



2020

ANNUAL REPORT OF THE CLERK OF THE COURT OF APPEALS

2020

Annual Report of the Clerk of the Court of Appeals



Judges of the New York State Court of Appeals

John P. Asiello
Clerk of the Court

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Honorable Leslie Stein
Associate Judge
Foreword
March 2021

I am grateful to Chief Judge DiFiore for inviting me to write the Foreword to the Court's 2020 Annual Report.

Sadly, the year 2020 will be remembered for the COVID-19 global pandemic that caused unprecedented disruption in our society and in our personal and professional lives. On behalf of my colleagues, I would like to express our gratitude to Chief Judge DiFiore for her leadership during what has been an extraordinarily challenging year for the Court of Appeals and the New York State Unified Court System. That our courts have remained open and functioning to provide access to justice is a remarkable achievement. Our ability to do so with the level of excellence that preceded the pandemic and that is rightfully expected by the public is extraordinary.

During the Court's March Session, the Court of Appeals responded to the emerging public health crisis by conducting socially distanced oral arguments with only Judges and counsel present in the courtroom. This was followed by the Court's rapid adoption of virtual operations in April, which positioned the Court to hear both videoconference and in-person oral arguments throughout the pandemic, as the conditions warranted. In-person oral arguments have been conducted pursuant to appropriate safety protocols, including COVID screening, use of personal protective equipment and personal distancing. In addition, to ensure public access, all proceedings have been live-streamed on the Court's website. None of this could have been accomplished without the extraordinary service of our technology staff and the cooperation of the talented attorneys who appeared before us.

Throughout the pandemic, the Court continued to hear and decide appeals and motions in a timely and efficient manner and conducted auxiliary operations with minimal interruption. My colleagues and I are grateful to the Clerk of the Court, John Asiello, and his dedicated staff for their professionalism, resilience and ingenuity in meeting the public health and logistical challenges that arose during the course of the year. The Court's staff leveraged technology and constantly found new and creative ways to preserve the continuity of our operations and ensure the safe delivery of services to litigants, lawyers and members of the public.

The members of the Court also demonstrated great dedication to our institution during the pandemic, answering the call to service and taking on additional duties and responsibilities. For example, it became necessary for the Court to make a determination regarding the logistics of administering the bar examination in New York. To that end, Judge Garcia led a Working Group that collaborated with the New York State Board of Law Examiners to administer an emergency remote bar examination in October. As part of an effort to address myriad challenges faced by our vast court system, the Chief Judge created the Commission to Reimagine the Future of New York's Courts, to which I was honored to be appointed. The Commission has issued a series of reports and recommendations to help guide the safe and efficient operation of our court system during the public health crisis and to improve the public's access to justice well into the future.

While this Annual Report accurately chronicles the work of our Court and the broad range of profoundly important and novel legal issues that were decided during the 2020 calendar year, it does not adequately capture the extraordinary dedication and commitment to justice exhibited by the very special people who work at Court of Appeals Hall. Since I joined the Court in February 2015, I have had the privilege of experiencing the enthusiasm and the level of pride each of them devotes to their work. The Court's professional staff are second to none in their competence and proficiency, and they provide the foundation for the excellence of our work product. In addition, there are many others who serve the Court in various ways, such as by providing security and keeping our majestic courthouse beautiful and functioning efficiently. I would be remiss if I did not also express the Court's appreciation for the employees who do not work in Court of Appeals Hall, but who have continued to provide indispensable services to the Court and to the public during the pandemic, including the staff of the Law Reporting Bureau and the Board of Law Examiners. Each one of these faithful and loyal employees has diligently persevered in their work throughout this challenging year and they are owed a debt of gratitude.

On June 4, 2021, I will retire from the Court of Appeals. It has been the privilege of a lifetime to serve on one of the most storied courts in our nation's history, and to have played a part in the development of the law of our state for nearly six and a half years. In the relatively short time since I began my tenure on the Court, three Judges have retired and we tragically lost our dear colleague and friend, Judge Sheila Abdus-Salaam. Despite those losses, this venerable institution has continued to resolve the complex issues that come before the Court, promptly and with great dedication, as we endeavor to interpret the law fairly and accurately. I have immeasurable respect and admiration for the wise, knowledgeable and hard-working Judges with whom I have had the privilege to serve. I learned, first-hand, that my colleagues care deeply and strive vigorously to achieve a just and right result in every matter that comes before them. They understand that our decisions have a profound effect on people's lives and on the contours of our society, and they are ever mindful of their duty.

I also have boundless appreciation for all of my brilliant and dedicated law clerks, who have worked tirelessly to ensure that I am afforded the information required to make the best and most informed decisions possible. And, of course, none of this would be achievable without the contribution of the superb lawyers who appear and argue before our Court.

When I began my legal career in 1981, I never imagined that I would be privileged to reach the pinnacle of the legal profession by serving on the New York Court of Appeals. I am grateful for that opportunity, and I hope that I have succeeded in making a meaningful contribution to the work of the Court. While I am certain that I will miss my life on the Court, I also know that I will leave with a thousand treasured memories and with the knowledge and confidence that our institution is in the very best of hands.

2020

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

Introduction

I thank Judge Stein for chronicling in her foreword how the Judges and the nonjudicial staff of the Court of Appeals continued to serve the public amid the difficult circumstances the COVID-19 pandemic presented in 2020. I offer some additional comments on accomplishments during this unprecedented year.

The work of the Court continued and at no time did the Court close. Consistent with evolving public health guidelines, operations were continued to the greatest extent possible, in-person or remotely, with the resources available. Even when in-person operations were severely restricted, at least a small group of attorneys, technology staff and administrative personnel were present at Court of Appeals Hall to attend to Clerk's Staff responsibilities, including answering telephone inquiries, processing mail and digital filings, and communicating with the Judges and chambers staff. To add a few specific illustrations of the extent to which operations were continued as close to normal as possible, the Court heard in-person argument at all but one (April-May) of the eight sessions it had scheduled for arguments in 2020, while also making use of argument by videoconference as necessary. As it typically does, the Court released decisions in all months of the year except July. The Court decided more motions and more criminal leave applications than were filed, improving currency in those areas, and leaving fewer pending applications to be carried over to 2021 than were carried over from 2019 to 2020.

Significant amendments to the Rules of Practice were adopted in May and December to provide for a new companion digital filing system for motions, sua sponte jurisdictional reviews and criminal leave applications. The Court's Information Technology Department and Clerk's Office attorneys created and implemented the system to further facilitate internal virtual office operations, and to provide litigants with a means of digital filing. Borrowing on some aspects of Court-PASS for appeals, the digital filings are a companion to the filing of one paper copy. More than a short-term fix to address the challenges occasioned by the COVID-19 pandemic, the system of companion digital filings will benefit the bar, public and Court into the future.

As Judge Stein described, during 2020 the Court addressed many issues relating to the bar examination and legal education, both of which were significantly disrupted by the pandemic, and for the first time the New York State Board of Law Examiners successfully administered a remote bar examination. On September 2, the Court appointed former Court of Appeals Judge Carmen Beauchamp Ciparick as chair of the Board of Law Examiners. Judge Ciparick succeeded Diane F. Bosse, who retired after serving with distinction on the Board of Law Examiners for more than 22 years, the last 19 years as its chair.

Six Court of Appeals employees also retired or resigned in 2020. Principal Stenographers Marianne Gilbert and Nancy Irwin, who provided administrative assistance in the Court's Motions and Appeals Departments, retired, each after more than 14 years' service with the Court. Court Analyst Joe Welch, who worked at the Court for 17 years and whose duties included Court Crier, and Court Analyst Meaghan Hickey, who served in the business office for two years, both resigned to pursue opportunities in the private sector. Senior Security Attendant Matthew Gerber and Senior Building Guard Robert Somerville each retired with 20 years of Court service. I thank each of them for their valuable contributions to the Court.

In a year of extraordinary challenges that could not have been anticipated, I commend the Court's non-judicial personnel for their commitment, flexibility and cooperation. Faced with staffing shortages due to COVID-19 restrictions and the inability to fill vacancies, Court operations continued because individuals came forward to take on and skillfully complete tasks beyond those they are normally assigned to perform. Those efforts are especially appreciated.

The format of this year's Annual Report, divided into five parts, follows the format of the 2019 report. The first section is a narrative overview of matters filed with and decided by the Court during the year. The second part describes various functions of the Clerk's Office, and summarizes administrative accomplishments in 2020. The third section highlights selected decisions of 2020. The fourth part covers some of the Court's 2020 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. During these sessions held in Albany, 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 2020, in addition to hearing oral argument in Albany, the Court heard oral argument by videoconference.

In 2020, the Court and its Judges disposed of 3,008 matters, including 96 appeals,* 1,070 motions, and 1,824 criminal leave applications. A detailed analysis of the Court's work follows.

* This number includes determinations on Rule 500.27 certified questions and proceedings seeking review of determinations of the State Commission on Judicial Conduct pursuant to Judiciary Law § 44 (8).

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.

In 2020, 68 appeals were subject to Rule 500.10 inquiries. Of those, 50 appeals were dismissed sua sponte (SSD) or transferred to the Appellate Division. Twelve 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 2020, 65 appeals were decided in the normal course. 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 is assigned by random draw to one member of the Court for reporting to the full Court.

Following oral argument of an appeal, the appeal is conferenced by the full Court. In conference, the Judges are seated clockwise in seniority order around the conference table. The reporting Judge speaks first on the appeal, followed by the other Judges in reverse seniority order (the most junior Judge speaks after the reporting Judge). 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 written submissions without oral argument, saving the litigants and the Court the time and expense associated with the filing of bound briefs and oral argument. As with normal course appeals, the parties' submissions are available through the Court's Public Access and Search System (Court-PASS) and Court Rules permit amicus curiae participation.

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 176 appeals filed in 2020, 35 (19.8%) were initially selected to receive SSM consideration, a slight increase from the percentage so selected in 2019 (15.8%). Eighteen were civil matters and 17 were criminal matters. None of the appeals initially selected to receive SSM consideration in 2020 was directed to full briefing and oral argument. Of the 96 appeals decided in 2020 on the normal course or on the SSM procedure, 31 (32%) were decided upon SSM review (23.1% were so decided in 2019). Twelve were civil matters and 19 were criminal matters. Two civil appeals on SSM review were withdrawn. Eighteen matters remained pending on SSM review at the end of 2020 (7 civil and 11 criminal).

Promptness in Deciding Appeals

The Court continued its tradition of prompt disposition of appeals following oral argument or submission. In 2020, the average time from argument to disposition of a normal course appeal was 40 days; for all appeals, the average time from argument or submission to disposition was 28 days.

The average period from filing a notice of appeal or an order granting leave to appeal to oral argument was approximately 14 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 481 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 271 days.

The Court's 2020 Docket

Filings

One hundred seventy-six (176) notices of appeal and orders granting leave to appeal were filed in 2020 (234 were filed in 2019). One hundred forty-two (142) filings were civil matters (compared to 188 in 2019), and 34 were criminal matters (compared to 46 in 2019). The Appellate Division Departments issued 20 of the orders granting leave to appeal filed in 2020 (14 were civil, 6 were criminal).

Motion filings decreased in 2020. During the year, 954 motions were submitted to the Court, compared to the 1,182 submitted in 2019. Criminal leave application filings also decreased in 2020. In 2020, 1,729 applications for leave to appeal in criminal cases were assigned to individual Judges of the Court, compared to the 2,408 assigned in 2019. On average, each Judge was assigned 247 such applications during the year.

Dispositions

Appeals and Writings

In 2020, the Court decided 96 appeals (54 civil and 42 criminal, compared to 60 civil and 48 criminal in 2019). Forty-one (41) of the 96 appeals were decided by signed opinions, 35 by memoranda, 9 by per curiam opinions, and 11 by decision list entries. Fifty-five (55) dissenting opinions and 26 concurring opinions were issued.

Motions

The Court decided 1,070 motions in 2020, a slight decrease from the 1,096 decided in 2019. Of the 870 motions for leave to appeal decided in 2020, 3.7% were granted, 76.2% were denied, 19.7% were dismissed, and less than .5% were withdrawn. Thirty-two (32) motions for leave to appeal were granted in 2020. 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 105 days, while the average period of time from return date to disposition for all motions was 94 days.

CPL 460.20 Applications

Individual Judges of the Court granted 29 of the 1,824 applications for leave to appeal in criminal cases decided in 2020. One hundred seventeen (117) applications were dismissed for lack of jurisdiction and 10 were withdrawn. Four (4) of the 38 applications filed by the People were granted. Of the 132 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, none 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 2020, on average, 58 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 2020, pursuant to Judiciary Law § 44 (8), the Court suspended two judges with pay based on determinations of the State Commission on Judicial Conduct recommending that the judges be removed from office. The Court subsequently issued removal orders for these judges and a third judge who had been suspended with pay by the Court in 2019.

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. The Court first decides whether the certification should be accepted and, if the Court accepts a certified question, the matter is treated similarly to an appeal. In 2020, the average period from receipt of initial certification papers to the Court's order accepting or rejecting review was 22 days. The average period from acceptance of a certification to disposition was 12 months.

The Court answered two certified questions in 2020, both of which were accepted in 2019. At the end of 2020, eight questions that were accepted in 2020 remained pending.

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

In 2020, the Court decided 309 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a decrease from the 322 petitions decided in 2019. Petitions typically are decided four to eight weeks after submission.

Court Rules

Effective April 15, 2020, the Court amended its Rules for the Registration of In-House Counsel (Part 522), to permit part-time in-house counsel practice; clarify that there is no New York residency requirement under Part 522; expand the grace period for registering as in-house counsel; authorize a 90-day period to cure any past failures to register as in-house counsel; eliminate the reciprocity requirement for in-house counsel registration by foreign attorneys; eliminate the requirement that foreign attorneys be and remain members in good standing of their home jurisdiction bars if such membership is unavailable to in-house counsel, as is the case in a number of civil law jurisdictions; permit foreign attorneys to apply for registration as in-house counsel on the basis of affidavits if their home jurisdiction is unable to provide proof of good standing because of a lack of structure of legal oversight of in-house counsel in that jurisdiction; and permit foreign attorneys who are registered as in-house counsel to provide pro bono services under the direct supervision of a duly registered New York attorney.

Effective May 27, 2020 and December 30, 2020, the Court amended its Rules of Practice to require, for motions and responses to Rule 500.10 jurisdictional inquiries, and for criminal leave applications, respectively, submissions in digital format as companions to the printed papers filed and served in accordance with the Court's Rules of Practice. The Court also amended its Rules of Practice to reduce the number of printed copies that must be filed for civil motions for leave to appeal, reargument motions, and papers in opposition to those motions.

Effective July 22, 2020, the Court enacted a new Part 524 permitting the temporary authorization of certain law graduates to engage in the supervised practice of law in New York.

Additionally, in a series of orders issued in response to the global health pandemic, the Court temporarily waived certain bar exam eligibility and admission requirements for certain J.D. and LL.M. candidates and permitted the New York State Board of Law Examiners to administer an emergency remote New York bar examination in October 2020 and a remote Uniform Bar Examination in February 2021.

Administrative Functions and Accomplishments

Court of Appeals Hall

Court of Appeals Hall at 20 Eagle Street has been the Court's home for over 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 Building Manager 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, including digital filings, 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.

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 3,650 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 1,282,879 visits were recorded to the main internet site in 2020, averaging 3,505 visits per day. The Court-PASS site recorded 234,298 visits in 2020.

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.

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 submitting 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 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, which 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.

Office for Professional Matters

Special Projects Counsel manages the Office for Professional Matters. An administrative assistant 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 2019 through December 2020, Central Staff completed 748 motion reports, 11 SSD reports, and 8 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 2020 were graduates of Albany, Brooklyn, Cornell, CUNY, Northeastern University, Notre Dame, Syracuse University, University at Buffalo, University of California (Irvine), and Vermont law schools.

Library

The Principal Law Librarian and Senior Law Librarian provide legal and general research and reference services to the Judges of the Court, their law clerks, and the Clerk's Office staff.

During 2020, the Library adapted procedures to continue to serve the Court throughout periods of virtual operations. Print subscriptions were strategically reduced for cost savings, and work continued to expand in-house databases that provide full-text access to the Court's internal reports, bill jackets, and other research materials. The Principal Law Librarian presented a virtual program at the annual 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, New York State Law Reporting Bureau, and New York State Board of Law Examiners attorneys. The Committee meets on an as-needed basis and issues credit for suitable programs offered by the Court or its auxiliary agencies.

In 2020, the Committee provided 8 programs totaling 15.5 credit hours. Attorneys also were provided with information on CLE programs offered by the Appellate Division, Third Department, the New York State Judicial Institute, the New York State-Federal Judicial Council and the Historical Society of the New York Courts. These programs accounted for over 16 additional credit hours of live and teleconference programming.

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, with the assistance of the Deputy Chief of Security, 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.

Management and Operations

The Director of Court of Appeals Management and Operations, aided by a Court Analyst, 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 preparation, voucher processing, benefit program administration and annual budget request development.

Budget and Finance

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

Expenditures

The work of the Court and the New York State Law Reporting Bureau was performed within the 2020-21 fiscal year budget appropriation of \$1.1 million for non-personal services costs, including in-house maintenance of Court of Appeals Hall.

Budget Requests

The total request for fiscal year 2021-22 for the Court and Law Reporting Bureau is \$1.1 million for non-personal services.

The budget request for fiscal year 2021-22 illustrates the Court's diligent attempt to perform its functions and those of the New York State Law Reporting Bureau economically and efficiently. The Court will continue to maximize opportunities for savings.

Revenues

In calendar year 2020, the Court reported filing fees for civil appeals totaling \$12,285. Also, the Court reported filing fees for motions totaling \$19,715. 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 (\$985.58). For calendar year 2020, revenue collections totaled \$32,985.58.

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 in particular Deputy Clerk Heather Davis, who, in addition to discharging her numerous other duties, compiled and edited the report, and mention also Ann Byer, Cynthia Byrne, Zainab Chaudhry, Lori Drumm, Lisa Drury, Margery Corbin Eddy, Hope Engel, Antonio Galvao, Bryan Lawrence, Rachael MacVean, Marissa Mason, Edward Ohanian, Amanda Ross-Carroll, Stephen Sherwin, 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 2020 decisions, reflecting the range of constitutional, statutory, regulatory and common law issues decided by the Court each year.

ADOPTION

Matter of Marian T. (Lauren R.) (36 NY3d 44)

This proceeding involved the propriety of petitioners' adoption of Marian T., a 66-year-old woman with a significant developmental disability who had resided with them for over a decade through a state program. The courts below having determined that Marian T. lacked the capacity to consent to the adoption, the primary issue was whether her adoption was categorically precluded under the statutory scheme, which turned on the proper interpretation of Domestic Relations Law § 111 (1) (a) – a statute that requires the consent of an “adoptive child” over the age of 14 but permits the court, in its discretion, to dispense with that consent. Based on the definition of “adoptive child” found elsewhere in the statutory scheme and the use of that phrase in other subsections of section 111, the Court concluded that the phrase referred to the parent/child relationship created by an adoption – not the age of the adoptee – and therefore encompassed adults. Thus, despite Marian T.'s age, she was an “adoptive child” and a court could, upon an appropriate exercise of discretion, dispense with her consent under the statute. Because there was no abuse of discretion under the circumstances of this case, where Marian T. had been provided notice of the adoption petition and significant efforts were made to involve her

in the proceedings and ascertain her feelings and desires, and there was record support for the affirmed finding that the adoption was in her best interests, the Court determined the adoption petition was properly granted.

ANIMALS

Hewitt v Palmer Veterinary Clinic, PC (35 NY3d 541)

Plaintiff was injured in the waiting room of a veterinary clinic by a dog owned by another client after the dog received medical treatment for an injury. Thereafter, plaintiff brought a negligence action against the veterinary clinic. It was undisputed that the veterinary clinic owed a duty of care to plaintiff, a client in its waiting room. The Court held that the veterinary clinic was not entitled to summary judgment dismissing the negligence claim, despite the clinic's absence of prior notice of the dog's vicious propensities. The Court explained that the clinic and its agents had specialized knowledge relating to animal behavior and the treatment of animals who may be ill or injured, and that the clinic and its agents may – either unavoidably in the course of treatment or otherwise – create circumstances that give rise to a substantial risk of aggressive behavior. Because veterinary clinics are uniquely well-equipped to anticipate and guard against the risk of aggressive animal behavior, the Court concluded that veterinary practices do not need the protection afforded by the vicious propensities notice requirement.

ARBITRATION

American Intl. Specialty Lines Ins. Co. v Allied Capital Corp. (35 NY3d 64)

The Court held that an arbitration panel did not exceed its authority by

reconsidering a “partial final award.” The Court observed that it had never had occasion to determine whether, or under what circumstances, parties to an arbitration may agree to the issuance of a final award that disposes of some, but not all, of the issues submitted to the arbitrator(s). However, even assuming that parties may agree to such a partial final award, the parties did not effectively do so in this case. Specifically, the Court held that, absent an express mutual agreement between the parties to the issuance of a partial final award, the common law *functus officio* doctrine — which historically has precluded arbitrators from, among other things, reconsidering final awards — was not applicable.

ATTORNEY AND CLIENT

Bill Birds, Inc. v Stein Law Firm, P.C. (35 NY3d 173)

Plaintiffs brought this civil action against their former attorneys under Judiciary Law § 487 (1) contending they suffered monetary damages when they were induced to bring a meritless lawsuit based on misleading legal advice. Relying on long-standing precedent, the Court explained that the purpose of the ancient cause of action codified in the statute — which imposes civil and criminal liability on an attorney who commits “deceit or collusion . . . with intent to deceive the court or any party” — is to safeguard an attorney’s special obligation of honesty and fair dealing in the course of litigation, a pillar of the profession. As such, the statute extends only to conduct that occurs during an action pending in a court and neither encompasses misleading legal advice preceding the commencement of litigation nor negligent acts or conduct that constitutes only legal malpractice, such as

filing a pleading containing nonmeritorious arguments. Accordingly, the Court affirmed the Appellate Division order dismissing plaintiffs’ section 487 (1) claim, which failed to allege any acts of deceit or collusion occurring during the pendency of the underlying lawsuit.

BANKRUPTCY

Sutton 58 Assoc. LLC v Pilevsky (36 NY3d 297)

The Court held that federal bankruptcy law did not preempt plaintiff’s state law claims asserted against the non-debtor defendants for tortious interference with a contract. Plaintiff had loaned funds to non-party borrowers to construct an apartment complex pursuant to agreements that prohibited borrowers from incurring certain indebtedness, acquiring unrelated assets, or engaging in other business, and which required borrowers to remain special purpose bankruptcy remote entities. Borrowers defaulted and commenced federal bankruptcy proceedings. Meanwhile, plaintiff commenced an action in state court alleging that various non-debtor defendants had tortiously interfered with the loan agreements between plaintiff and borrowers. The Court held that plaintiff’s tortious interference claims were not preempted by the Bankruptcy Code under principles of field preemption because, while the Code governs the litigation and settlement of controversies between debtors and creditors in connection with the bankruptcy estate, defendants cited no provision of the Code that suggested a congressional intent to interfere with state tort remedies with respect to claims brought by a non-debtor against alleged non-debtor tortfeasors for interference with contractual agreements that exist independently of a bankruptcy

proceeding. Further, the Court held that plaintiff's tortious interference claims were not impliedly preempted, in accordance with principles of conflict preemption, because plaintiff's claims — which alleged wrongful conduct that occurred prior to and separate from the bankruptcy proceedings — did not implicate the propriety of, or risk interference with, the bankruptcy proceedings.

CIVIL PROCEDURE — DAMAGES

Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc. (36 NY3d 69)

The parties entered into a 15-year commercial lease for defendant's rental of the ground floor and basement levels of a building owned by plaintiff. Thirteen years into the tenancy, with defendant facing financial difficulties, the parties entered into a surrender agreement that terminated the lease in exchange for defendant's surrender of the premises and a staggered payment of a dollar amount equal to defendant's arrears (\$261,751.73). Under the surrender agreement, in the event of defendant's default or failure to timely cure upon notice, the aggregate amount of all fixed rent and other sums and charges due during the term of the lease agreement were to come due, and defendant would no longer be entitled to be relieved from any claims otherwise released under the surrender agreement. As agreed by the parties, defendant duly vacated and surrendered the premises to plaintiff and timely made the first two \$43,000 surrender payments. Plaintiff re-let the premises one month after the surrender. Defendant then failed to timely pay the next four monthly surrender payments despite plaintiff's notice to pay. Plaintiff brought a contract action to enforce the damages provision of the surrender

agreement, seeking over \$1 million in future payments under the terminated lease, plus interest and taxes and costs provided under the lease. The Court held that plaintiff's damages are properly measured against defendant's breach of the surrender agreement and not against the terminated lease. Viewed in this light, the Court further held that the liquidated damages clause in the surrender agreement was an unenforceable penalty because it was grossly disproportionate to the damages for the only contractual breach at issue in the appeal, i.e., overdue payment of the monthly surrender installments.

CIVIL PROCEDURE — STATUTE OF LIMITATIONS

Chavez v Occidental Chem. Corp. (35 NY3d 492)

Pursuant to certified questions from the United States Court of Appeals for the Second Circuit, this Court was asked whether New York recognizes tolling of the statute of limitations for absent class members of a putative class action filed in another jurisdiction under *American Pipe* (*American Pipe & Constr. Co. v Utah*, 414 US 538 [1974]), and, if so, whether a non-merits dismissal of class certification can terminate such cross-jurisdictional tolling. The Court answered these questions in the affirmative. In order to give effect to legislative policy embodied in CPLR article 9, the Court held that New York recognizes *American Pipe* tolling cross-jurisdictionally. Noting that the same principles that support recognition of cross-jurisdictional tolling also support intra-jurisdictional tolling, the Court further recognized *American Pipe* tolling intra-jurisdictionally. Because recognition of *American Pipe* tolling implicated New York's statutes of limitations, the Court

adopted a bright-line rule regarding non-merits dismissals of class certification, holding that tolling ends — as a matter of law — when there is a clear dismissal of a putative class action, including a dismissal for *forum non conveniens*, or denial of class certification for any reason.

CIVIL SERVICE — RETIREMENT AND PENSION BENEFITS

Lynch v City of New York (35 NY3d 517)

Plaintiffs commenced this action seeking, among other things, judgment declaring that all police officers hired by the New York City Police Department, including those hired on or after July 1, 2009, are eligible for the benefits afforded by the second subdivision (h) of Code § 13-218. The City had concluded that officers hired on or after that date were not eligible for the benefits conferred by that subdivision, which entailed a “credit for service” mechanism that allows police officers to obtain service credit for certain periods of absence without pay for childcare leave. The Court applied longstanding, basic rules of statutory interpretation to a combined reading of the second subdivision (h) of section 13-218 and Retirement and Social Security Law § 513 (h) in determining that the affected officers are eligible for the disputed service credit benefits. Specifically, the Court concluded that the relevant portion of the Administrative Code allows affected officers to purchase service credit for time that otherwise would have been lost to childcare leave by contributing an amount equal to what would have been supplied if the officers had not taken childcare leave. The Court also concluded that the relevant part of the Retirement and Social Security Law does not prohibit the benefit conferred in that portion of the

Administrative Code.

CONSUMER PROTECTION

Plavin v Group Health Inc. (35 NY3d 1)

In answering certified questions from the United States Court of Appeals for the Third Circuit in the affirmative, the Court held that the plaintiff had sufficiently alleged consumer-oriented conduct for purposes of General Business Law §§ 349 and 350 where defendant Group Health Inc. allegedly created and marketed program descriptions and summaries of its insurance plan to employees of the City of New York. In this regard, the City of New York offered an open enrollment period for its employees to select from certain previously negotiated insurance plans, which the Court held resembled the kind of sales marketplace that General Business Law §§ 349 and 350 were intended to address. Further, the Court clarified that those statutes do not require that a plaintiff allege that consumer-oriented conduct be directed to all members of the public.

CONTRACTS — MORTGAGES AND DEEDS OF TRUST

Matter of Part 60 Put-Back Litig. (36 NY3d 342)

In this residential mortgage-backed securities (RMBS) case, the trustee for the RMBS trust sued the sponsor and the depositor for the RMBS transaction, alleging that defendants had breached the relevant contracts in a grossly negligent manner. A long-standing public policy rule in New York prohibits a party from relying on a contract clause to escape liability for gross negligence. The RMBS contracts contained a “sole remedy provision,” which provided that plaintiff’s only remedy for a breach of the representations and

warranties defendants had made about the mortgage loans was for defendants to cure or repurchase the defective loans. Plaintiff argued that its allegations of gross negligence should render unenforceable the sole remedy provision pursuant to this public policy rule because that provision would otherwise allow defendants to escape liability for their grossly negligent conduct. The Court held that, in a pure breach of contract case, where no independent tort has been alleged, this public policy rule renders unenforceable only exculpatory or nominal damages clauses, which either purport to allow a defendant to escape liability entirely or limit damages to a nominal sum. The Court further concluded that the sole remedy provision was not an exculpatory or nominal damages clause because it provided a remedy for a breach of the representations and warranties and did not wholly immunize defendants from liability. The Court therefore held that the sole remedy provision was enforceable.

CRIMES – SEX OFFENDERS

People v Perez (35 NY3d 85)

The Court held that defendant was properly assessed points under Sex Offender Registration Act (SORA) risk assessment instrument risk factor 9, which concerns the “Number and Nature of Prior Crimes,” for his prior New Jersey conviction for lewdness. The Court determined that reliance on the underlying conduct of a prior foreign conviction is appropriate as a matter of law for purposes of assessing points under risk factor 9 and that the New York Board of Examiners of Sex Offenders and courts should apply the “essential elements” test set forth in *Matter of North v Board of Examiners of Sex Offenders of State of N.Y.* (8 NY3d 745 [2007]) when

considering whether to assess points for the prior foreign conviction. Under that test, defendant’s New Jersey conviction was comparable to the New York offense of endangering the welfare of a child. It was therefore proper to assess him 30 points for his prior criminal history.

CRIMINAL LAW

People v Anonymous (34 NY3d 631)

This appeal involved the proper interpretation and application of Criminal Procedure Law 160.50 for sentencing purposes. Defendant received a higher sentence than promised at his plea hearing, based on the trial court’s erroneous reliance on an unsealed trial record of a previous acquittal in another criminal proceeding. The Court held that a court is without authority to consider for sentencing purposes erroneously unsealed official records of a prior criminal action or proceeding terminated in favor of a defendant. By way of remedy, the Court further held that where violation of the sealing mandate of Criminal Procedure Law 160.50 impacts the ultimate sentence, the error warrants remittal for resentencing, without consideration of the official records obtained in violation of the sealing statute.

People v Balkman (35 NY3d 556)

A police officer stopped a vehicle because his patrol car’s mobile data terminal notified him that there was a “similarity hit” with respect to the vehicle, indicating that something was similar about the registered owner of the vehicle and a person with an outstanding warrant. The Court explained that, when police stop a vehicle based solely on information generated by running a license-plate number through a government database,

and defendant challenges the sufficiency of the factual predicate for the stop, the People, to establish that the stop was lawful, must present evidence of the content of the information. The Court held that the People failed to meet their burden, noting that the People presented no evidence about the content of the “similarity hit” — neither what particular data of the registered owner of the vehicle and the person with the warrant matched, nor what kinds of data matches, in general, result in “similarity hits.” Accordingly, the Court ruled that the evidence obtained from the stop should have been suppressed.

People v Batticks (35 NY3d 561)

The issue in this appeal was whether the trial court abused its discretion as a matter of law in giving the jury a curative instruction and forgoing a *Buford* inquiry (*People v Buford*, 69 NY2d 290 [1987]) of a sworn juror after her mid-trial exclamation that she was “very offen[ded]” by defense counsel’s repetitive use of a racial slur while cross-examining the victim. The Court concluded that the record supported the trial court’s findings that the juror’s reaction, when viewed in context, was triggered by counsel’s fifth and gratuitous use of the epithet, and provided no basis to indicate the juror was grossly unqualified. Because the entire incident unfolded in open court, the trial court was able to adequately assess whether the juror’s outburst was a transformative one and whether her sworn oath to be impartial remained intact. Thus, the Court held that the trial court’s remedy of admonishing the juror and counsel and issuing a carefully crafted curative instruction — which included a mechanism for any juror to advise the court if they could not be fair

and impartial due to anything that occurred at trial — was not an abuse of its discretion.

People v Delorbe (35 NY3d 112)

After pleading guilty to attempted burglary, defendant appealed, claiming that the trial court failed to inform him of adverse immigration consequences upon conviction and arguing that he was not required to preserve this due process claim. The Court disagreed, holding that the narrow exception to preservation under *People v Peque* (22 NY3d 168 [2013]) did not apply because defendant was served, in open court and months before the plea proceedings, with a Notice of Immigration Consequences form, providing him with a reasonable opportunity to object to the court’s failure to advise him of the potential deportation consequences.

People v Francis (34 NY3d 464)

Defendant, who committed four offenses under various aliases in 1982, 1988, 1991, and 1997, moved pursuant to CPL 440.20 to set aside his 1988 sentence because the court, unaware of defendant’s earlier conviction, imposed a term less than the mandatory minimum required by law. Defendant claimed that he was adversely affected by this error under CPL 470.15 (1) because, upon the motion’s success, he would move to vacate his 1988 plea on the ground that it was not knowing, voluntary, or intelligent. If successful, defendant also intended to challenge the lawfulness of the 1997 sentence because he could no longer be considered a persistent violent felony offender. The Court held that denial of a defendant’s motion to vacate his or her sentence on the ground that it was illegally lenient is not reviewable because the purported error has not adversely affected

defendant (CPL 470.15 [1]).

People v Goldman (35 NY3d 582)

The police sought a search warrant authorizing them to obtain corporeal evidence – in the form of DNA evidence by use of a buccal swab – from defendant, a suspect in a murder investigation who was in custody on an unrelated matter. The Court held that there was no violation of defendant’s constitutional rights where he was given notice and an opportunity to be heard prior to the issuance of the warrant on the nature and extent of the bodily intrusion. The magistrate however properly denied defendant discovery of the warrant application setting forth the probable cause for the use of the buccal swab to obtain DNA for comparative testing. The requirement that a warrant seeking corporeal evidence be brought on notice to the suspect, set forth in the Court’s prior decision in *Matter of Abe A.* (56 NY2d 288 [1982]), did not create a mandatory discovery procedure requiring that a defendant be given access to search warrant materials and an adversarial hearing as a matter of constitutional law, as the probable cause determination is one that is made by the neutral magistrate as a matter of course. Rather, the key difference between an *Abe A.* application and an ordinary ex parte search warrant application is the request for a bodily intrusion. Although a particularly invasive intrusion may require a fact-finding hearing as to the risks presented to the suspect if the seizure is authorized – a matter generally outside the ken of the court – such a hearing is not needed if the bodily intrusion is recognized as minimal, such as the buccal swab, and the evidence to be seized has high probative value, such

as DNA.

People v Hardy (35 NY3d 466)

Relying upon *People v Easton* (307 NY 336 [1954]), the Appellate Term upheld an amendment to a misdemeanor complaint made to correct an error in the factual portion of the complaint. The Court held that the Criminal Procedure Law abrogated *Easton*, a case decided when the Code of Criminal Procedure still governed criminal prosecutions. The Court determined that the CPL does not permit factual amendments to misdemeanor complaints or informations. Instead, the CPL requires the filing of a superseding accusatory instrument supported by a sworn statement containing the correct factual allegations. The Court further held that defendant did not forfeit his right to challenge the amendment by pleading guilty to the allegations in the amended complaint. Because the original error rendered the accusatory instrument jurisdictionally defective, the court’s authority to amend the accusatory instrument presented a nonwaivable jurisdictional issue.

People v Hinshaw (35 NY3d 427)

The Court held that a State Trooper’s stop of defendant’s vehicle was unlawful where the Trooper lacked probable cause to stop the vehicle for a traffic infraction or objectively reasonable suspicion that a crime had been, or was about to be, committed. The Court noted that, in order to guard against discriminatory law enforcement, New York law provides greater protections than federal law both for pedestrian stops by police and for automobile stops based on traffic infractions. Under New York law, an automobile stop is lawful only when based

upon probable cause that a driver has violated the Vehicle and Traffic Law (VTL), reasonable suspicion of criminality, or when conducted pursuant to nonarbitrary, nondiscriminatory, and uniform traffic procedures. The Trooper stopped defendant's vehicle based solely on a license-plate check indicating that the vehicle had previously been impounded, a notice which may have entirely innocent explanations and did not provide either probable cause that the VTL had been violated or objectively reasonable suspicion that a crime had occurred or was afoot. Accordingly, the Court held that the stop was unlawful and ordered defendant's motion to suppress be granted and the indictment dismissed.

People v Holz (35 NY3d 55)

Defendant was charged with two burglaries, the first relating to a laptop computer, and the second relating to jewelry, taken from the same dwelling two days apart. He moved unsuccessfully to suppress the jewelry, and then pleaded guilty to the earlier burglary in satisfaction of the entire indictment. CPL 710.70 (2) grants the right to review of a suppression order "upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty." The Appellate Division affirmed, reasoning that the judgment did not "ensue from" the denial of the motion, which is therefore unreviewable. The Court held that the statute grants the right to review of a suppression decision when the order related exclusively to a count that was satisfied by a guilty plea but was not one to which the defendant pleaded guilty. The Court observed that, by use of the word "ensuing," the legislature selected the

broadest of relational terms to convey the connection between the suppression order and the judgment. The Court found support in the pertinent legislative history and in policy considerations. To conclude that the Appellate Division lacks jurisdiction to review a trial court's determination on a suppression matter simply because the evidence in question is not directly related to the count of conviction would insulate erroneous trial-level decisions from appellate review.

People v J.L. (36 NY3d 112)

The Court considered whether defendant was entitled to a jury instruction on voluntary possession of a weapon. Defendant testified that, while sitting in an apartment where he had rented a room for the evening, he was shot by someone outside of the apartment. He further testified that, after running into the bedroom he had rented to search for a towel to stop the bleeding from his gunshot wound, he saw what appeared to be a gun in an open drawer. Police arrived shortly thereafter and transported defendant to the hospital. Police also searched the apartment and found a number of weapons and marihuana. Defendant was charged with criminal possession of a weapon and unlawful possession of marihuana. With respect to the gun found in the drawer, defendant argued that the jury should be instructed that possession had to be voluntary, meaning that he "was aware of his . . . physical possession or control . . . for a sufficient period to have been able to terminate the possession" (CJ12d [NY] Possession – Voluntary Possession § 15.00 [2]). The Court held that, when the evidence was viewed in the light most favorable to defendant, there was a

reasonable view that he had constructively possessed the weapon but that his awareness was so fleeting that any possession was not voluntary. The Court thus concluded that the evidence supported the requested jury charge and the error warranted a new trial on the voluntary possession count.

People v Lang (35 NY3d 222)

On the ninth day of defendant's murder trial, the trial court substituted an alternate juror for a sitting juror who failed to appear. Before ordering the substitution, the trial court stated its belief that the sitting juror had an appointment, but the record did not demonstrate that the court made any inquiry into the juror's whereabouts or likelihood of appearing. The Court reversed defendant's conviction and ordered a new trial, holding that the trial court failed to conduct a "reasonably thorough inquiry" into the absent juror's unavailability, as required by CPL 270.35 (2) (a), before substituting that juror with an alternate.

People v Lendof-Gonzalez (36 NY3d 87)

The Court reaffirmed its long-established "dangerous proximity" test for attempt liability. Defendant was convicted of criminal solicitation and attempted murder for plotting with another inmate — who, unbeknownst to defendant, was cooperating with jail authorities — to kill defendant's wife and mother-in-law. This Court affirmed the Appellate Division's vacatur of the attempted murder convictions because defendant and his feigned confederate did not take any actual step beyond mere conversations and planning. Accordingly, their conduct did not come dangerously close to completing the intended crimes.

People v Page (35 NY3d 199)

The Court held that a federal marine interdiction agent, who was employed by United States Customs and Border Protection and initiated the disputed vehicle stop, was not a peace officer under the CPL. Because the agent was not, in fact, a peace officer, he could not have improperly circumvented the jurisdictional limitations on the powers reserved for those members of law enforcement under the CPL. The Court's decision in *People v Williams* (4 NY3d 535 [2005]), therefore, was inapposite because that case concerned a peace officer's power to effect a citizen's arrest.

People v Williams (Cadman) (35 NY3d 24)

In May 2008, defendant fired four gunshots during a fight in the Bronx. Two of the bullets struck the victim, who subsequently died as a result of injuries sustained in the shooting. Defendant was arrested several months later, and the gun in question eventually was examined for DNA evidence by the police. That examination and "standard" DNA testing revealed that there was a mixture of DNA from at least two individuals on the firearm. An additional, more sensitive form of DNA analysis — Low Copy Number (LCN) testing — conducted with the aid of the proprietary Forensic Statistical Tool (FST), however, yielded different results. That more sensitive testing yielded the conclusion that it was millions of times more likely that the DNA mixture found on the gun contained contributions from defendant and one unknown, unrelated person, rather than from two unknown, unrelated people. The hearing court rejected defendant's request that a *Frye* hearing be held with respect to the reliability of any proposed evidence

generated through LCN and FST review, and that evidence was admitted at a trial that resulted in defendant's conviction. Although it concluded that the error in the admission of that evidence was harmless, the Court ruled that the hearing court abused its discretion as a matter of law in admitting that proof without holding a *Frye* hearing. In doing so, the Court reasoned that the People had not met their burden of establishing the general acceptance of the LCN methodology by the relevant scientific community, and that the FST – the particulars of which were not readily available to the community at large – similarly had not been generally accepted within the relevant scientific community.

People v Williams (Lance) (36 NY3d 156)

The Court held that defendant was not entitled to a jury charge regarding temporary and lawful possession of a firearm because no reasonable view of the evidence supported a conclusion that defendant's initial possession of the firearm was innocent or excusable. The Court explained that defendant's possession did not result from disarming a wrongful possessor or unexpected discovery of the firearm. Rather, the Court held, the evidence demonstrated that defendant had armed himself in anticipation of a potential confrontation, and a defendant may not avoid a criminal possession charge by claiming that possession of a firearm was for protection, even if a justification charge is provided to the jury with respect to a defendant's subsequent firing of the weapon.

EMINENT DOMAIN

Matter of National Fuel Gas Supply Corp. v Schueckler (35 NY3d 297)

The question before the Court was whether petitioner's certificate of public

convenience and necessity, issued by the Federal Energy Regulatory Commission (FERC) for construction of a natural gas pipeline, qualified under EDPL 206 (A) to exempt petitioner from the public notice and hearing provisions of EDPL article two. The Court held that the certificate of public convenience and necessity – which did not condition eminent domain on receipt of a water quality certification and which remained valid and operative at all relevant times despite an intervening denial by a state agency of petitioner's application for a water quality certification – satisfied EDPL 206 (A). In so holding, the Court determined that petitioner complied with the plain language of EDPL 206 (A) by submitting materials to FERC concerning the public benefit, use, and need for the proposed pipeline, and successfully obtaining a certificate of public convenience and necessity after FERC's consideration of the relevant factors. The Court explained that EDPL 206 (A) does not authorize extensive scrutiny of another agency's public use review and findings, as long as the other agency undertook a meaningful review of the factors set forth in EDPL 204 (B) before issuing the certificate. Further, the Court concluded that, although the FERC certificate conditioned construction on the issuance of a water quality certificate, such condition could not reasonably be understood to render the certificate of public convenience and necessity provisional for eminent domain purposes.

HABEAS CORPUS – SEX OFFENDERS

People ex rel. McCurdy v Warden, Westchester County Corr. Facility (36 NY3d 251)

The Court held that Correction Law § 73 (10) authorizes the Department of Corrections and Community Supervision

(DOCCS) to provide temporary housing in a Residential Treatment Facility (RTF) to sex offenders subject to the mandatory condition set forth in the Sexual Assault Reform Act (SARA) (*see* Executive Law § 259-c [14]) after the six-month period specified in Penal Law § 70.45 (3) has expired but before the offender on postrelease supervision (PRS) has located SARA-compliant housing. The Court rejected the argument that Correction Law § 73 (10) conflicts with Penal Law § 70.45 (3), which authorizes a period of confinement in an RTF upon commencement of the PRS term for a maximum of six months, because that argument failed to recognize the distinction in section 73 between confinement in an RTF as an inmate subject to its programs, as compared with the use of an RTF as a residence. The Court explained that Penal Law § 70.45 (3) permits DOCCS to hold a sex offender in an RTF for up to six months and require participation in RTF programming, while Correction Law § 73 (10) authorizes DOCCS to provide an offender with temporary housing so that the offender can avoid violating a PRS term mandated by the legislature and having delinquency time imposed.

People ex rel. Negron v Superintendent, Woodbourne Corr. Facility (36 NY3d 32)

Executive Law § 259-c (14), a provision of the Sexual Assault Reform Act (SARA), mandates that the Board of Parole impose a condition restricting entry upon school grounds on certain offenders being released on parole or supervised release. Petitioner commenced a habeas corpus proceeding against the correctional facility where he was detained, arguing that the mandatory school-grounds condition did

not apply to him because he was serving a sentence for burglary, which is not an offense enumerated in section 259-c (14). Resolving an Appellate Division split on the issue, the Court held that this provision's requirement only applies to those level three sex offenders serving a sentence for an offense enumerated in the statute, rather than to all level three sex offenders.

INSURANCE

Jin Ming Chen v. Insurance Co. of the State of Pa. (36 NY3d 133)

After the negligent party's primary insurance policy was voided, this coverage dispute arose between the injured party and the excess insurer and, in this Court, the issue distilled to the scope of the excess insurer's liability for interest on the underlying personal injury judgment. The primary policy included a Supplementary Payments provision that required the primary insurer to cover pre-judgment interest on the portion of the award it paid and all post-judgment interest that accrued until the judgment was paid, clearly stating that such payments would not reduce the \$100,000,000 liability limit. Nonetheless, the injured party contended that, when the primary policy failed, the excess insurer was required to cover all losses over the \$100,000,000 liability limit, including interest. Relying on the language in its Coverage provision, which excluded losses covered by the "Underlying Insurance" – i.e., the primary policy – the excess insurer countered that it was not required to drop down and pay interest that fell within the primary policy's Supplementary Payments clause. Based on the plain language of the underlying agreements, the Court agreed with the excess insurer, rejecting the injured party's contention that a general

follow form provision in the excess policy overrode the express payment terms defining the limits of excess coverage.

LANDLORD AND TENANT – RENT REGULATION

Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal (35 NY3d 332)

When leave to appeal was granted, these four appeals presented a common issue under the Rent Stabilization Law (RSL): what is the proper method for calculating the recoverable rent overcharge for New York City apartments that were improperly removed from rent stabilization during receipt of J-51 benefits pursuant to DHCR’s long-standing but erroneous interpretation of the statutory scheme, which was rejected in this Court’s 2009 decision in *Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270 (2009). Because *Roberts* made clear that the deregulation of the affected apartments – some of which had been subject to free market rents for more than a decade – was unlawful, the decision gave rise to overcharge claims whose resolution had spawned conflicting lower court decisions concerning the proper application of the four-year statute of limitations and associated lookback rule and record retention provisions then in effect. However, while the appeals were pending in the Court, the Legislature enacted the Housing Stability and Tenant Protection Act of 2019 (HSTPA), making sweeping changes to the RSL, including – in Part F – extending the statute of limitations and significantly altering the methodology for calculating rent overcharge claims. The tenants in these appeals asked the Court to resolve their claims under the standards imposed in the new amendments (instead of the rules in

effect when the underlying conduct occurred) and the building owners opposed, asserting a Due Process objection to retroactive application of the legislation. In light of the significant expansion and substantive alteration of the nature and scope of landowner liability resulting from the Part F amendments, the Court concluded that its claim revival and retroactivity jurisprudence precluded application of Part F to overcharges incurred prior to the statute’s effective date. Instead, the appeals were resolved through application of the governing pre-amendment law, which, in the absence of evidence of a fraudulent deregulation, required that overcharges be calculated using the rent charged four years prior to initiation of the overcharge claim as the base date rent, permitting recovery of any illegal increases from that date forward.

MUNICIPAL CORPORATIONS

Colon v Martin (35 NY3d 75)

General Municipal Law § 50-h requires a claimant to comply with a municipality’s demand for a pre-action oral examination before commencing suit against the municipality. The Court held that a claimant does not have the right to observe a co-claimant’s section 50-h oral examination over the municipality’s objection. Rather, the statutory language and legislative history confirmed that a municipality has the authority to require and conduct separate oral examinations of co-claimants.

SECURED TRANSACTIONS

CNH Diversified Opportunities Master Account, L.P. v Cleveland Unlimited, Inc. (36 NY3d 1)

Defendant issued \$150 million of senior

secured debt in the form of notes pursuant to an indenture. Section 6.07 of the indenture – which tracked the language of section 316 (b) of the Trust Indenture Act of 1939 – provided: “Notwithstanding any other provision of this Indenture, the right of any [noteholder] to receive payment of principal . . . and interest . . . on a Note, on or after the respective due dates expressed in such Note, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such [noteholder].” After defendant defaulted on its payment obligations, the trustee, at the direction of a group of majority noteholders and over the objection of plaintiffs, a group of minority noteholders, engaged in a strict foreclosure transaction that resulted in the cancellation of the notes and the corresponding debt. The Court held that the cancellation of the notes violated plaintiffs’ payment rights under section 6.07 of the indenture. The Court distinguished this case from *Marblegate Asset Mgt., LLC v Education Mgt. Fin. Corp.* (846 F3d 1 [2d Cir 2017]), explaining that, in *Marblegate*, the restructuring transaction preserved the minority noteholder’s legal right to receive payment due on the notes and to sue the issuer for failure to make such payment whereas, in this case, the foreclosure cancelled the notes, terminating the legal right to receive payment.

SOCIAL SERVICES

Matter of Leggio v Devine (34 NY3d 448)

The Court upheld the Office of Temporary Disability Assistance’s (OTDA) determination that child support funds are considered household income for purposes of determining eligibility for the federal

Supplemental Nutrition Assistance Program (SNAP), even where a portion of those funds exclusively support college students ineligible to receive SNAP benefits. The Court held that OTDA’s interpretation of applicable statutes and regulations represents a policy decision within the cooperative federalism framework of a national program committed to state administration. Because OTDA’s determination that child support is household income is not irrational, it is entitled to deference. The Court further held that in New York, students living at home are considered to be household members, thus the maintenance exclusion of 7 USC § 2014 (d) (6), which excludes funds that are received and used for the care and maintenance of a third-party beneficiary who is not a household member, does not apply to funds collected and used for their benefit.

TOWNS

Matter of Town of Irondequoit v County of Monroe (36 NY3d 177)

In this dispute between a County and two of its Towns, the question was which governmental entity suffers the loss if a property owner fails to pay maintenance, repair and demolition charges incurred in connection with real property. Under Real Property Tax Law (RPTL) 936, counties are required to guarantee and credit towns for “unpaid delinquent taxes” assessed by towns and listed on their annual tax rolls. For decades, the Towns of Irondequoit and Brighton included in their annual accounting of unpaid delinquent taxes the amount of unpaid property maintenance, repair and demolition charges they incurred in their efforts to combat community blight – charges the Towns are statutorily authorized to assess against real

property if not timely reimbursed by the property owners. For decades Monroe County credited those charges to the Towns as unpaid delinquent taxes. However, when the County unilaterally halted this practice in 2016, contending the charges were not “taxes” the County was obligated to credit, the Towns brought this CPLR article 78 proceeding challenging the determination as arbitrary, capricious and contrary to law. After carefully reviewing the relevant provisions of the Town Law and the byzantine RPTL statutory scheme, the Court agreed with the Towns that the charges must be guaranteed and credited by counties under RPTL 936, rejecting the County’s assertion that the charges were categorically excluded, given (among other things) the broad definition of “delinquent tax” in RPTL 1102 (2), which cross-references section 936. The Court concluded that this construction, which shifts the risk of loss to counties, accords with the overall structure for the enforcement of property tax liens, in which the Legislature granted exclusive authority to counties to commence in rem proceedings to foreclose on real property to “enforce the payment of delinquent taxes or other lawful charges which have accumulated and become liens against certain property.”

UNEMPLOYMENT INSURANCE

Matter of Vega (Postmates Inc. – Commissioner of Labor) (35 NY3d 131)

In this CPLR article 78 challenge, the Court held that substantial evidence supported the Unemployment Insurance Appeals Board’s determination that couriers hired by Postmates Inc. – an on-demand delivery business that solicits employees and couriers using a website and smartphone application – are

employees for whom Postmates is required to make unemployment insurance fund contributions, as opposed to independent contractors. Noting that the touchstone of the analysis is whether the employer exercised control over the results produced by the worker or the means used to achieve those results – and recognizing that the relevant indicia of control vary depending on the nature of the work – the Court concluded the Board’s finding was supported by record evidence that Postmates dominated significant aspects of its couriers’ work by dictating to whom they can deliver, where to deliver requested items, effectively limiting the time frame for delivery and controlling all aspects of pricing and payment. The fact that the couriers could choose their work schedules (by logging into the application) and specific delivery routes did not dictate a finding that they were independent contractors operating their own businesses.

WORKERS’ COMPENSATION

Matter of O’Donnell v Erie County (35 NY3d 14)

When a worker suffers a job-related disability that is permanent but partial, meaning that the worker may retain some ability to work, and the worker’s wage income is reduced, the worker may be eligible for benefits under the Workers’ Compensation Law if the worker demonstrates a causal link between the disability and the reduction in income. When claimant filed for such relief, her former employer conceded that claimant was permanently partially disabled and that she had involuntarily retired from her former employment, but argued that her lack of income was caused not by her disability but by her unwillingness to find other work. Under *Matter of Zamora v New*

York Neurologic Assoc. (19 NY3d 186 [2012]), the Workers' Compensation Board can infer from a permanent partial disability claimant's involuntary retirement from a former job that the claimant's disability caused the claimant's reduction in earnings; whether the Board should do so depends upon the nature of the disability and the nature of the claimant's work in a given case. After awarding claimant worker's compensation relief and successfully defending that award before the Appellate Division, the Board reversed course before this Court, saying its internal practice was to infer causation from involuntary retirement only when the employer did not contest causation, and to always require that claimant demonstrate willingness to work if the employer did contest causation; it had wrongly deviated from that practice here. In light of the unusual procedural posture, the Court sent the case back to the Board for further proceedings without determining whether it had violated administrative precedent or whether such a rule would be lawful.

ZONING

Matter of Peyton v New York City Bd. of Stds. & Appeals (36 NY3d 271)

The New York City Zoning Resolution requires a minimum amount of "open space" in certain residential districts. In this CPLR article 78 proceeding, the Court considered whether the Zoning Resolution's definition of open space requires an area to be accessible to the residents of every building on a zoning lot containing multiple, separately owned buildings. The agency charged with administering the Zoning Resolution, the Board of Standards and Appeals of the City of New York (BSA), has interpreted "open space" to encompass areas accessible

to a single building's residents as long as the residents of each building on the zoning lot receive an allocation of open space equal to or in excess of what would be required if each building were located on its own zoning lot. Based on the Zoning Resolution's text, structure, legislative history, and purpose, and giving due deference to the agency's expertise, the Court held that the BSA's interpretation was not arbitrary, capricious, or contrary to law.

2020 Events

State of Our Judiciary



On February 26, 2020, Chief Judge Janet DiFiore delivered the State of Our Judiciary at Court of Appeals Hall. The State of Our Judiciary focused on several priorities that are fundamental to the present and future viability of the New York State courts: constitutional simplification of our courts; implementing presumptive early Alternative Dispute Resolution, or “ADR,” for civil litigation in our courts; and criminal justice reform.

Law Day 2020

Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100.



Chief Judge DiFiore, Law Day 2020,
videoconference message.

For the past 30 years, the Court of Appeals has co-hosted the annual Law Day ceremony with the Attorney General of the State of New York. In 2020, the Court continued the tradition, albeit in a very different way due to the coronavirus pandemic. Unable to gather in person at Court of Appeals Hall to commemorate Law Day, the Chief Judge, Attorney General Letitia James, and New York State Bar Association President Hank Greenberg celebrated Law Day via videoconference messages. The Chief Judge's message to the public was clear and unwavering: our justice system remains strong and resilient; our respective institutions are working together to ensure access to justice; and we are supporting and upholding the rule of law, standing together against the disruption of the moment.

The 2020 Law Day theme was: "Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100." Participants reflected on the historic contributions of pioneering suffragettes, including women like Elizabeth Cady Stanton and Susan B. Anthony, who started a movement for equality and justice in New York with the 1848 Seneca Falls Women's Rights Convention, which ultimately led to the 19th Amendment granting women the right to vote.

Socially Distanced Oral Arguments

To comply with public health guidelines, beginning in March 2020, the Court held oral arguments with the Judges of the Court and arguing counsel each at least six feet apart in the Richardson Courtroom at Court of Appeals Hall. In June 2020, the Court held oral arguments remotely, with counsel arguing via videoconference.

Oral Argument, March 2020
Richardson Courtroom
Court of Appeals Hall



Oral Argument,
June 2020
Counsel via
Videoconference

Appendices

Appendix 1

Judges of the Court of Appeals

Appendix 2

Nonjudicial Staff and Personnel Changes

Appendix 3

Appeals Decided by Jurisdictional Predicate (2020)

Appendix 4

Appeals Analysis (2016-2020)

All Appeals – Civil and Criminal

Civil Appeals – Type of Disposition

Criminal Appeals – Type of Disposition

Appendix 5

Civil Appeals Decided by Jurisdictional Predicate (2016-2020)

Appendix 6

Criminal Appeals Decided by Jurisdictional Predicate (2016-2020)

Appendix 7

Motions (2016-2020)

Appendix 8

Criminal Leave Applications (2016-2020)

Appendix 9

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2016-2020)

Appendix 10

Office for Professional Matters (2016-2020)

Judges of the Court of Appeals

Chief Judge

Hon. Janet DiFiore

Associate Judges

Hon. Jenny Rivera

Hon. Leslie E. Stein

Hon. Eugene M. Fahey

Hon. Michael J. Garcia

Hon. Rowan D. Wilson

Hon. Paul G. Feinman



Nonjudicial Staff

Allen, James A.*	Senior Court Attorney, Central Staff
Amyot, Leah Soule	Senior Principal Law Clerk to Judge Stein
Asiello, John P.	Clerk of the Court
Augustyn, Adam*	Senior Court Attorney, Central Staff
Barile, Robert	HVAC Assistant Building Superintendent
Bielawski, Julia Smead	Assistant Consultation Clerk
Brizzie, Gary J.	Assistant Building Superintendent I
Byer, Ann	Secretary to the Court of Appeals
Byrne, Cynthia D.	Criminal Leave Applications Clerk
Calvay-Benedetto, Patricia	Secretary to Judge Wilson
Cassara, Christian	Court Attorney, Central Staff
Chaudhry, Zainab	Principal Court Attorney
Chest, Wesley	Senior Associate Computer Applications Programmer
Clark, Judith A.	Principal Stenographer
Costa, Gary Q.	Senior Court Building Guard
Coughlin, Monica	Special Projects Coordinator
Couser, Lisa A.	Senior Clerical Assistant
Cross, Robert J.	Senior Court Building Guard
Culligan, David O.	Senior Clerical Assistant
Damrosch, Peter	Law Clerk to Judge Wilson
Davis, Heather	Deputy Clerk of the Court
Delgosha, Anita	Senior Court Attorney, Central Staff
Ding, Leo	Assistant Law Clerk to Judge Garcia
Donnelly, William E.	Senior Assistant Building Superintendent
Drumm, Lori	Principal Stenographer
Drury, Lisa	Special Projects Counsel
Eddy, Margery Corbin	Chief Court Attorney
Engel, Hope B.	Consultation Clerk
Ford, Catherine*	Law Clerk to Judge Wilson
Ford-Savarese, Laura	Law Clerk to Judge Wilson
Gadson, Ronald	Deputy Chief Security Attendant
Galvao, Antonio	Counsel to Chief Judge DiFiore
Garcia, Heather A.	Senior Security Attendant

* As of January 1, 2021, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

Nonjudicial Staff

Garnes, Lisa	Assistant Court Analyst
Gerber, Matthew*	Senior Security Attendant
Gersztzoff, Stephen	Senior Law Librarian
Gilbert, Marianne*	Principal Stenographer
Golebiowski, Jacob	Senior Local Area Network Administrator
Groschadl, Laura A.	Senior Principal Law Clerk to Judge Fahey
Guenthner, Franklin*	Assistant Law Clerk to Judge Feinman
Gyori, Elizabeth*	Law Clerk to Judge Rivera
Haas, Tammy L.	Principal Assistant Building Superintendent
Hartnagle, Anthony	Senior Custodial Aide
Henney, Scott	Law Clerk to Judge Rivera
Hickey, Meaghan*	Court Analyst
Hoffmann, Stephanie*	Senior Court Attorney, Central Staff
Holman, Cynthia M.	Principal Stenographer
Hosang-Brown, Yanique	Management Analyst
Hulse, Emma	Law Clerk to Judge Wilson
Ignazio, Andrea R.	Principal Stenographer
Irwin, Nancy J.*	Principal Stenographer
Jurkowski, Stephanie	Senior Court Attorney, Central Staff
Kaiser, Warren	Senior PC Analyst
Keiter, Owen*	Law Clerk to Judge Rivera
Kenny, Krysten	Senior Principal Law Clerk to Judge Stein
Knepka, Megan	Court Attorney, Central Staff
Lane, Brian C.	Senior Court Building Guard
LaPorte, Azahar	Secretary to Judge Rivera
Lawrence, Bryan D.	Chief Management Analyst
Lazarus, Benjamin*	Law Clerk to Judge Wilson
LeBow, Matthew	Deputy Chief Security Attendant
LeCours, Lisa A.	Executive Assistant to Chief Judge DiFiore
Levin, Justin	Senior Principal Law Clerk to Judge Feinman
Lyon, Gordon W.	Senior Principal Law Clerk to Judge Fahey
MacVean, Rachael M.	Chief Motion Clerk
Maller-Stein, Rebecca*	Senior Law Clerk to Judge Feinman
Maniscalco, Stephen	Senior Law Clerk to Judge Feinman

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Nonjudicial Staff

Manring, Gregory	Senior Law Clerk to Judge Garcia
Martino, Regina	Principal Stenographer
Mason, Marissa K.	Principal Law Librarian
Mayo, Michael J.	Building Manager
McCormick, Lauren	Court Attorney, Central Staff
McGlothlin, William	Assistant Law Clerk to Judge Stein
Mendias, Ryan	Law Clerk to Judge Rivera
Molho, Graham	Senior Court Attorney, Central Staff
Moon, Chloe*	Law Clerk to Judge Wilson
Moore, Travis R.	Senior Security Attendant
Muller, Joseph J.	Senior Security Attendant
Mulyca, Jonathan A.	Court Analyst
Nania, Anthony	Law Clerk to Chief Judge DiFiore
O'Friel, Jennifer A.	Senior Principal Law Clerk to Chief Judge DiFiore
Ohanian, Edward J.	Assistant Deputy Clerk
Oken, Lindsey*	Principal Law Clerk to Judge Garcia
O'Rourke, Joseph C.	Principal Law Clerk to Judge Stein
Pasquarelli, Angela M.	Senior Services Aide
Pastrick, Michael	Senior Principal Law Clerk to Judge Fahey
Pavlini, Sarah	Court Attorney, Central Staff
Radley, Kelly	Principal Custodial Aide
Rappoport, Gaspard	Law Clerk to Judge Feinman
Riegel, Joshua	Senior Law Clerk to Judge Rivera
Rodriguez, Steven	Senior Court Building Guard
Roe, Jennifer L.	Senior Court Building Guard
Ross-Carroll, Amanda	Director Court of Appeals Management & Operations
Rutbeck-Goldman, Ariela*	Senior Court Attorney, Central Staff
Schickler, Carmiel*	Law Clerk to Judge Garcia
Schwartzman, Nina	Senior Court Attorney, Central Staff
Shain, Aliya*	Senior Court Attorney, Central Staff
Sherwin, Stephen P.	Deputy Chief Court Attorney

* As of January 1, 2021, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

Nonjudicial Staff

Shevlin, Denise C.	Senior Security Attendant
Skinner, Erin S.	Senior Court Attorney, Central Staff
Somerville, Robert*	Senior Court Building Guard
Spencer, Gary H.	Public Information Officer
Sullivan, Kayley	Law Clerk to Judge Garcia
Terranova, Charles	Court Attorney, Central Staff
Tolon, Elizabeth*	Assistant Law Clerk to Judge Garcia
Torres, Samuel	Senior Security Attendant
VanDeloo, James F.	Deputy Building Superintendent
Waithe, Nelvon H.	Senior Court Building Guard
Warenchak, Andrew R.	Principal Custodial Aide
Welch, Joseph*	Court Analyst
Welch, Mary K.	Secretary to Judge Fahey
Wheelock, Kathryn	Law Clerk to Chief Judge DiFiore
Wilkerson, Elizabeth*	Senior Law Clerk to Chief Judge DiFiore
Wilson, Mark	Senior Court Building Guard
Wilson, Michele	Principal Custodial Aide
Winkley, Nicholas D.	Senior Court Attorney, Central Staff
Wood, Margaret N.	Assistant Deputy Clerk
Yalamas, George C.	Chief Security Attendant
Yoon, Sera	Court Attorney, Central Staff
Zucker, Aaron	Law Clerk to Judge Garcia

* As of January 1, 2021, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

Personnel Changes

APPOINTMENTS	
Cassara, Christian	Court Attorney, Central Staff
Damrosch, Peter	Law Clerk to Judge Wilson
Ding, Leo	Assistant Law Clerk to Judge Garcia
Ford-Savarese, Laura	Law Clerk to Judge Wilson
Henney, Scott	Law Clerk to Judge Rivera
Hulse, Emma	Law Clerk to Judge Wilson
Knepka, Megan	Court Attorney, Central Staff
Martino, Regina	Principal Stenographer
McCormick, Lauren	Court Attorney, Central Staff
Mendias, Ryan	Law Clerk to Judge Rivera
Nania, Anthony	Law Clerk to Chief Judge DiFiore
Pavlini, Sarah	Court Attorney, Central Staff
Rappoport, Gaspard	Law Clerk to Judge Feinman
Sullivan, Kayley	Law Clerk to Judge Garcia
Terranova, Charles	Court Attorney, Central Staff
Yoon, Sera	Court Attorney, Central Staff
Zucker, Aaron	Law Clerk to Judge Garcia
PROMOTIONS	
Clark, Judith A.	Principal Stenographer
Delgosha, Anita	Senior Court Attorney, Central Staff
Jurkowski, Stephanie	Senior Court Attorney, Central Staff
Maniscalco, Stephen	Senior Law Clerk to Judge Feinman
Manring, Gregory	Senior Law Clerk to Judge Garcia
Molho, Graham	Senior Court Attorney, Central Staff
O'Rourke, Joseph C.	Principal Law Clerk to Judge Stein
Riegel, Joshua	Senior Law Clerk to Judge Rivera
Schwartzman, Nina	Senior Court Attorney, Central Staff
Skinner, Erin S.	Senior Court Attorney, Central Staff
Wilkerson, Elizabeth	Senior Law Clerk to Chief Judge DiFiore
Winkley, Nicholas D.	Senior Court Attorney, Central Staff

Personnel Changes

COMPLETION OF CLERKSHIPS, RESIGNATIONS, RETIREMENTS	
Allen, James A.	Senior Court Attorney, Central Staff
Augustyn, Adam	Senior Court Attorney, Central Staff
Ford, Catherine	Law Clerk to Judge Wilson
Gerber, Matthew	Senior Security Attendant
Gilbert, Marianne	Principal Stenographer
Guenthner, Franklin	Assistant Law Clerk to Judge Feinman
Gyori, Elizabeth	Law Clerk to Judge Rivera
Hickey, Meaghan	Court Analyst
Hoffmann, Stephanie	Senior Court Attorney, Central Staff
Irwin, Nancy J.	Principal Stenographer
Keiter, Owen	Law Clerk to Judge Rivera
Lazarus, Benjamin	Law Clerk to Judge Wilson
Maller-Stein, Rebecca	Senior Law Clerk to Judge Feinman
Moon, Chloe	Law Clerk to Judge Wilson
Oken, Lindsey	Principal Law Clerk to Judge Garcia
Rutbeck-Goldman, Ariela	Senior Court Attorney, Central Staff
Schickler, Carmiel	Law Clerk to Judge Garcia
Shain, Aliya	Senior Court Attorney, Central Staff
Somerville, Robert	Senior Court Building Guard
Tolon, Elizabeth	Assistant Law Clerk
Welch, Joseph	Court Analyst
Wilkerson, Elizabeth	Senior Law Clerk to Chief Judge DiFiore

Appeals Decided by Jurisdictional Predicate (2020)

Basis of Jurisdiction:						
All Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Appellate Division Dissents	4	5	2	1	0	12
Permission of Court of Appeals/Judge thereof	24	30	3	1	0	58
Permission of Appellate Division/Justice thereof	11	7	1	0	0	19
Constitutional Question	0	1	2	0	0	3
Stipulation for Judgment Absolute	0	0	0	0	0	0
CPLR 5601(d)	0	0	0	0	0	0
Other	0	0	0	0	4	4
Totals	39	43	8	2	4	96

* Includes final determinations of Rule 500.27 certified questions and proceedings seeking review of determinations of the State Commission on Judicial Conduct pursuant to Judiciary Law § 44(8).

Appeals Decided by Jurisdictional Predicate (2020)

Basis of Jurisdiction:						
Civil Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Appellate Division						
Dissents	4	5	2	1	0	12
Permission of Court of Appeals	14	7	3	0	0	24
Permission of Appellate Division	6	4	1	0	0	11
Constitutional Question	0	1	2	0	0	3
Stipulation for Judgment Absolute	0	0	0	0	0	0
CPLR 5601(d)	0	0	0	0	0	0
Other	0	0	0	0	4	4
Totals	24	17	8	1	4	54
Basis of Jurisdiction:						
Criminal Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Permission of Court of Appeals Judge	10	23	0	1	0	34
Permission of Appellate Division Justice	5	3	0	0	0	8
Totals	15	26	0	1	0	42

* Includes final determinations of Rule 500.27 certified questions and proceedings seeking review of determinations of the State Commission on Judicial Conduct pursuant to Judiciary Law § 44(8).

Appeals Analysis (2016-2020)

All Appeals — Civil and Criminal					
	2016	2017	2018	2019	2020
Civil	52% (118 of 225)	56% (80 of 142)	63% (86 of 136)	56% (60 of 108)	56% (54 of 96)
Criminal	48% (107 of 225)	44% (62 of 142)	37% (50 of 136)	44% (48 of 108)	44% (42 of 96)
Civil Appeals — Type of Disposition					
	2016	2017	2018	2019	2020
Affirmed	54%	47%	58%	48%	41%
Reversed	30%	33%	30%	38%	45%
Modified	7%	10%	7%	5%	8%
Dismissed	1%	1%	0%	3%	2%
Other*	8%	9%	5%	5%	4%
Criminal Appeals — Type of Disposition					
	2016	2017	2018	2019	2020
Affirmed	67%	63%	62%	69%	36%
Reversed	28%	34%	38%	27%	62%
Modified	3%	1.5%	0%	4%	0%
Dismissed	2%	1.5%	0%	0%	2%
Other*	0%	0%	0%	0%	0%

* E.g., final determinations of Rule 500.27 certified questions and proceedings seeking review of determinations of the State Commission on Judicial Conduct pursuant to Judiciary Law § 44(8).

Civil Appeals Decided by Jurisdictional Predicate (2016-2020)

	2016**	2017	2018	2019	2020
Appellate Division Dissents	12% (14 of 118)	21% (17 of 80)	17% (15 of 86)	30% (18 of 60)	22% (12 of 54)
Permission of Court of Appeals	45% (54 of 118)	30% (24 of 80)	36% (31 of 86)	42% (25 of 60)	44% (24 of 54)
Permission of Appellate Division	27% (32 of 118)	33% (26 of 80)	37% (32 of 86)	18% (11 of 60)	20% (11 of 54)
Constitutional Question	6% (7 of 118)	5% (4 of 80)	2.5% (2 of 86)	3% (2 of 60)	6% (3 of 54)
Stipulation for Judgment Absolute	0% (0 of 118)	1% (1 of 80)	0% (0 of 86)	0% (0 of 60)	0% (0 of 54)
CPLR 5601(d)	1% (1 of 118)	1% (1 of 80)	2.5% (2 of 86)	2% (1 of 60)	0% (0 of 54)
Supreme Court Remand	0% (0 of 118)	0% (0 of 80)	0% (0 of 86)	0% (0 of 60)	0% (0 of 54)
Judiciary Law § 44*	2% (2 of 118)	1% (1 of 80)	2.5% (2 of 86)	0% (0 of 60)	4% (2 of 54)
Certified Question (Rule 500.27)**	7% (8 of 118)	8% (6 of 80)	2.5% (2 of 86)	5% (3 of 60)	4% (2 of 54)
Other	0% (0 of 118)	0% (0 of 80)	0% (0 of 86)	0% (0 of 60)	0% (0 of 54)

* Includes judicial conduct matters.

** The 2016 numbers include decisions accepting certifications.

Criminal Appeals Decided by Jurisdictional Predicate (2016-2020)

	2016	2017	2018	2019	2020
Permission of Court of Appeals Judge	75% (80 of 107)	70% (43 of 62)	60% (30 of 50)	67% (32 of 48)	81% (34 of 42)
Permission of Appellate Division Justice	25% (27 of 107)	30% (19 of 62)	40% (20 of 50)	33% (16 of 48)	19% (8 of 42)

Motions (2016-2020)

	2016	2017	2018	2019	2020
Motions Submitted for Calendar Year	1183	1237	1238	1182	954
Motions Decided for Calendar Year*	1232	1196	1180	1096	1070
Motions for Leave to Appeal	910	920	926	843	870
Granted	17	38	31	18	32
Denied	689	718	674	640	663
Dismissed	199	164	221	184	171
Withdrawn	5	6	4	1	4
Motions to Dismiss Appeals	4	6	3	6	3
Granted	3	2	1	2	2
Denied	1	4	2	4	1
Dismissed	0	0	0	0	0
Withdrawn	0	0	0	0	0
Sua Sponte and Court's Own Motion Dismissals	96	94	101	118	97
Total Dismissals of Appeals	99	96	102	120	99
Motions for Reargument of Appeal	29	24	27	24	23
Granted	0	0	0	0	0
Motions for Reargument of Motion	72	57	59	68	55
Granted	0	0	1	0	0
Motions for Assignment of Counsel	46	36	29	27	23
Granted	46	36	29	27	23
Legal Aid	5	4	6	7	4
Denied	0	0	0	0	0
Dismissed	0	0	0	0	0
Motions for Poor Person Status	184	238	244	194	205
Granted	3	6	5	6	4
Denied	1	0	1	0	0
Dismissed	180	232	238	188	201

* 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 (2016-2020)

	2016	2017	2018	2019	2020
Motions for Amicus Curiae Relief	117	112	92	79	71
Granted	114	106	89	75	70
Motions to Waive Rule Compliance	0	0	0	0	0
Granted	0	0	0	0	0
Motions to Vacate Dismissal/Preclusion	8	6	5	1	6
Granted	7	3	4	0	3
Motions for Leave to Intervene	0	1	0	0	0
Granted	0	0	0	0	0
Motions to Stay/Vacate Stay	29	32	39	29	20
Granted	1	0	1	1	2
Denied	2	1	2	2	2
Dismissed	26	31	36	26	16
Withdrawn	0	0	0	0	0
Motions for CPL 460.30 Extension	22	16	17	18	12
Granted	21	16	17	18	12
Motions to Strike	5	3	0	4	2
Granted	1	1	0	3	2
Motions to Amend Remittitur	0	0	0	0	1
Granted	0	0	0	0	0
Motions for Miscellaneous Relief	30	21	23	34	27
Granted	2	3	2	1	2
Denied	17	7	2	24	12
Dismissed	11	11	19	9	13
Withdrawn	0	0	0	0	0

Criminal Leave Applications (2016-2020)

	2016	2017	2018	2019	2020
Total Applications Assigned	2211	2275	2406	2408	1729
Total Applications Decided*	2497	2244	2319	2493	1824
Granted	33	25	36	34	29
Denied	2230	2042	2128	2265	1668
Dismissed	221	172	153	188	117
Withdrawn	13	5	2	6	10
Total People's Applications	66	65	49	75	38
Granted	10	7	4	15	4
Denied	48	52	42	52	29
Dismissed	2	5	2	3	1
Withdrawn	6	1	1	5	4
Average Number of Applications Assigned to Each Judge**	358	374	344	344	247
Average Number of Grants for Each Judge	5	4	5	5	4

* Includes some applications assigned in previous year.

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

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2016-2020)

	2016	2017	2018	2019	2020
Total number of inquiry letters sent	57	80	80	80	68
Withdrawn on stipulation	1	0	4	0	2
Dismissed by Court	44	49	50	56	48
Transferred to Appellate Division Sua Sponte	1	4	3	6	2
Appeals allowed to proceed in normal course (a final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	3	8	6	2	4
Jurisdiction retained – appeals decided	1	2	0	0	0
Inquiries pending at year's end	7	17	17	16	12

Office for Professional Matters (2016-2020)

	2016	2017	2018	2019	2020
Attorneys Admitted*	8,423	8,203	8,750	8,537	8,276
Registered In-House Counsel	135	162	133	141	71
Certificates of Admission	123	98	133	131	152
Clerkship Certificates	6	2	3	4	2
Petitions for Waiver**	314	270	259	322	309
Written Inquiries	98	75	78	98	128
Disciplinary Orders***	611	3,551	471	763	1,889
Name Change Orders	850	981	917	965	483

* 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 2016, 2017, 2019 and 2020 numbers include orders involving multiple attorneys' violation of the biennial registration requirement (see Judiciary Law § 468-a).

