayman Islands. Under choice of law principles, New York applies its own procedural law in claims brought in New York, and Cayman Islands substantive law governs the merits. Shareholders are required to establish that their claims are meritorious under Cayman Islands common law principles.

CONTRIBUTION

Artibee v Home Place Corp. (28 NY3d 739)

The Court concluded that the factfinder in Supreme Court may not apportion fault to the State under CPLR 1601 (1) when a plaintiff claims that both the State and a private party are liable for noneconomic losses in a personal injury action. CPLR 1601 (1) provides that low-fault, joint tortfeasors are liable for noneconomic loss only in proportion to their actual assessed share of fault. Although the statutory language permits the State to seek apportionment in the Court of Claims, it does not allow apportionment against the

State in a Supreme Court action due to the fact that, among other things, there is a jurisdictional limitation on impleading the State as a codefendant in such an action. Therefore, a private tortfeasor-defendant is not entitled to a jury charge on apportionment against the State in an action commenced in Supreme Court.

CONSTITUTIONAL LAW

American Economy Ins. Co. v State of New York (30 NY3d 136)

Workers' compensation insurance companies challenged a 2013 amendment to the Workers' Compensation Law that closed the Special Fund for Reopened Cases to new applications after January 1, 2014. Plaintiffs contended that the amendment violated various constitutional provisions by retroactively imposing unfunded liability upon them for policies finalized before the effective date of the amendment. The Court concluded that, even assuming that the amendment had retroactive effect, that retroactive impact was constitutionally permissible. The Court held that the amendment did not violate the Contract Clause of the federal constitution because it did not impair plaintiffs' contracts with their insureds, nor did the amendment violate the Takings Clauses of the federal and state constitutions because plaintiffs failed to identify a vested property interest impaired by the amendment. Finally, the Court concluded that plaintiffs could not establish a substantive due process violation because any retroactive impact of the amendment was justified by a rational legislative purpose.

Bransten v State of New York (30 NY3d 434)

Current and retired New York State judges brought an action for declaratory and injunctive relief against the State, alleging that its statutorily-authorized decrease in its contribution to the cost of judges' health care insurance premiums violated the State Constitution's Judicial Compensation Clause, which prohibits diminishment of a judge's compensation during the judge's term of office. The Court held that the State's contribution to these premiums is not judicial compensation protected from direct diminution by the Compensation Clause, as it is a cost that is voluntarily assumed by the participating judges, and affects salary only indirectly as the judge must make up the difference. Furthermore, adopting the United States Supreme Court's analytical framework from *United States v Hatter* (532 US 557 [2001]), the Court held the reductions in contributions do not have the effect of singling out the judiciary for disadvantageous treatment, as other State employees were similarly affected.

For the People Theatres of N.Y., Inc. v City of New York (29 NY3d 340)

The Court for a second time considered the subject of New York City's 2001 zoning amendments with respect to the adult entertainment industry. Under the Court's 2005 decision in this case (6 NY3d 63), the sole remaining question of fact was whether certain adult bookstores and topless clubs, which had made changes to comply with a 1995 zoning ordinance, were so transformed in character that they no longer resembled

adult uses found to create negative secondary effects. Following proceedings at the trial court and Appellate Division, this Court was tasked with clarifying the standard to be applied at trial. The Court noted that the United States Supreme Court has instructed that in First Amendment cases applying intermediate scrutiny, a court's task, when reviewing a legislature's factual or predictive judgments, is to ensure that, in formulating its judgments, the legislature has drawn reasonable inferences based on substantial evidence. The same modest burden of proof is applicable, this Court held, to a municipality's factual judgments in the adult use zoning context. Properly understood, the trial court's task was to decide whether the City had relevant evidence reasonably adequate to support its conclusion that the adult establishments retained a predominant, ongoing focus on sexually explicit activities or materials. The Court summarized the lower courts' findings, concerning such quintessentially sexual activities as lap dances and the viewing of adult films, and held that the findings supported only one conclusion: that the City met its burden of showing the businesses' continued focus on the sexually explicit activities or materials. The Court concluded that the 2001 zoning amendments do not violate the First Amendment.

Myers v Schneiderman (30 NY3d 1)

A trio of terminally ill, mentally competent patients, together with doctors who care for patients at the end of their lives and a non profit concerned with end-of-life care, brought an action against the Attorney General seeking a declaration that the statutory ban on assisted suicide did not apply to physicians who provide aid-in-dying, a practice by which a terminally ill patient receives a lethal prescription from a doctor. If the statutory ban does cover aid-in-dying, plaintiffs sought a declaration that it violates the Equal Protection and Due Process Clauses of the New York State Constitution. The Court held first that the plain language of the assisted suicide statutes cover what plaintiffs dub aid-in-dying, as they apply to a physician who intentionally prescribes a lethal dosage of a drug because such an act constitutes promoting a suicide attempt or aiding another person to commit suicide. Second, the Court held, in line with the United States Supreme Court's decision in *Vacco v Quill* (521 US 793 [1997]), the assisted suicide statutes do not unconstitutionally distinguish between individuals, and thus comply with equal protection. Finally, the Court, following the United States Supreme Court's decision in *Washington v Glucksberg* (521 US 702 [1997]), held that while New York does recognize individuals' right to determine their own medical treatment, including the right to refuse such treatment when the consequence is certain death, the Court has never recognized the right to assisted suicide as a fundamental right. As such, the statutes are only subject to rational basis review, and the State amply demonstrated the statutes were rationally related to legitimate government interests, including guarding against the risks of mistake and abuse.

Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig. (30 NY3d 377)

These certified questions from the United States Court of Appeals for the Second Circuit called upon the Court to decide (1) whether the general rule that legislatively-created State entities lack capacity to challenge the constitutionality of State

statutes applies to public benefit corporations, or whether a "particularized inquiry" is necessary to determine whether the public benefit corporation "should be treated like the State," and (2) whether the "serious injustice" standard articulated in *Gallewski v Hentz & Co.* (301 NY 164 [1950]) or the "reasonable[ness]" standard articulated in *Robinson v Robins Dry Dock & Repair Co.* (238 NY 271 [1924]) governs the merits of a due process challenge under the New York State Constitution to a claim-revival statute. With respect to the first question, after analyzing the history and purposes of the capacity-to-sue doctrine, the Court held that the doctrine applies to public benefit corporations just as it would to any municipality or other local governmental entity, rejecting a "particularized inquiry" approach for public benefit corporations. With respect to the second question, the Court held that *Robinson*, *Gallewski*, and their progeny express one and the same rule: a claim-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice.

CONTRACTS

Princes Point LLC v Muss Dev. L.L.C. (30 NY3d 127)

Plaintiff agreed to purchase a developable waterfront parcel on Staten Island from defendant. Closing was to be accomplished no later than 18 months after the execution and delivery of that contract. Before closing occurred, the New York State Department of Environmental Conservation (DEC) required the owner to cure certain defects in a retaining wall along the waterfront of the property, which delayed closing and gave rise to an amendment to the purchase agreement in which the price for the parcel was increased to account for the additional remedial work. The closing date for the property was extended on approximately 11 occasions following those amendments. Approximately one month before the last closing date, plaintiff commenced this action alleging, among other things, fraud in the inducement of the amendments to the contract. This Court was confronted with the question whether the mere commencement of the action — which sought "rescission and/or reformation" of the contract — constituted an anticipatory breach of that agreement. Under the circumstances of this case, the Court concluded that it did not, reasoning that this action was akin to a declaratory judgment action, wherein the prosecuting party would seek a judicial determination as to the terms of a contract. The Court added that the mere act of seeking judicial approval to avoid a performance obligation is different from establishing that one will not perform that obligation absent such approval.

CRIMINAL LAW

People v Andujar (John) (30 NY3d 160)

Defendant was prosecuted under Vehicle and Traffic Law § 397 for the misdemeanor offense of equipping the tow truck he was operating with a police radio scanner without a permit. The sole issue in the case was the definition of the term "equipped." The Court held that for a vehicle to be "equipped" with a scanner, the device need not be physically attached to the vehicle, as long as it is easily accessible and ready for use.

People v Anderson (Trevor) (29 NY3d 69)

The Court determined that defendant received effective representation from his counsel, notwithstanding counsel's failure to object to the prosecutor's use of PowerPoint slides during summation. The Court based its holding, in part, on a determination that a vast majority of the PowerPoint slides were not objectionable. The Court rejected defendant's argument that a PowerPoint presentation may only be displayed to the jury in unaltered, pristine form, and that any written comment or argument superimposed on the slides is improper. Rather, the Court held, PowerPoint slides may properly be used in summation where, as in this case, the added captions or markings are consistent with the trial evidence and the fair inferences to be drawn from that evidence.

People v Arjune (Mario) (30 NY3d 347)

The Court held that *People v Syville* (15 NY3d 391 [2010]), establishing that a defendant may seek coram nobis relief where he or she demonstrates that trial counsel failed to comply with a request to file a notice of appeal, does not extend to circumstances in which counsel failed to advise defendant of the right to poor person relief. A defendant does not have a right to counsel in applying for poor person relief because the application is not a critical stage of the proceedings. In addition, *Syville* does not extend to cases in which counsel failed to take any action when served with a motion to dismiss the appeal years after the notice of appeal was filed, because trial counsel does not have a constitutional responsibility in connection with an appeal extending for years after the notice of appeal is filed.

People v Boone (Otis) (30 NY3d 521)

There is a near consensus among cognitive and social psychologists that people generally have significantly greater difficulty accurately identifying members of other races than accurately identifying members of their own race: the cross-race effect. Although the face recognition bias is generally accepted by experts in psychology, studies show that most jurors do not understand that cross-racial identifications may be less reliable. In the case before the Court, defendant, who is black, was identified by two white victims as the man who had robbed them of their cell phones, but no physical evidence linked him to the crimes. The Court held that when identification is an issue in a criminal case and the identifying witness and defendant appear to be of different races, a party is entitled, upon request, to a charge on the cross-race effect. The charge must instruct that the jury should consider whether there is a difference in race between defendant and the identifying witness, and that, if there is, the jury should consider that some people have greater difficulty accurately identifying members of a different race than accurately identifying members of their own race, and whether the difference in race affected the accuracy of the witness's identification.

People v Bushey (Andrew) (29 NY3d 158)

A police officer ran a license plate of a vehicle through a Department of Motor Vehicles (DMV) computer database and discovered that the vehicle's registration was suspended. Acting upon that information, he stopped the vehicle defendant was driving. Based on his observations of defendant during the

traffic stop, the officer arrested defendant for driving while intoxicated, along with violations for operating without a valid registration or license. The Court held that a police officer, acting in his official capacity, may run a license plate number through a government database, without any suspicion of wrongdoing, to check for any outstanding violations or suspensions on the registration of the vehicle since this conduct does not constitute a "search" under the Fourth Amendment. The Court determined that a driver has no expectation of privacy in the DMV database information associated with a license plate number, and that the information obtained from such a check may provide probable cause to stop a driver.

People v Fisher (Kevin) (28 NY3d 717)

Defendant pleaded guilty to hindering prosecution in the second degree after helping dispose of a gun that was used in a homicide. Following defendant's plea, the shooter was acquitted of all felony charges, after which defendant moved to withdraw his guilty plea. His motion was denied. The Court held that it was within the trial court's discretion to reject defendant's motion to withdraw the plea prior to sentencing because, although Penal Law § 205.60 provides that a defendant is guilty of hindering prosecution in the second degree when defendant renders criminal assistance to a person who has committed a felony, "the statute does not require proof that the assisted person was ever arrested or convicted" (*People v Chico*, 90 NY2d 585, 588 [1997]). The Court held that the People satisfied their burden of establishing defendant's guilt beyond a reasonable doubt by relying on his admissions that the shooter committed the crime and that collateral estoppel did not apply to bar the People's continued prosecution following the shooter's acquittal because no previously determined facts were relitigated at defendant's sentencing.

People v Flanagan (William) (28 NY3d 644)

Defendant used his position as a former Deputy Commissioner in the Nassau County Police Department to stop the investigation and arrest of a benefactor's son for crimes committed at a local high school. Specifically, defendant directed subordinates to return stolen property that was recovered as evidence in an open criminal investigation and directed other officers not to investigate the matter any further, despite the existence of probable cause. Defendant was convicted of conspiracy in the sixth degree and two counts of official misconduct — one count on a theory of malfeasance and the other on a theory of nonfeasance. Despite defendant's argument that the return of stolen property by the police was authorized, the Court held that there was legally sufficient evidence to support the conviction for official misconduct on a theory of malfeasance based on consideration of all of the surrounding circumstances — including that the return of the evidence was in contravention of department protocols, defendant knew that the act was an unauthorized exercise of official functions, and the act was done with the intent to obtain a benefit for the suspect's father. Similarly, the Court held that there was legally sufficient evidence of official misconduct on a theory of nonfeasance as the evidence established that defendant in his supervisory capacity directed the other officers to abdicate their inherent duty to investigate a legitimate

felony complaint in order to obtain a benefit for the suspect's father.

People v Flores (Mary Anne Grady) (30 NY3d 229)

The Court held that, under CPL 460.10 (3), the filing of an affidavit of errors is a jurisdictional prerequisite for the taking of an appeal from a judgment entered in a local criminal court where there was no court stenographer present during the criminal proceeding. For the first time on appeal to this Court, the People argued that the Court could not entertain the appeal due to defendant's failure to file an affidavit of errors. The Court agreed and concluded that this jurisdictional defect bars the Court's review of the merits of the appeal. In doing so, the Court determined that the failure to file the required affidavit of errors similarly rendered the intermediate appellate court without jurisdiction to hear the case.

People v Garvin (Sean) (30 NY3d 174)

The Court rejected defendant's argument that warrantless threshold/doorway arrests violate *Payton v New York* (445 US 573 [1980]) when the only reason the arrestee is in the doorway is that he or she was summoned there by police. In so holding, the Court reaffirmed its long-standing rule that a preplanned, warrantless arrest of a suspect on the threshold of a residence is permissible under the Fourth Amendment, provided that the suspect has voluntarily answered the door and the police have not crossed the threshold. Similarly, the Court declined to overrule its prior cases holding that such arrests are valid even where the suspect exited his residence or stood on the threshold as a result of a ruse employed by the police.

People v Lin (Hao) (28 NY3d 701)

The Court held that the Confrontation Clause was not violated when a police officer, who directly observed but did not personally administer defendant's breath test, testified at trial regarding his own observations, and none of the nontestifying officer's hearsay statements was admitted against defendant. The Confrontation Clause is satisfied if the witness is a trained analyst who supervised, witnessed or observed the testing, even without having personally conducted it. Inasmuch as the 13-step operational checklist completed by the nontestifying officer was not admitted, no testimonial statement by a nontestifying witness concerning the testing procedure was used against defendant.

People v Minemier (Kevin) (29 NY3d 414)

On this appeal, the Court clarified that the Criminal Procedure Law does not require a sentencing court to state on the record its reasoning for denying youthful offender status. In the discretionary sentencing context, a court has no obligation to explain its reasons for imposing a particular sentence that is within statutory parameters. However, in this particular case, reversal was required because the sentencing court failed to adequately set forth on the record the basis for its refusal to disclose to the defense certain confidential statements that were reviewed and considered by the court for sentencing purposes.

People v Novak (Brian) (30 NY3d 222)

Relying on principles of due process, the Court held that a judge sitting as a single-judge appellate court may not decide an appeal in a case if that same judge presided at trial. Defendant was convicted and sentenced after a bench trial in City Court

and then appealed as of right to the intermediate appellate court, here County Court. In the interim, the trial judge was elevated to the intermediate appellate court and then proceeded to serve as the sole reviewing judge on appeal. The Court determined on these facts that there was a facial appearance of impropriety and the judge's recusal from defendant's appeal was mandated as a matter of due process and fundamental fairness.

People v Smith (Dwight) (30 NY3d 1043)

The Court held that defendant was denied his right to counsel on a motion to compel a DNA sample. In defendant's absence, the trial court granted retained defense counsel's motion to be relieved from representing defendant for failure to pay, as well as granted the People's discovery motion for the taking of a DNA sample based on that counsel's inaction. Defendant appeared in court later the same day and stated that he had not spoken with his attorney about the motion and did not wish to consent to giving a sample. Throughout an extensive colloquy, the trial court denied the requests for an attorney, telling the unrepresented defendant that there were no bases on which to challenge the DNA sample order. Since the pretrial proceedings concerning the DNA test were critical within the meaning of the law, defendant was deprived his right to counsel in violation of the Sixth Amendment and article 1, § 6 of the New York State Constitution.

People v Stone (John) (29 NY3d 166)

In this single eyewitness case, the Court held that a curative instruction is sufficient to eliminate the harm caused by a testifying officer's reference to hearsay statements that identified defendant as the perpetrator. Prior to trial, defendant successfully sought suppression of his wife's statements to police during the criminal investigation because she eventually recanted her initial identification of defendant as the perpetrator of the crime and because she could not be located to testify. At trial, the investigating officer indicated that defendant's wife identified him as the perpetrator and, in sustaining defense counsel's objection, the trial court issued two curative instructions for the jury to disregard these statements. The Court held that, although the officer's testimony violated defendant's right to confrontation, the trial court's curative instruction was sufficient to render the error harmless. In so holding, the Court rejected defendant's argument that this type of error was "powerfully incriminating" and cannot be cured by a limiting instruction.

People v Vining (Gregory) (28 NY3d 686)

Defendant was charged with several counts of assault, trespass and criminal mischief, all arising out of incidents involving his ex-girlfriend. During trial, the court, upon the People's application, allowed the prosecutor to play a telephone call made from defendant to the victim while he was incarcerated. The People sought to introduce the call as an adoptive admission by silence, given that the victim repeatedly accused defendant of breaking her ribs and defendant failed to deny the allegations during the call. The Court concluded that the trial court did not abuse its discretion as a matter of law in admitting the phone call as an adoptive admission. The Court held that once the People satisfied the threshold evidentiary requirements for admissibility, the call was properly placed

before the jury to weigh its import and significance. That the call was recorded while defendant was incarcerated did not change the Court's analysis.

People v Viruet (Miguel) (29 NY3d 527)

The Court reaffirmed the principle that when a defendant in a criminal case, acting with due diligence, demands evidence that is reasonably likely to be of material importance, and that evidence has been lost or destroyed by the State, the trial court must give an adverse inference jury charge. The Court held that the lost evidence — video surveillance footage of the moment the victim was shot and the location of the two eyewitnesses at the time of the shooting — was reasonably likely to be of material importance and an adverse inference instruction was therefore required. However, in this particular case, given the strength of the People's case, the failure to give the instruction was harmless error and reversal was not required.

People v Williams (Leonard) (29 NY3d 84)

The Court held that defendant was not deprived of a fair trial by the People's use of annotated trial exhibits in a PowerPoint presentation during summation. Consistent with the rules applicable to summations in general, the Court held that PowerPoint presentations can be used to display images and commentary that accurately represent the trial evidence. The Court noted that, to the extent the annotations at issue may have misrepresented the testimony in this case, the trial court adequately protected defendant's right to a fair trial by repeated instructions to the jury that the jury was the sole judge of the facts and that the attorneys' arguments were not evidence.

ENVIRONMENTAL LAW

Friends of P.S. 163, Inc. v Jewish Home Lifecare, Manhattan (30 NY3d 416)

Parents of children attending a public elementary school and residents of several adjacent apartment buildings brought CPLR article 78 challenges to a New York State Department of Health determination approving Jewish Home Lifecare's application to construct a new nursing home. Petitioners alleged that the agency had not complied with its responsibilities under the State Environmental Quality Review Act, since it had failed to properly assess and mitigate the lead and noise pollution that would result from the construction. The Court disagreed, holding that the agency had taken the requisite hard look at the relevant areas of environmental concern and made a reasoned elaboration of the basis for its determination. The agency acted within the law when it adopted a different methodology than that championed by petitioners, rejected their preferred mitigation measures, and elaborated the reasons for its determination in its findings statement.

ESTOPPEL

Matter of Hennel (29 NY3d 487)

Petitioners sought to enforce an oral promise made by decedent, their grandfather, that would otherwise be unenforceable under the statute of frauds. Before his death, decedent had transferred a property, subject to a mortgage, to petitioners and orally promised to satisfy the mortgage with assets of his estate upon his death. For the first time, the Court

recognized that when the elements of promissory estoppel are satisfied and the enforcement of the statute of frauds would result in injury so unjust and egregious that the outcome would be unconscionable, the opposing party could be estopped from reliance on the statute of frauds. Nevertheless, the Court concluded that even assuming that the elements of promissory estoppel were met, the resulting injury to petitioners did not rise to the level of unconscionability, and therefore the statute of frauds barred petitioners' reliance on the oral with decedent.

INSURANCE

Burlington Ins. Co. v NYC Tr. Auth. (29 NY3d 313)

A Transit employee was injured on the job while using a Breaking Solutions machine. Discovery in a federal action revealed that the Transit Authorities, and not Breaking Solutions, were at fault for the employee's injuries. Breaking Solutions' insurer, commenced this declaratory judgment action, arguing that it did not owe the Transit Authorities coverage as additional insureds under an endorsement to Breaking Solution's general liability policy. Under the general liability policy, plaintiff insurer agreed to cover the Transit Authorities for liability from injuries "caused in whole or in part" by Breaking Solutions. The Court held that the "caused in whole or in part" language in the endorsement meant that coverage would extend to injuries proximately caused by Breaking Solutions, which would not include the injury here since the injury was caused by the Transit Authorities. The Court reasoned that "caused in whole or in part" must mean proximate cause because "but for" cause cannot be partial. Furthermore, the policy's reference to "liability" confirmed that proximate cause was required because liability exists only when there is fault, as does proximate cause. Finally, the Court reasoned, this interpretation would not threaten industry practice since the language at issue was derived from an industry form, drafted precisely to avoid liability in cases such as this one.

Carlson v American Intl. Group, Inc. (30 NY3d 288)

Plaintiff brought an action pursuant to Insurance Law § 3420 (a) (2) to collect on certain insurance policies issued to DHL Worldwide Express, Inc. (DHL), after his wife was killed by a truck being used for DHL package delivery. DHL had entered into an agreement with MVP Delivery and Logistics, Inc. (MVP), pursuant to which MVP used its fleet of trucks and employees to perform DHL's package delivery services in Western New York. The Court held that whether MVP was an "insured" under DHL's insurance policies presents a question of fact to be resolved by the trier of fact. The Court also held that the meaning of "issued or delivered" in section 3420 is informed by the decision in *Preserver Ins. Co. v Ryba* (10 NY3d 635 [2008]), and thus, section 3420 encompasses situations where both insureds and risks are located in New York.

Global Reins. Corp. of Am. v Century Indem. Co. (30 NY3d 508)

This certified question from the United States Court of Appeals for the Second Circuit asked the Court to decide the following issue: Does the *Excess Ins. Co.*

Ltd. v Factory Mut. Ins. Co. (3 NY3d 577 [2004]) decision impose either a rule of construction, or a strong presumption, that a per occurrence liability cap in a reinsurance contract limits the total reinsurance available under the contract to the amount of the cap regardless of whether the underlying policy is understood to cover expenses such as, for instance, defense costs? Answering this certified question, the Court clarified that *Excess* did not address whether a blanket presumption or rule of construction that a limitation-on-liability clause applies to all payments by a reinsurer whatsoever, such as third-party defense costs. Recalling standard principles of contract interpretation, including principles of insurance and reinsurance contract interpretation, the Court held that a court may not disregard the precise terminology that the parties used and simply assume that any clause bearing the generic marker of a "limitation on liability" clause was intended to be cost-inclusive.

Lend Lease (US) Constr. LMB Inc. v Zurich Am. Ins. Co. (28 NY3d 675)

Plaintiffs sought a declaration of coverage under a program of builder's risk insurance furnished by defendants for damage to a tower crane caused by Superstorm Sandy. During Superstorm Sandy, the crane rose approximately 750 feet from its base on a building in Manhattan. The damage to the crane yielded one of the most dramatic images of the landfall of that storm — the boom of the crane collapsed in high winds and teetered from the top of the building to which it was anchored. After assuming that the crane was covered in the first instance under the insurance in question, the Court concluded that such coverage was defeated by the contractor's tools exclusion of that insurance. That exclusion removed from coverage, among other things, machinery not destined to become a permanent part of the insured project. The Court held that the crane was machinery within the meaning of the policy, and that it was not destined to become a permanent part of the subject project inasmuch as it was to have been dismantled upon the completion of construction.

JUDGES

Matter of Ayres (New York State Commn. on Jud. Conduct) (30 NY3d 59)

A nonlawyer Justice of the Conklin Town Court sought review of a State Commission on Judicial Conduct determination removing him from office. The Justice had sought to influence the disposition of a traffic ticket issued to his daughter, and had abandoned the role of neutral decision-maker in an appeal from his court. He further failed to recognize or correct his errors, despite multiple opportunities to do so. The Court concluded that, under the circumstances, removal from office was an appropriate sanction.

Matter of Loehr v Administrative Bd. of the Cts. of the State of N.Y. (29 NY3d 374)

Three retired Supreme Court Justices who sought to be certified for further service on that bench objected to the Administrative Board of the Courts of the State of New York's decision to no longer certify applicants who would, on reappointment, choose to receive both a retirement allowance for prior judicial service and their salary as a certified justice, rather than foregoing their retirement benefits for the duration of their further service. The Court held that the Board's decision

furthered the State's interest in prohibiting the contemporaneous receipt of retirement benefits and salary, was an appropriate exercise of its discretion to certify retired Justices, and was not contrary to any law or constitutional mandate raised by the retirees.

LABOR — SAFE PLACE TO WORK

O'Brien v Port Auth. of N.Y. & N.J. (29 NY3d 27)

In this Labor Law § 240 (1) case, plaintiff, a worker at the One World Trade Center construction site, sustained injuries when he slipped and fell while descending an exterior metal staircase (also referred to as a temporary scaffold) that was wet from exposure to the elements. The Court held that summary judgment should not have been granted in plaintiff's favor on the issue of liability because there were triable issues of fact as to whether the staircase provided sufficient protection. In particular, there were conflicting expert opinions as to the adequacy of the staircase as a safety device. The Court reiterated that the mere fact that plaintiff fell did not, in itself, establish a violation of Labor Law § 240 (1).

LIENS

Rivera v Department of Hous. Preserv. & Dev. of the City of N.Y. (29 NY3d 45)

Building owners responsible for violations that cause tenants to be displaced must reimburse the Department of Housing Preservation and Development (HPD) for tenants' relocation expenses. These expenses constitute a lien on the property in question governed by the provisions of the Lien Law that are applicable to mechanic's liens. Building owners sought to summarily discharge liens on their property, arguing that the liens sought an unreasonable amount of expenses. Under the Lien Law, a lien may be discharged summarily when "it appears from the face of the notice of lien" that the lien is invalid because "the labor or materials furnished are not lienable" or where the notice of lien does not include the information required by Lien Law § 9. Rejecting the building owners' arguments, the Court held that an allegedly unreasonable amount of claimed expenses in the notice of lien does not render a notice of lien facially invalid and subject to summary discharge.

MUNICIPAL CORPORATIONS— TORT LIABILITY

Tara N.P. v Western Suffolk Bd. of Coop. Educ. Servs. (28 NY3d 709)

Plaintiff was sexually assaulted by a worker at a County-owned facility. The County referred the worker as part of the County's "welfare to work program," notwithstanding that he was a level three sex offender. In determining whether the County acted in a governmental or proprietary capacity when it made the referral, the Court held that the County's referral was part of administrating the work program. The Court held that this was a quintessentially governmental role, and, thus, plaintiff could not recover from the County without establishing it owed her a special duty of care — a burden she failed to sustain. Noting that this was unfortunately a case in which "a failure by government to do its job has caused harm," the Court held that, under well-settled law, the County was immune from liability.

PARENT, CHILD AND FAMILY

Matter of Jamie J. (Michelle E.C.) (30 NY3d 275)

Family Court removed Jamie J. from her mother's custody pursuant to an ex parte pre-petition order under Family Court Act § 1022. After Family Court dismissed the underlying petition for failure to prove neglect, the Department of Social Services contended that Family Court Act § 1088 provided Family Court with continuing jurisdiction over the child. Interpreting the statute in the light of the family's constitutional rights as well as New York's fundamental policy preference for allowing children to grow up in their natural homes, the Court held that dismissal of the neglect proceeding terminated Family Court's subject matter jurisdiction and required Jamie J.'s return to her mother's care.

Matter of Lisa T. v King E. T. (30 NY3d 548)

The Court held that Family Court had jurisdiction to issue an order of protection upon its finding that respondent had violated two temporary orders of protection issued in a then-pending family offense proceeding, despite that court's simultaneous dismissal of the family offense petition. Family Court Act §§ 846 and 846–a provide Family Court with jurisdiction to prosecute contempt of its orders, including temporary orders of protection, and section 846-a expressly authorizes the entry of a new order of protection upon a willful violation of a temporary order of protection.

PARTIES

Excess Line Assn. of N.Y. (ELANY) v Waldorf & Assoc. (30 NY3d 119)

Excess Line Association of New York (ELANY) — a legislatively created advisory association under the purview of the New York State Department of Financial Services (DFS) — claimed that it had capacity to sue its members for stamping fees and to compel an accounting to determine amounts allegedly owed. Because governmental entities, like ELANY, are artificial creatures of statute, their right to sue must be derived from statute. Inasmuch as ELANY's enabling statute did not authorize it to sue for the relief sought and such power could not be derived by implication from the responsibilities of ELANY, which were advisory in nature, the Court held that ELANY lacked capacity to maintain the action. In reaching this conclusion, the Court further observed that ELANY's role as a record keeper for excess line transactions contrasted starkly with DFS's broad, explicit enforcement function under the Insurance Law.

PARKS AND PARKWAYS — PUBLIC TRUST DOCTRINE

Matter of Avella v City of New York (29 NY3d 425)

Plaintiffs brought a hybrid CPLR article 78 proceeding and declaratory judgment action seeking to enjoin the proposed development of parkland in Queens. The proposed development, "Willets West," involved the construction of a shopping mall and movie theater on Citi Field's parking lot, where Shea Stadium once stood. Under the Public Trust Doctrine, legislative alienation of city parkland, for use of the land for non-park purposes for an extended period, must be "plainly conferred." The Court held that the plain language of the 1961 statute authorizing the building of Shea Stadium does not

provide the authorization to build a mall and movie theater on the parkland.

RECORDS—FREEDOM OF INFORMATION LAW

Matter of Friedman v Rice (30 NY3d 461)

Petitioner sought records under the Freedom of Information Law relating to his decades-old conviction. The Nassau County District Attorney denied the request, relying, in part, on Public Officer's Law § 87 (2) (e) (iii), which protects from disclosure records "compiled for law enforcement purposes and which, if disclosed, would . . . identify a confidential source or disclose confidential information relating to a criminal investigation." The Court concluded that the legislature's policy of broad public access requires that section 87 (2) (e) (iii) be read narrowly. The Court held that the exemption shields records only where the agency presents a particularized and specific justification for denying access, based on an express promise of confidentiality to the source, or by establishing that, under the circumstances of the particular case, the confidentiality of the source or information can be reasonably inferred.

Matter of Madeiros v New York State Educ. Dept. (30 NY3d 67)

The Court was asked to determine whether certain records compiled by respondent New York State Education Department relating to municipalities' plans for auditing special education preschool provider costs were exempt from disclosure under the Freedom of Information Law. The Court held that Public Officers Law § 87 (2) (e) (i) — which exempts from disclosure records that are compiled for law enforcement purposes where such disclosure would interfere with law enforcement investigations or judicial proceedings — does not apply solely to those records compiled in connection with criminal investigations. The Court concluded that because the audit records at issue were not routine fiscal audits and were specifically targeted at uncovering improper and potentially illegal or fraudulent reporting of costs by preschool special education providers, the audit records were compiled for law enforcement purposes. The Department's redactions were justified insofar as disclosure of the redacted content would enable providers to more effectively conceal fraudulent and criminal activities and avoid detection. Further, the existence of reasonably anticipated investigations at the time of petitioner's request was evident due to the plainly contemplated impending audits.

TORTS

Connaughton v Chipotle Mexican Grill, Inc. (29 NY3d 137)

The Court clarified that fraudulent misrepresentation requires a showing of an actual pecuniary loss to satisfy the injury element of the tort. Conversely, under this "out-of-pocket" rule, an action for fraud cannot be used to compensate plaintiffs either for profits that might have been gained in the absence of the fraud or for other speculative damages. Moreover, the Court held that nominal damages are not sufficient to make out a prima facie case of fraud, again because the tort requires an actual injury. Accordingly, the Court determined that plaintiff's complaint failed to identify any compensable damages resulting from defendants' misrepresentations and that, even under New York's liberal pleading standard, the absence of a pecuniary loss allegation

mandated dismissal for failure to state a cause of action.

Oddo v Queens Vil. Comm. for Mental Health for Jamacia Community Adolescent Program, Inc. (28 NY3d 731)

The Court considered whether defendant mental health and substance abuse treatment facility owed a duty of care to plaintiff, who was assaulted by one of defendant's discharged residents. The Court held that no such duty existed, because defendant discharged the resident from the program, and thus lacked control over him at the time of the incident.

2017 Annual Events

State of Our Judiciary

On February 22, 2017, Chief Judge Janet DiFiore delivered the State of Our Judiciary at the Bronx County Hall of Justice. Featured in the Chief Judge's remarks was a review of the first year of the "Excellence Initiative," a comprehensive and detailed system seeking to achieve and maintain operational and decisional excellence.

Chief Judge DiFiore delivers the 2017 State of Our Judiciary. Seated, left to right: Hon. Gerald J. Whalen, Presiding Justice, Appellate Division, Fourth Department; Hon. Karen K. Peters, Presiding Justice, Appellate Division, Third Department; Hon. Lawrence K. Marks, Chief Administrative Judge, New York State Courts; Hon. Randall T. Eng, Presiding Justice, Appellate Division, Second Department; and Hon. Peter Tom, Acting Presiding Justice, Appellate Division, First Department.

Investitures

Hon. Rowan D. Wilson and Paul G. Feinman

Investiture of Judge Rowan D. Wilson

On January 15, 2017, Governor Andrew M. Cuomo nominated Rowan D. Wilson to the position of Associate Judge of the Court of Appeals of the State of New York. On February 6, 2017, the New York State Senate confirmed his nomination. A formal investiture ceremony was held on June 1, 2017, at Court of Appeals Hall.

Investiture of Judge Paul G. Feinman

On June 16, 2017, Governor Andrew M. Cuomo nominated Paul G. Feinman to the position of Associate Judge of the Court of Appeals of the State of New York. On June 21, 2017, the New York State Senate confirmed his nomination. A formal investiture ceremony was held on October 18, 2017, at Court of Appeals Hall.

Oral Argument in White Plains

Richard J. Daronco Westchester County Courthouse

Left to Right: Chief Judge DiFiore and Judges Wilson, Fahey, Stein, Garcia and Rivera speak with students following oral argument.

The Court of Appeals held a three-day session, from April 25 through April 27, at the Richard J. Daronco Westchester County Courthouse in White Plains. The Court hosted students and teachers from six high schools serving Westchester and the Bronx, as well as students and faculty from Mercy College in Dobbs Ferry.

Volunteer lawyers from the Westchester County District Attorney's Office and the Legal Aid Society of Westchester County, as well as volunteer law students from the Elisabeth Haub School of Law at Pace University, met with the students to discuss the legal issues presented so that the students could get the most out of the oral arguments they heard.

Each day following oral arguments, the Judges of the Court met with the students to discuss the day's session and the Court's work, as well as other relevant topics of interest.

Law Day

The 14th Amendment: Transforming American Democracy

On May 1, 2017, the Court celebrated Law Day. The 2017 theme was: "The 14th Amendment: Transforming American Democracy." The celebration included remarks from Chief Judge DiFiore, Attorney General Eric Schneiderman, and New York State Bar Association President Claire P. Gutekunst.

Above: Chief Judge DiFiore, Attorney General Eric Schneiderman and New York State Bar Association President Claire P. Gutekunst.

Law Day

Judith S. Kaye Service Awards: Superior Work Performance

As part of the Law Day ceremony, Chief Administrative Judge Lawrence K. Marks recognized outstanding Unified Court System employees with Judith S. Kaye Service Awards.

Judge Marks with Superior Work Performance Recipients.

Right: Antonio Diaz.

Below Left: Maria Barrington.

Below Right: Catherine Tisenchek.

Law Day

Judith S. Kaye Service Awards: Heroism

Left: Judge Marks and Judge David M. Hawkins with Heroism Award Recipients Marie Bennett, Bernadette Falco, Francis Ziegler and Catherine Zullo.

Law Day

David A. Garfinkel Essay Scholarship

The Historical Society of the New York Courts announced the 2017 David A. Garfinkel Essay Scholarship winners at the Law Day Ceremony. This year's topic was "You, the Voter: How Far Have We Come? Is the Journey Over?" Scholarship prizes were awarded to students enrolled in New York's SUNY and CUNY community colleges.

Left to Right: Garfinkel Essay Scholarship Winners Joseph Fornataro (CUNY 2nd Prize), Ralph Romanelli (CUNY 1st Prize), and Anna Lewis (SUNY 2nd Prize)

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Office for Professional Matters (2013-2017)

Judges of the Court of Appeals

Chief Judge

Hon. Janet DiFiore

Associate Judges

Hon. Jenny Rivera

Hon. Sheila Abdus-Salaam (Deceased April 12, 2017)

Hon. Leslie E. Stein

Hon. Eugene M. Fahey

Hon. Michael J. Garcia

Hon. Rowan D. Wilson

Hon. Paul G. Feinman

Nonjudicial Staff

Alessi, Samantha	Senior Court Attorney
Amyot, Leah Soule	Senior Principal Law Clerk to Judge Stein
Asiello, John P.	Clerk of the Court
Bailey, Anna	Law Clerk to Judge Garcia
Bakowski, Amanda	Law Clerk to Judge Wilson
Benjamin, Jared	Assistant Law Clerk to Judge Feinman
Bessette, Bryan P.	Court Attorney
Bielawski, Julia Smead	Assistant Consultation Clerk
Bohannon, Lisa*	Senior Court Analyst
Boyd, J'Naia	Senior Court Attorney
Braunlin, Whitney E.	Senior Court Attorney
Brizzie, Gary J.	Principal Custodial Aide
Broad, Kimberley*	Senior Court Attorney
Buccella, Alina	Court Attorney
Byer, Ann	Secretary to the Court of Appeals
Byrne, Cynthia D.	Criminal Leave Applications Clerk
Bystryn, Alexander	Law Clerk to Chief Judge DiFiore
Calvay-Benedetto, Patricia	Secretary to Judge Wilson
Chest, Wesley	Senior Associate Computer Applications Programmer
Claydon, Julianne	Chief Legal Reference Attorney
Cleary, Lisa M.	Principal Stenographer
Corcos, Caroline R.	Senior Court Attorney
Costa, Gary Q.	Senior Court Building Guard
Coughlin, Monica	Secretary to Chief Judge DiFiore
Couser, Lisa A.	Clerical Assistant
Cross, Robert J.	Senior Court Building Guard
Culligan, David O.	Clerical Assistant
Dach, Jonathan	Principal Law Clerk to Judge Wilson
Dautel, Susan S.	Assistant Deputy Clerk
Davis, Heather A.	Deputy Clerk of the Court
De La Hoz Miranda, Catalina*	Senior Court Attorney
Donnelly, William E.	Assistant Building Superintendent I
Drury, Lisa	Special Projects Counsel
Dughi-Hogenkamp, Jamie*	Law Clerk to Judge Garcia
Ebersole, Lisa	Law Clerk to Judge Wilson
Eddy, Margery Corbin	Chief Court Attorney
Engel, Hope B.	Consultation Clerk
Estela, Sara Luz*	Law Clerk to Judge Rivera
Figueroa, Milagros	Principal Stenographer
Fix-Mossman, Lori E.*	Principal Stenographer
Frisch, Deborah*	Law Clerk to Chief Judge DiFiore
Fulham, Kerry	Law Clerk to Chief Judge DiFiore

Galvao, Antonio	Counsel to Chief Judge DiFiore
Garcia, Heather A.	Senior Security Attendant
Gerber, Matthew	Senior Security Attendant
Gilbert, Marianne	Principal Stenographer
Golebiowski, Jacob	Senior Local Area Network Administrator
Goretsky, Asher*	Clerical Assistant
Groschadl, Laura A.	Principal Law Clerk to Judge Fahey
Haas, Tammy L.	Principal Assistant Building Superintendent
Halsey, Trevor	Court Attorney
Hanft, Genevieve	Senior Law Clerk to Judge Garcia
Hartnagle, Mary C.	Senior Custodial Aide
Herd, Julia P.	Senior Principal Law Clerk to Judge Feinman
Holman, Cynthia M.	Senior Stenographer
Hosang-Brown, Yanique	Management Analyst
Ignazio, Andrea R.	Principal Stenographer
Irwin, Nancy J.	Principal Stenographer
Johnson, David P.	Senior Court Attorney
Joseph, Anna	Law Clerk to Judge Rivera
Kaiser, Warren	Senior PC Analyst
Kane, Suzanne M.	Principal Stenographer
Kearns, Ronald J.	HVAC Assistant Building Superintendent
Kenny, Krysten	Principal Law Clerk to Judge Stein
Kinkle, Jeffrey	Senior Law Clerk to Judge Rivera
Klubok, Gregory J.	Senior Court Attorney
Kong, Yongjun	Principal Custodial Aide
Lane, Brian C.	Senior Court Building Guard
LaPorte, Azahar	Secretary to Judge Rivera
Lawrence, Bryan D.	Chief Management Analyst
LeBow, Matthew	Deputy Chief Security Attendant
LeCours, Lisa A.	Executive Assistant to Chief Judge DiFiore
Levin, Justin	Principal Court Attorney
Lynch, Michael L.	Law Clerk to Judge Feinman
Lyon, Gordon W.	Senior Principal Law Clerk to Judge Fahey
MacVean, Rachael M.	Chief Motion Clerk
Martino, Regina	Secretary to Judge Stein
Maurer, Samantha*	Senior Court Attorney
Mayo, Michael J.	Deputy Building Superintendent
McCormick, Cynthia A.	Chief Management Analyst
Mechanick, Chase H.	Law Clerk to Judge Feinman
Meese-Martinez, Jacqueline A.*	Law Clerk to Judge Rivera
Minniefield, Matthew E.	Court Attorney
Moore, Travis R.	Senior Security Attendant

Muller, Joseph J.	Senior Security Attendant
Mulyca, Jonathan A.	Clerical Assistant
O'Rourke, Joseph*	Senior Court Attorney
O'Friel, Jennifer A.	Senior Principal Law Clerk to Chief Judge DiFiore
Ohanian, Edward J.	Law Clerk to Judge Stein
Oken, Lindsey	Principal Law Clerk to Judge Garcia
Pasquarelli, Angela M.	Senior Services Aide
Pastrick, Michael	Senior Principal Law Clerk to Judge Fahey
Pepper, Francis W.*	Principal Custodial Aide
Radley, Kelly	Principal Custodial Aide
Randolph, Jennifer*	Law Clerk to Chief Judge DiFiore
Rodriguez, Steven	Court Building Guard
Rosenblum, Noah	Law Clerk to Judge Rivera
Roe, Jennifer L.	Senior Court Building Guard
Saint-Fort, Dominique F.*	Principal Law Clerk to Judge Abdus-Salaam
Sherwin, Stephen P.	Deputy Chief Court Attorney
Shevlin, Denise C.	Senior Security Attendant
Side, Matthew P.*	Senior Principal Law Clerk to Judge Stein
Somerville, Robert	Senior Court Building Guard
Spencer, Gary H.	Public Information Officer
Struebing, Jake Elijah	Assistant Law Clerk to Judge Garcia
Tierney, Inez M.	Principal Court Analyst
Torres, Samuel	Senior Security Attendant
Turon, Kristin L.	Stenographer
VanDeloo, James F.	First Assistant Building Superintendent
Villaronga, Genoveva*	Secretary to Judge Abdus-Salaam
Vogele, Jessica	Court Attorney
Waithe, Nelvon H.	Senior Court Building Guard
Ward-Leon, Tara*	Senior Court Attorney
Warenchak, Andrew R.	Principal Custodial Aide
Warren, Melisande H. Johnson	Court Attorney
Wasserbach, Debra C.*	Principal Court Analyst
Welch, Joseph H.	Court Analyst
Welch, Mary K.	Secretary to Judge Fahey
Wilson, Mark	Senior Court Building Guard
Wilson, Michele	Senior Custodial Aide
Wisniewski, James J.	Senior Court Attorney
Wolfgang, Katelyn T.*	Law Clerk to Chief Judge DiFiore
Woll, Deborah*	Senior Principal Law Clerk to Judge Abdus-Salaam
Wood, Margaret N.	Assistant Deputy Clerk
Yalamas, George C.	Chief Security Attendant
Zanello, Lindsay*	Senior Court Attorney

* As of January 1, 2018, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

Personnel Changes

APPOINTMENTS	
Bakowski, Amanda	Law Clerk to Judge Wilson, August 2017
Bielawski, Julia Smead	Assistant Consultation Clerk, August 2017
Benjamin, Jared	Assistant Law Clerk to Judge Feinman, August 2017
Bystryn, Alexander	Law Clerk to Chief Judge DiFiore, February 2017
Calvay-Benedetto, Patricia	Secretary to Judge Wilson, March 2017
Dach, Jonathan	Law Clerk to Judge Wilson, February 2017
Drury, Lisa	Special Projects Counsel, April 2017
Ebersole, Lisa	Law Clerk to Judge Wilson, March 2017
Fulham, Kerry	Law Clerk to Chief Judge DiFiore, February 2017
Herd, Julia P.	Senior Principal Law Clerk to Judge Feinman, June 2017
Joseph, Anna	Law Clerk to Judge Rivera, August 2017
Lynch, Michael L.	Law Clerk to Judge Feinman, June 2017
Mechanick, Chase H.	Law Clerk to Judge Feinman, August 2017
Ohanian, Edward J.	Law Clerk to Judge Stein, July 2017
Rodriguez, Steven	Court Building Guard, August 2017
Rosenblum, Noah	Law Clerk to Judge Rivera, August 2017
Struebing, Jake Elijah	Assistant Law Clerk to Judge Garcia, August 2017
Wilson, Michele	Senior Custodial Aide, October 2017
PROMOTIONS	
Bailey, Anna	Law Clerk to Judge Garcia, July 2017
Hanft, Genevieve	Senior Law Clerk to Judge Garcia, May 2017
Kinkle, Jeffrey	Senior Law Clerk to Judge Rivera, August 2017
LeCours, Lisa A.	Executive Assistant to Chief Judge DiFiore, August 2017
McCormick, Cynthia A.	Chief Management Analyst, October 2017
Oken, Lindsey	Principal Law Clerk to Judge Garcia, February 2017
VanDeloo, James F.	First Assistant Building Superintendent, May 2017
Welch, Joseph H.	Court Analyst, May 2017

RESIGNATIONS, RETIREMENTS AND TRANSFERS	
Bohannon, Lisa	Senior Court Analyst, September 2017
Dughi-Hogenkamp, Jamie	Law Clerk to Judge Garcia, August 2017
Estela, Sara Luz	Law Clerk to Judge Rivera, August 2017
Fix-Mossman, Lori E.	Principal Stenographer, September 2017
Frisch, Deborah	Law Clerk to Chief Judge DiFiore, August 2017
Goretsky, Asher	Clerical Assistant, August 2017
Meese-Martinez, Jacqueline A.	Law Clerk to Judge Rivera, August 2017
Pepper, Francis W.	Principal Custodial Aide, June 2017
Randolph, Jennifer	Law Clerk to Chief Judge DiFiore, January 2017
Saint-Fort, Dominique F.	Principal Law Clerk to Judge Abdus-Salaam, July 2017
Side, Matthew P.	Senior Principal Law Clerk to Judge Stein, June 2017
Villaronga, Genoveva	Secretary to Judge Abdus-Salaam, June 2017
Wasserbach, Debra C.	Principal Court Analyst, June 2017
Wolfgang, Katelyn T.	Law Clerk to Chief Judge DiFiore, February 2017
Woll, Deborah	Senior Principal Law Clerk to Judge Abdus-Salaam, June 2017

CENTRAL LEGAL RESEARCH STAFF	
APPOINTMENTS	
Bessette, Bryan P.	Court Attorney, August 2017
Buccella, Alina	Court Attorney, August 2017
Halsey, Trevor	Court Attorney, August 2017
Minniefield, Matthew E.	Court Attorney, August 2017
Vogele, Jessica	Court Attorney, August 2017
Warren, Melisande H. Johnson	Court Attorney, August 2017
PROMOTIONS	
Alessi, Samantha	Senior Court Attorney, August 2017
Boyd, J'Naia	Senior Court Attorney, August 2017
Braunlin, Whitney E.	Senior Court Attorney, August 2017
Corcos, Caroline R.	Senior Court Attorney, August 2017
Johnson, David P.	Senior Court Attorney, August 2017
Klubok, Gregory J.	Senior Court Attorney, August 2017
Wisniewski, James J.	Senior Court Attorney, August 2017
COMPLETION OF CLERKSHIPS	
Broad, Kimberley	Completed clerkship, August 2017
De La Hoz Miranda, Catalina	Completed clerkship, August 2017
Maurer, Samantha	Completed clerkship, August 2017
O'Rourke, Joseph	Completed clerkship, August 2017
Ward-Leon, Tara	Completed clerkship, August 2017
Zanello, Lindsay	Completed clerkship, August 2017

Appeals Decided by Jurisdictional Predicate (2017)

Basis of Jurisdiction: All Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Appellate Division Dissents	7	8	1	1	0	17
Permission of Court of Appeals/Judge thereof	38	25	3	1	0	67
Permission of Appellate Division/Justice thereof	29	11	5	0	0	45
Constitutional Question	1	3	0	0	0	4
Stipulation for Judgment Absolute	1	0	0	0	0	1
Other	1	0	0	0	7	8
Totals	77	47	9	2	7	142

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

Basis of Jurisdiction: Civil Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Appellate Division Dissents	7	8	1	1	0	17
Permission of Court of Appeals	11	10	3	0	0	24
Permission of Appellate Division	17	5	4	0	0	26
Constitutional Question	1	3	0	0	0	4
Stipulation for Judgment Absolute	1	0	0	0	0	1
Other	1	0	0	0	7	8
Totals	38	26	8	1	7	80
Basis of Jurisdiction: Criminal Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Permission of Court of Appeals Judge	27	15	0	1	0	43
Permission of Appellate Division Justice	12	6	1	0	0	19
Totals	39	21	1	1	0	62

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

Appeals Analysis (2013-2017)

All Appeals — Civil and Criminal	2013	2014	2015	2016	2017
Civil	57% (148 of 259)	61% (144 of 235)	55% (112 of 202)	52% (118 of 225)	56% (80 of 142)
Criminal	43% (111 of 259)	39% (91 of 235)	45% (90 0f 202)	48% (107 of 225)	44% (62 of 142)
Civil Appeals — Type of Disposition					
	2013	**2014**	**2015**	**2016**	**2017**
Affirmed	49%	37%	44%	54%	47%
Reversed	27%	38%	33%	30%	33%
Modified	6%	9%	10%	7%	10%
Dismissed	2%	1%	1%	1%	1%
Other*	16%	15%	12%	8%	9%
Criminal Appeals — Type of Disposition					
	2013	**2014**	**2015**	**2016**	**2017**
Affirmed	66%	54%	63%	67%	63%
Reversed	28%	33%	31%	28%	34%
Modified	5%	9%	3%	3%	1.5%
Dismissed	1%	4%	2%	2%	1.5%
Other*	0%	0%	1%	0%	0%

* E.g., judicial suspension; Rule 500.27 certification.

Civil Appeals Decided by Jurisdictional Predicate (2013-2017)

	2013	2014	2015	2016	2017
Appellate Division Dissents	21% (31 of 148)	9% (14 of 144)	8% (9 of 112)	12% (14 of 118)	21% (17 of 80)
Permission of Court of Appeals	35% (52 of 148)	38% (53 of 144)	46% (51 of 112)	45% (54 of 118)	30% (24 of 80)
Permission of Appellate Division	17% (25 of 148)	29% (42 of 144)	29% (33 of 112)	27% (32 of 118)	33% (26 of 80)
Constitutional Question	9% (13 of 148)	5% (7 of 144)	4% (5 of 112)	6% (7 of 118)	5% (4 of 80)
Stipulation for Judgment Absolute	0.70% (1 of 148)	0.70% (1 of 144)	0% (0 of 112)	0% (0 of 118)	1% (1 of 80)
CPLR 5601(d)	2% (3 of 148)	1% (2 of 144)	3% (3 of 112)	1% (1 of 118)	1% (1 of 80)
Supreme Court Remand	0% (0 of 148)	0% (0 of 144)	0% (0 of 112)	0% (0 of 118)	0% (0 of 80)
Judiciary Law § 44*	4% (6 of 148)	1% (2 of 144)	2% (2 of 112)	2% (2 of 118)	1% (1 of 80)
Certified Question (Rule 500.27)**	11% (17 of 148)	16% (23 of 144)	8% (9 of 112)	7% (8 of 118)	8% (6 of 80)
Other	0% (0 of 148)	0% (0 of 144)	0% (0 of 112)	0% (0 of 118)	0% (0 of 80)

* Includes judicial suspension matters.

** The 2013 to 2016 numbers include decisions accepting certifications.

Criminal Appeals Decided by Jurisdictional Predicate (2013-2017)

	2013	2014	2015	2016	2017
Permission of Court of Appeals Judge	84% (93 of 111)	82% (75 of 91)	81% (73 of 90)	75% (80 of 107)	70% (43 of 62)
Permission of Appellate Division Justice	16% (18 of 111)	18% (16 of 91)	19% (17 of 90)	25% (27 of 107)	30% (19 of 62)

Motions (2013-2017)

	2013	2014	2015	2016	2017
Motions Submitted for Calendar Year	1292	1293	1395	1183	1237
Motions Decided for Calendar Year*	1310	1300	1378	1232	1196
Motions for Leave to Appeal	995	934	1051	910	920
Granted	65	72	57	17	38
Denied	739	662	750	689	718
Dismissed	190	193	237	199	164
Withdrawn	2	7	7	5	6
Motions to Dismiss Appeals	12	5	13	4	6
Granted	2	1	4	3	2
Denied	7	4	9	1	4
Dismissed	3	0	0	0	0
Withdrawn	0	0	0	0	0
Sua Sponte and Court's Own Motion Dismissals	92	96	84	96	94
Total Dismissals of Appeals	94	97	88	99	96
Motions for Reargument of Appeal	22	34	27	29	24
Granted	3	0	0	0	0
Motions for Reargument of Motion	54	54	61	72	57
Granted	1	0	0	0	0
Motions for Assignment of Counsel	45	64	70	46	36
Granted	45	64	70	46	36
Legal Aid	10	15	15	5	4
Denied	0	0	0	0	0
Dismissed	0	0	0	0	0
Motions for Poor Person Status	159	170	219	184	238
Granted	6	12	6	3	6
Denied	0	0	0	1	0
Dismissed	153	158	213	180	232

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

Motions (2013-2017)

	2013	2014	2015	2016	2017
Motions for Amicus Curiae Relief	124	155	122	117	112
Granted	119	152	118	114	106
Motions to Waive Rule Compliance	0	0	1	0	0
Granted	0	0	0	0	0
Motions to Vacate Dismissal/Preclusion	5	9	6	8	6
Granted	5	9	6	7	3
Motions for Leave to Intervene	2	0	0	0	1
Granted	0	0	0	0	0
Motions to Stay/Vacate Stay	34	22	36	29	32
Granted	3	3	2	1	0
Denied	0	3	3	2	1
Dismissed	31	16	31	26	31
Withdrawn	0	0	0	0	0
Motions for CPL 460.30 Extension	22	13	13	22	16
Granted	21	11	12	21	16
Motions to Strike Brief/Record/Appendix	7	11	3	5	3
Granted	3	4	1	1	1
Motions to Amend Remittitur	1	0	0	0	0
Granted	0	0	0	0	0
Motions for Miscellaneous Relief	9	17	20	30	21
Granted	3	2	2	2	3
Denied	3	12	10	17	7
Dismissed	3	3	8	11	11
Withdrawn	0	0	0	0	0

Criminal Leave Applications (2013-2017)

	2013	2014	2015	2016	2017
Total Applications Assigned	2044	2100	2338	2211	2275
Total Applications Decided*	1923	2090	2201	2497	2244
Granted	74	81	91	33	25
Denied	1692	1843	1868	2230	2042
Dismissed	145	154	231	221	172
Withdrawn	12	12	11	13	5
Total People's Applications	63	47	51	66	65
Granted	14	11	7	10	7
Denied	39	29	35	48	52
Dismissed	3	2	2	2	5
Withdrawn	7	5	7	6	1
Average Number of Applications Assigned to Each Judge**	324	325	391	358	374
Average Number of Grants for Each Judge	11	12	13	5	4

* Includes some applications assigned in previous year.

** The averages take into account periods during which there were less than seven Judges available for assignment of criminal leave applications.

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2013-2017)

	2013	2014	2015	2016	2017
Total number of inquiry letters sent	100	73	77	57	80
Withdrawn on stipulation	2	1	1	1	0
Dismissed by Court	69	48	44	44	49
Transferred to Appellate Division Sua Sponte	2	9	3	1	4
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)	6	8	5	3	8
Jurisdiction retained — appeals decided*	1	0	0	1	2
Inquiries pending at year's end	20	7	25	7	17

* In 2013, the one appeal where jurisdiction was retained was later withdrawn by stipulation.

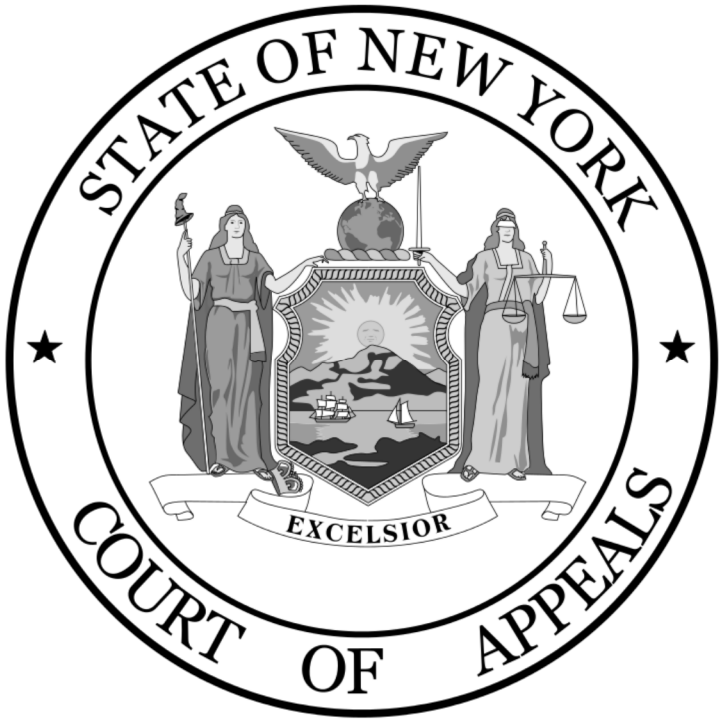
Office for Professional Matters (2013-2017)

	2013	2014	2015	2016	2017
Attorneys Admitted*	10,251	10,748	8,868	8,423	8,203
Registered In-House Counsel	91	100	94	135	162
Certificates of Admission	91	142	94	123	98
Clerkship Certificates	4	3	0	6	2
Petitions for Waiver**	313	361	334	314	270
Written Inquiries	82	71	72	98	75
Disciplinary Orders***	3,012	2,172	557	611	3,551
Name Change Orders	923	803	842	850	981

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

** Includes correspondence to law schools reviewing their J.D. and LL.M. programs under Rules 520.3 and 520.6.

*** The 2013, 2014, 2016 and 2017 numbers include orders involving multiple attorneys' violation of the biennial registration requirement (*see* Judiciary Law § 468-a).


STATE OF NEW YORK
COURT OF APPEALS
EXCELSIOR