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New York Criminal Law Newsletter

A publication of the Criminal Justice Section
of the New York State Bar Association

THE NEW YORK COURT OF APPEALS

THE COURT ON THE BENCH

(left to right) Eugene F. Pigott, Jr., Susan Phillips Read, Carmen Beauchamp Ciparick, Chief Judge Jonathan Lippman, Victoria A. Graffeo, Robert S. Smith, Theodore T. Jones, Jr.

See "A Personal Look at the New York Court of Appeals" on page 11

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Table of Contents

Message from the Chair

A Personal Commentary—Who Owns the Criminal Justice System?

With the advent of DNA profiling in 1984, a new age began: The Era of the Wrongful Conviction.

Fast Forward to the present—it has been a rough twenty-seven years for prosecutors and police. The Innocence Project's 273 post-DNA exonerations—the majority of which were caused by mistaken identifications and secondarily by faulty forensic evidence (and the remainder owing to false confessions and incriminating statements, informants and bad lawyering)—have shaken the public's belief in the fairness of the criminal justice system. It is one thing to exclaim that the system is not perfect, but a whole other reality to comprehend free fall.

Wrongful convictions are systemic, not accidental, rare or isolated. History tells us that in a democracy the tried and true method for reform is legislation to correct the problems. In recent years, a new paradigm has emerged which eschews democratic reform through elected representation and seeks improvement through the voluntary efforts—guidelines—proposed and controlled by prosecutors.

Prosecutors have an obligation as representatives of all in the criminal justice system to espouse improvements. The problem arises, however, when reform efforts are encapsulated in prosecutorial rules which are offered under a "my way or the highway" only rubric. An excellent example of this approach can be found in the recent decision by the New Jersey Supreme Court, *New Jersey v. Henderson*, 2011 WL 3687539 (2011), which addressed the inherent problems of eyewitness identification, based on some 200 published social science studies which revealed that indeed identification is malleable, subject to systemic (lineup procedures) or estimator variables (lighting conditions, presence of a weapon, etc.) which affect and dilute memory leading to misidentifications, concluding that the current standards for assessing eyewitness identification do not offer a measure of reliability or sufficiently deter police conduct. The N.J. Supreme Court called for new rules, such as full exploration of all variables at pre-trial hearings, and new jury instructions to aid jurors in properly weighing the evidence.

In 2001, the N.J. Attorney General incorporated scientific research on system variables into "thorough and exacting" guidelines it used to improve eyewitness identification. In *Henderson* the defense argued that a violation of the Attorney General's Guidelines should result in an automatic finding of impermissible suggestiveness, while the prosecutors suggested such a standard would penalize the AG for even adopting guidelines and would reward defendants who intimidate witnesses. The *Henderson* court held that the AG's Guidelines are "best practices." The suggestion that the Court defer to other government branches to deal with an evolving social science landscape was rejected, the Court noting that it remains the Court's obligation to guarantee that constitutional requirements are met…"

"Wrongful convictions are systemic, not accidental, rare or isolated."

In May, 2010 New York State Law Enforcement agencies announced voluntary "best practices" guidelines for photo array and lineup procedures. Sixteen months later, the "rollout" of these guidelines and their implementation by police departments continue. Of course, these best practices, all accomplished with no input from the defense bar, or for that matter any neutral organizations, are not mandatory, and at a recent meeting of the Section one prosecutor opined that she would not stipulate to the procedures at a *Wade* hearing. This refusal undercuts the impact of the "reforms." Without the stipulation, defense counsel would be hamstrung in their efforts during cross-examination at a *Wade* hearing to show that violations of the best practices should be considered evidence of impermissible suggestiveness. In fact, it would be impossible to get past a district attorney's relevance objection in those instances where a police department did not implement the best practices guidelines.

Prosecutors are comfortable with the current *Wade* hearing scheme as it is applied in New York. They should be. It favors findings of non-suggestibility, since after meeting their initial burden of going forward to show the identification procedures were not suggestive, the burden shifts to the defense to show suggestibility. This latter task has proven to be almost impossible, primarily because of the constricted scope of cross-examination afforded the defense in most New York courts. Once the court hears that system variables appear to be constitutional, the hearing, for all intents and purposes, is over. Thus what the *Henderson* court recognized as an important factor for courts to consider—namely estimator variables largely the result of self-reporting by the eyewitness—are never heard at a pre-trial *Wade* hearing by the court. There is, and has been for over thirty years, a reluctance to have complainants testify at and be subjected to cross-examina-

tion at *Wade* hearings, since this can only engender a transcript which the defense may use at trial (putting aside for the moment the very real possibility that this information could lead a court to find the identification is not valid). Thus suggestive identifications procedures, which can result in altering the memory of eyewitnesses to the point that the eyewitness expresses total confidence in his or her identification before a jury, are rewarded under New York's *Wade* scheme. Until New York recognizes the linkage between reforming rules for how *Wade* hearings are decided, then prosecutors' current and proposed best practices have the effect of solidifying mistaken identifications, not improving the current state of affairs.

Defense counsel are not without blame, either. There has been a lack of aggressiveness in investigating how photo procedures are conducted, and almost no demand for courts to permit admission into evidence at *Wade* hearings the very photo array books used by the police (especially in gang-related activity cases). Cross-examination needs to be much more intensive and well-planned in bringing to the fore the not-so-obvious methodologies utilized to create suggestibility.

So who owns the criminal justice system? Maybe we should ask Michael Morton of Austin, Texas, who was exonerated of the 1986 killing of his wife, or Jacques Rivera, exonerated of the 1990 Chicago conviction for a gang-related murder secured with false evidence from the star and sole eyewitness witness, or Obie Anthony of Los Angeles, whose 1994 conviction was overturned when it was conclusively shown that the state's star witness, a pimp, had lied after cutting a deal with prosecutors. All three were released from prison on October 4, 2011, after spending a combined six decades behind bars. In the Era of The Wrongful Conviction, best practices indeed.

Marvin Schechter

Message from the Editor

With this issue we begin our tenth year of publishing the *New York Criminal Law Newsletter*. We have endeavored to make our issues both interesting and informative. Over the years, we have covered a variety of issues affecting the practice of criminal law, and have tried to keep up to date with any statutory and case law developments. We have attempted to provide this information to criminal law practitioners in an expeditious basis. I thank our members for their continued support and continue to request articles for possible publication and comments regarding our publication.

In this issue, we present our annual review of newly enacted criminal law legislation, which has been prepared for us by Judge Barry Kamins. Judge Kamins has been preparing this annual update almost from the inception of our *Newsletter*, and we thank him for his continued service to our *Newsletter* and our Section.

Both the New York Court of Appeals and the United States Supreme Court commenced hearing cases in the fall, following their summer recesses. Several significant decisions have already been rendered from those Courts, and we summarized those matters in the appropriate sections of our issue. In a special feature article, we also provide a personal look at the individual members of the New York Court of Appeals, and offer some brief summaries on their backgrounds, characteristics and judicial philosophies. Although the New York Court of Appeals acts as one body, it is comprised of seven distinct individuals, and we provide our readers with a look at the individuals behind the decisions.

In our For Your Information section, we provide final details regarding the recommendation of the Special Commission with respect to judicial salaries, as well as statistics and comments regarding the national crime situation and economic conditions in the Nation.

As in the past, the New York State Bar Association and our Criminal Justice Section will be holding their Annual Meeting in New York City. This year the meeting will be held at the Hilton New York, located at 1335 Avenue of the Americas (6th Avenue). The date for the Section meeting, CLE program and luncheon has been scheduled for Thursday, January 26, 2012. As in the past, our Section will also be presenting several awards to distinguished members of the legal profession who have exhibited exemplary legal skills or service to the community. Details regarding these events have been forwarded in a separate mailing, and we hope that many of our members are able to attend.

Spiros A. Tsimbinos

Request for Articles

If you have written an article and would like to have it considered for publication in *New York Criminal Law Newsletter*, please send it to the Editor-in-Chief:

Spiros A. Tsimbinos
1588 Brandywine Way
Dunedin, FL 34698
(718) 849-3599 (NY)
(727) 733-0989 (Florida)

Articles should be submittted in electronic document format (pdfs are NOT acceptable), and include biographical information.

www.nysba.org/CriminalLawNewsletter

Newly Enacted Criminal Law Justice Legislation

By Hon. Barry Kamins

This column will discuss new criminal justice legislation signed into law by Governor Cuomo that contains amendments to the Penal Law, Criminal Procedure Law, Vehicle and Traffic Law and other related statutes. It is recommended that the reader review the legislation for specific details as the following discussion will primarily highlight key provisions of the new laws.

The Legislature has created a number of new crimes. One of them, Assault on a Judge (L.2011, Ch. 148, eff. November 17, 2011), provides stronger protection for judges who are physically attacked by providing for enhanced penalties that already exist for certain groups, i.e. peace officers, police officers, firefighters and emergency medical services professionals. Assault on a Judge (either a judge of a court of record or a justice court), causing serious physical injury without a weapon while in the performance of his or her official duties, is now a Class C felony, punishable by up to fifteen years in jail; normally, intentionally causing serious physical injury without a weapon is punishable by a maximum of seven years in jail, as a Class D felony.

The Legislature has responded to newspaper accounts of prostitutes working in the shadow of a Bronx elementary school by enacting the crime of Prostitution in a School Zone (L.2011, Ch. 191, eff. November 17, 2011), a Class A misdemeanor. A person will be guilty of the crime if he or she is over the age of 19 and commits the crime of prostitution during school hours within a school "zone," i.e. any property adjacent to the boundary line of a school, and when the defendant knows or reasonably should know that the prostitution activity is within the direct view of children attending such school.

New laws ban the sale of smoking paraphernalia (hookahs, water pipes, etc.) and shisha (tobacco mixed with syrup) to individuals under the age of 18 (L.2011, Ch. 131, eff. January 1, 2012). In addition, it is now an unclassified misdemeanor to sell products marketed as bath salts but which contain mephedrone and MDPV (controlled substances) (L.2011, Ch. 130, eff. August 14, 2011). These fake bath salts are already outlawed in three other states.

The Legislature has addressed the use of hidden compartments in motor vehicles that are almost always utilized to transport weapons, controlled substances and the proceeds of drug sales. Occasionally, these secret compartments will be "booby-trapped," causing serious risk to law enforcement. A new Class D felony, Obstruction of Governmental Duties by Explosive Device or Hazardous Substance, criminalizes the placement of an explosive, bomb, or hazardous substance in a compartment that hinders the work of law enforcement (L.2011, Ch. 327, eff. November 1, 2011).

Finally, a new Class A misdemeanor, Unauthorized Radio Transmission, prohibits an unofficial "pirate" radio station from broadcasting without FCC approval (L.2011, Ch. 361, eff. January 31, 2012). In addition, a new offense was enacted under the New York City Administrative Code, relating to the restraint of animals while outdoors (Local Law 10, eff. May 1, 2011). It is now a violation to restrain an animal outdoors for longer than three continuous hours in any twelve-hour period and if an animal is restrained for longer than 15 minutes, it must be provided with adequate food, water and shelter.

In addition to the new crimes mentioned above, the Penal Law has been amended to expand the definition of certain existing crimes. For example, Sexual Abuse in the First Degree has been amended to conform to prior amendments of the rape and criminal sexual act statutes (formerly known as sodomy). It is now a Class D felony for a child under the age of thirteen to be subjected to sexual contact by a person who is twenty-one years of age or older (L.2011, Ch. 26, eff. November 1, 2011).

The sex offense statute was amended to expand criminal liability to a wider range of governmental employees who engage in sexual activity with inmates of state or local correctional institutions to whom they are unmarried. The amendment expands the definition of "employee" to include certain employees of the Department of Corrections and Community Supervision, the Office of Mental Health and the Office of Children and Family Services (L.2011, Ch. 205, eff. November 1, 2011).

The Legislature corrected a drafting oversight that was highlighted by the New York Court of Appeals in *People v. Boothe*, 16 N.Y.3d 195 (2011). When the Legislature enacted a series of insurance fraud penalties in 1998, it added a section defining a fraudulent health care insurance act. However, it failed to add a corresponding section that would have criminalized that act. The Court noted that the Legislature needed to amend the statute accordingly, which it has now done (L.2011, Ch. 211, eff. July 20, 2011).

The Legislature has responded to a series of intemperate protests taking place at military funerals around the country. It has increased the buffer zone around a funeral, memorial service or religious service from 100 to 300 feet; anyone making unreasonable noise within that zone is guilty of a Class A misdemeanor (A.7698, eff. March 21, 2012). A new form of Promoting Prostitution has been added to respond to the distribution of very

graphic business cards in certain residential neighborhoods. It is now unlawful to distribute obscene material to 10 or more people in a public place with the intent to advance or profit from prostitution (L.2011, Ch. 215, eff. November 17, 2011).

The gambling statute has been amended to make clear that coin-operated amusement machines (video games, pinball machines) that provide an extra ball, time or game are *not* "gambling devices" (L.2011, Ch. 8, eff. March 25, 2011). In addition, the Legislature responded to the recent shooting of two state troopers by closing a loophole in the weapon statute that did not prohibit individuals with prior convictions for a felony or serious offense from possessing certain types of weapons. It is now unlawful for that class of individuals to possess muzzle-loading firearms, black powder rifles, black powder shotguns and antique firearms (L.2011, Ch. 357, eff. January 30, 2012).

The music piracy laws have been amended to expand the definition of a "recording" to include a hard drive, flash drive, memory card or other data storage device (L.2011, Ch. 313, eff. November 1, 2011). This will afford more protection to an industry that has been victimized over the last few years and where artists and music retailers have been deprived of hard-earned profits. In addition, the Railroad Law was amended to update the antiquated provisions relating to trespass on railroad property and to reflect the security challenges facing railroads and the public in the post-9/11 world. The new law increases the fine for trespass and prohibits the operation of various types of vehicles on railroad property (L.2011, Ch. 176, eff. January 16, 2012).

Finally, the law has been amended to further protect animals. In order to address this, an amendment increases the penalties for *attending* an animal fighting event. Currently, anyone who promotes animal fighting can be charged with a felony. Typically, during raids of animal fighting, the organizers were able to blend into the crowd as spectators, thereby evading any meaningful punishment. Previously, one who merely attends an event could only be charged with a violation. Attending an event now constitutes a Class B misdemeanor (L.2011, Ch. 332, eff. September 2, 2011).

A number of procedural changes have also been enacted by the Legislature. Under one new provision, a new "180.80 clock" has been created for defendants who, after being released on their own recognizance are re-committed to custody in a felony complaint, e.g. when they do not return to court and are arrested on a bench warrant. The new law does what many judges had been doing without express authorization by the Criminal Procedure Law: fix a new CPL 180.80 period giving the prosecution a new deadline to dispose of the felony complaint by indictment or preliminary hearing (S.4469, eff. October 23, 2011). The new time period commences from the time the court commits the defendant to the custody of the sheriff.

A second change closes a loophole in the statutory double jeopardy provisions of the Criminal Procedure Law. Under prior law, when a defendant was prosecuted in federal court for federal income tax offenses, state officials were barred from bringing similar charges under state law.[1] The new provision creates an additional exception to the existing bar on separate prosecutions based on the same criminal transaction (L.2011, Ch. 186, eff. October 18, 2011).

Two new changes will affect bail procedures. Under one new provision, a non-profit charity, organized under Section 501(c)(3) of the United States Code, is now permitted to post bail on behalf of an indigent defendant, provided it does not charge a premium or receive compensation for doing so (A.8158, eff. 90 days after Governor's signature). A second measure will make it easier for a defendant to post a bail bond secured by real property. In the past, it had been difficult for a person to post such a bond because of the complexity in determining the value of property for purposes of obtaining the bail bond. This forced defendants to bear the cost of using a bail bondsman, who is not required to use any particular system to verify the value of collateral. The procedure was also difficult to navigate by criminal practitioners. Under the new measure, an individual can file an appraisal report certified by a duly licensed state certified general real estate appraiser as evidence of the value of the real property. This will limit the individual's need to use a bail bondsman to determine the value of the collateral (L.2011, Ch. 305, eff. August 3, 2011).

The Legislature has enacted a new measure that will encourage individuals to assist drug users who are in danger of dying from a drug overdose; the measure substantially limits the prosecution of those individuals who are seeking emergency treatment or who are assisting those in need of such treatment (L.2011, Ch. 154, eff. September 18, 2011). New York is the fourth state to enact a Good Samaritan drug law. An individual cannot be prosecuted for possession of a controlled substance (except for an A-I felony or drug sales "involving sale for consideration or other benefit or gain") when he or she, in good faith, seeks health care for someone experiencing a life threatening emergency, and the Good Samaritan is found in possession of drugs. The immunity also extends to the person seeking the emergency health care.

In addition, there is now an affirmative defense to a charge of Criminal Sale of a Controlled Substance (except for an A-I or AII felony) when the controlled substance was obtained as a result of seeking or receiving emergency health care. The defense applies to the Good Samaritan or the person undergoing the emergency provided the defendant has no prior conviction for a Class A-I, A-II or Class B drug felony.

In other procedural changes, a court may now determine, prior to sentence, a defendant's eligibility for a certificate of relief from civil disabilities (L.2011, Ch. 488, eff. August 17, 2011). Finally, the groundwork for efiling in criminal courts has been laid. The Chief Administrative Judge will create an Advisory Committee to evaluate the impact of efiling in criminal courts and a report containing an evaluation and recommendation must be filed by January 1, 2012 and sent to the Governor, Legislature and Chief Judge (A.8368, eff. September 23, 2011).

Each year the Legislature enacts legislation to assist crime victims and this year was no exception. Victims of domestic violence will benefit from a number of new laws. First, one new law closes a gap between federal and state anti-domestic violence laws by preventing individuals who are convicted of certain violent misdemeanors from purchasing firearms. Currently, a federal firearms dealer may not sell a firearm to a person who has been convicted of a misdemeanor involving domestic violence. The problem has been that, up to now, information about New York convictions had not been transmitted to the FBI's criminal background system, thus permitting individuals with prior convictions to purchase a gun.

Under the new law, when a defendant has been convicted of one of four misdemeanors (assault, menacing, forcible touching or criminal obstruction of breathing or blood circulation), and it has been established that the defendant is related to the victim in the manner specified under 18 U.S.C. 921(a)(3)(A)(ii),[2] the clerk of the court must notify the Division of Criminal Justice Services (DCJS). DCJS must then notify the FBI and the defendant is identified as a person prohibited from purchasing and possessing a firearm. The court can make the above finding based upon an admission by the defendant or, after a hearing, in which the prosecution must prove beyond a reasonable doubt that the defendant is related or situated to the victim as specified under Federal law (L.2011, Ch. 258, eff. November 29, 2011).

Domestic violence victims will also benefit from a new law clarifying the date on which a final order of protection commences; it will now commence on the date of *sentencing* rather than "upon conviction" (L.2011, Ch. 9, eff. May 13, 2011). An Address Confidentiality Program has been created that will authorize the use of designated addresses for victims and their children for the purpose of service of process and receipt of mail. Thirty-three other states have some form of this program which permits the victim's new address to remain anonymous, thus preventing the batterer from locating the victim and committing further abuse (A.628, eff. June 23, 2012).

In addition, victims of Criminal Obstruction of Breathing or Blood Circulation are now eligible for monetary awards from the Office of Victim Services even if the victim did not sustain any physical injury (A.8091, eff. December 22, 2011). The group of domestic violence victims eligible for support services has been expanded to include persons who are in an intimate relationship; the amendment also expands the crimes for which the victims are eligible for those services (L.2011, Ch. 11, eff. April 13, 2011). Finally, a Missing Vulnerable Adults Clearinghouse has been created to provide a coordinated plan to address the problem of missing adults with cognitive impairments, mental disabilities or brain disorders. Modeled on the "Amber Alert" system, New York will join four other states in taking steps to assist families of cognitively impaired adults in locating their missing loved ones (L.2011, Ch. 222, eff. October 23, 2011).

The Vehicle and Traffic Law has been amended to make texting or using a Smartphone while driving a primary offense. Under prior law, those who committed the offense of Use of Portable Electronic Devices could not be stopped by a police officer unless the motorist was committing some *other* VTL offense. The new law permits the officer to stop the car solely for this offense (L.2011, Ch. 109, eff. July 12, 2011). The amendment also changes the rebuttable presumption found in the statute. A person who holds a portable electronic device is presumed to be using such device; the presumption can be rebutted by evidence *tending to show* that the operator was not using the device. A second amendment significantly expands the list of criminal convictions that disqualify an individual from becoming a school bus driver (L.2011, Ch. 400, eff. February 12, 2012). In all, 26 felony convictions have been added to the list, raising the total to 58.

Several new laws will affect individuals who must register as sex offenders. First, procedures for verifying the current addresses of sex offenders have been tightened. An offender who refuses to sign a verification form can now be charged with an E felony and such refusal may result in a revocation of parole or probation (A.424, eff. 60 days after Governor's signature). In addition, level two offenders must now register their place of employment (A.7950, eff. September 23, 2011). The sex offender registry must now include the registrant's type of assigned supervision and the length of time of such supervision (A.2565, eff. September 23, 2011). Finally, a person who is convicted of Attempted Unlawful Surveillance must now register as a sex offender (A.5661, eff. September 23, 2011).

A number of changes have taken place in the area of sentencing and parole. The Department of Correctional Services and the Division of Parole have been merged into the Department of Correction and Community Supervision (DCCS) (L.2011, Ch. 62, eff. April 1, 2011). DCCS has assumed responsibility for supervising people after they are released from prison. The Executive Law has been amended to substitute risk assessment procedures for the prior guidelines that governed discretionary release on parole (L.2011, Ch. 62, Part C, Subpart A, eff. September 27, 2011).[3]

Another new law clarifies that certain documents must accompany an individual being committed to state prison. A "sentence and commitment" (or certificate of conviction) and any order of protection must accompany the defendant (L.2011, Ch. 177, eff. September 1, 2011). This will permit DCCS to take the necessary steps to ensure that the order of protection is complied with during the period of incarceration.

Each year the Legislature enacts laws that either repeal or extend existing statutes. For example, a number of sentencing structures set to expire on September 1, 2011 were extended until September 1, 2013: minimum periods of incarceration for persistent violent felony offenders; indeterminate sentences for a felony; sentences for B and C violent felonies; sentences for second violent felony offenders; sentences for second felony offenders (L.2011, Ch. 57). A number of prison programs as well as the ignition interlock device program and mandatory surcharge and crime victim fees were also extended to September 1, 2013 (L.2011, Ch. 57). The law suspending driving privileges for parents who fail to pay child support is extended until June 30, 2013 (L.2011, Ch. 101). Finally, the Interagency Task Force on Human Trafficking is extended until September 1, 2013 (L.2011, Ch. 24).

A number of changes have been made in statutes other than the Penal Law and Criminal Procedure Law. The Legislature has enacted a significant training bill that requires the Municipal Police Training Council to establish training on the subject of crimes involving sexual assault with an emphasis on a victim centered approach. The bill also mandates training for judges with respect to crimes involving sexual assault (A.2349, eff. December 22, 2011). The Legislature has also taken the first step in amending the State Constitution to increase the age until which Supreme Court Judges can be certificated, from the age of 76 to 80 years (A.8469; once it is signed by the Governor there will be a constitutional amendment requiring passage by two successive legislatures and approval by the voters). The measure would also change the retirement age for Judges of the Court of Appeals from 70 to 80.

Other new legislation authorizes local correctional facilities to house out-of-state prisoners with the approval of the appropriate local legislative bodies (A.8238, eff. September 23, 2011). A barber's license will now be suspended or revoked if alcohol is sold on the premises to minors (L.2011, Ch. 417, eff. February 11, 2012). Finally, law enforcement officers within the Federal Protective Services have been granted peace officer status. This will restore the status they had when they were previously agents of the U.S. Immigration and Customs Enforcement Department (L.2011, Ch. 407, eff. August 17, 2011).

Endnotes

1. See *People v. Helmsley*, 170 A.D.2d 209 (1991).
2. The federal statute requires that the misdemeanor has, as an element, "the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim."
3. See Genty, Changes to Parole Laws Signal Potentially Sweeping Policy Shift, NYLJ 9/1/11.

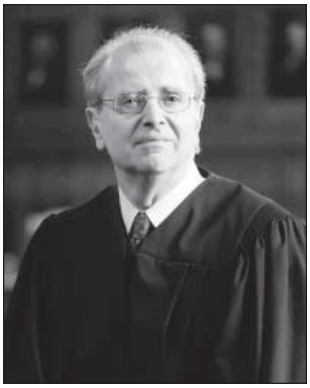
Barry Kamins is an Acting Supreme Court Justice, and presently serves as the Administrative Judge for criminal matters in Brooklyn Supreme and Criminal Courts. He is widely recognized as an outstanding legal scholar, and has authored numerous articles on criminal law and procedure. He is the author of the Learned Treatise "New York Search and Seizure." He has been a longtime contributor to our *Newsletter*, and has over the last several years provided us with annual legislative updates.

A Personal Look at the New York Court of Appeals

By Spiros A. Tsimbinos

Although the New York Court of Appeals acts as one body when it issues its decisions, it is comprised of seven distinct individuals with their own personal backgrounds, characteristics and judicial philosophies. We present, for the benefit of our readers, a brief biographical sketch of each of the Judges currently on the Court. We begin with the Chief Judge and continue with the six Associate Judges listed in the order of their seniority on the Court.

Chief Judge Jonathan Lippman



Chief Judge Lippman was appointed to the New York Court of Appeals in 2009. He moved directly from being the Presiding Justice of the Appellate Division, First Department, into the New York Court of Appeals. He was appointed by then-Governor Paterson. Judge Lippman has served for many years within the New York State court system, having held various posts including Chief Administrative Judge. While on the Court, he has attempted to achieve a greater consensus among the Judges, but in many instances he has found himself among the minority, and for the 2010-2011 term he led the Court in the number of dissents, which amounted to 28. He is basically placed within the more liberal bloc of the Court, and usually votes together with Judges Ciparick and Jones. Judge Lippman is currently 66 years of age, with his term expiring in the year 2015. He is a graduate of New York University School of Law.

Judge Carmen Beauchamp Ciparick

Judge Ciparick is the Senior Associate Judge of the Court, serving since 1994 when she was first appointed by former Governor Cuomo. She is currently 69 years of age, and her current term will end in 2012. She is a graduate of St. John's University School of Law. Judge Ciparick grew up in Washington Heights and graduated from Hunter College in 1963. Prior to her elevation to the New York Court of Appeals she served on the New York City Criminal Court and then was elected to the New York Supreme Court in 1982. Judge Ciparick is also generally considered to be a member of the liberal bloc within the Court and to be somewhat more favorable to defense concerns in criminal law cases. During the past term, she issued 19 dissenting opinions and often voted together with Chief Judge Lippman and Judge Jones.

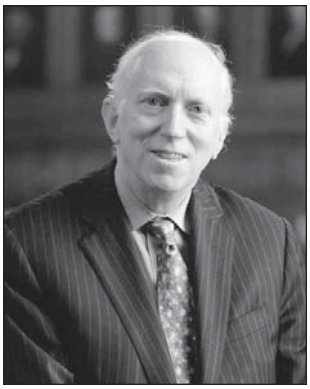
Judge Victoria A. Graffeo

Judge Graffeo was appointed by Governor Pataki and joined the Court in 2000. Her current term ends in 2014. She is currently 59 years of age and is the youngest member of the Court. Prior to her elevation to the New York Court of Appeals, Judge Graffeo held several governmental positions, including Solicitor General and as legislative counsel. She also served in the Supreme Court in the Third Judicial District and was an Associate Justice of the Appellate Division, Third Department. Judge Graffeo was born in Rockville Centre, New York and was educated in Schenectady. She is a graduate of Albany Law School. Judge Graffeo is basically included in the more conservative bloc of the New York Court of Appeals. She often votes together with Judge Read. During the last term, Judge Graffeo dissented in 12 cases.

Judge Susan Phillips Read

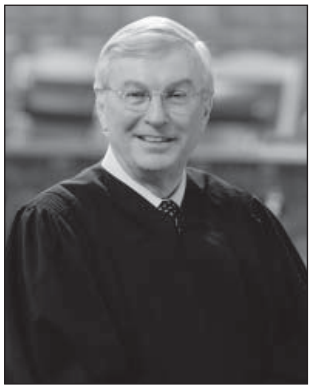
Judge Read was appointed by former Governor Pataki and joined the Court in 2003. Her current term ends in 2017. She is currently 64 years of age. Prior to her appointment to the Court of Appeals, she served as the Presiding Judge of the New York State Court of Claims, and also served as Deputy Counsel to Governor Pataki from 1995 to 1997. She was born in Ohio and attended the University of Chicago Law School. She also engaged in the private practice of law from 1988 to 1994. Judge Read currently resides with her husband in West Sand Lake and Saratoga Springs, New York. Judge Read is also listed within the more conservative bloc of the Court and she often votes together with Judge Graffeo. During the past term, she issued 13 dissenting opinions.

Judge Robert S. Smith



Judge Smith joined the Court in 2003. He was appointed by Governor Pataki, and his term expires in 2014. He was born in New York City and grew up in Massachusetts and Connecticut. He is a graduate of Columbia Law School where he served as Editor in Chief of the *Law Review*. From 1968 to 2003, he practiced law in New York City with the firm of Paul, Weiss, Rifkind, Wharton & Garrison. He is currently 67 years of age and resides with his wife in New York City. He has three children and two grandchildren. Judge Smith moved directly from the private practice of law to the New York Court of Appeals, and had no prior judicial experience before his elevation to the Court. During his eight years of service on the Court, it has been difficult to place Judge Smith in either the liberal or conservative grouping, and he often takes an independent and contrary position from many of his colleagues. During the last term, he issued 23 dissenting opinions. He also must be considered one of the critical swing votes on the Court.

Judge Eugene F. Pigott, Jr.



Judge Pigott was appointed to the Court by former Governor Pataki, and has served on the Court since 2006. His current term expires in 2016. Judge Pigott is currently 65 years of age. He was born in Rochester, New York and practiced law in Buffalo for several years. He also previously served as Erie County Attorney. His prior judicial experience includes service on the New York State Supreme Court and as presiding Justice of the Appellate Division, Fourth Department. Judge Pigott is married, with two children, and he currently resides in Grand Island, New York. He is a graduate of Buffalo School of Law. Although Judge Pigott is also generally included within the more conservative grouping of the Court, he often pursues a more liberal and pro-defense position in criminal law matters, and is hard to pigeonhole in any one particular camp. He must be listed as one of the swing votes on the Court.

Judge Theodore T. Jones, Jr.

Judge Jones was appointed by former Governor Spitzer in 2007. His current term expires in 2015. Judge Jones was born in Brooklyn, New York and attended public schools in New York City. He is a graduate of St. John's University School of Law. After conducting a private practice for several years in Brooklyn, he was elected to the New York State Supreme Court in 1990. He eventually became the Administrative Judge for the civil term in Brooklyn, and in 2007, he began his current tenure on the New York Court of Appeals. Judge Jones is married and has two children. Judge Jones also has a distinguished military background, having served in Vietnam and having reached the rank of Captain in the United States Army. Judge Jones is placed by most observers within the liberal camp of the Court and currently appears to be one of the most pro-defense Judges with respect to criminal law decisions. During the last term, he issued 24 dissents, the second highest within the Court, many of which involve criminal law decisions. He brings to the Court a criminal law background, since he served for many years as a criminal defense attorney with the Legal Aid Society.

Conclusion

In a recent article in the *New York Law Journal* of August 18, 2011 summarizing the workings of the Court during the 2010-2011 term, Chief Judge Lippman is quoted as commenting, "It is a Court that is not predictable in any particular case. I think we often disagree but are never disagreeable with one another. It is a Court that I don't think is easy to label." Professor Vincent Bonventre, of Albany Law School, who often writes on the New York Court of Appeals, also is quoted as saying, "You have some really interesting personalities writing some very strong opinions." I hope that these brief snapshots of the seven interesting personalities who make up the New York Court of Appeals will lead to a better understanding of the Court by our readers.

New York Court of Appeals Review

The New York Court of Appeals returned from its summer recess in early September. As of the time we were going to press on this issue, it had only issued one criminal law decision of any significance, which is summarized below. This issue thus covers Court of Appeals decisions that were rendered from September 2, 2011 to October 12, 2011. We expect that numerous Court of Appeals decisions will be forthcoming in the next few weeks, and these will be covered in our next issue.

Lack of Preservation

***People v. Holmes*, decided September 8, 2011 (N.Y.L.J., September 9, 2011, p. 16)**

In a unanimous decision, the New York Court of Appeals reversed and remitted the matter back to the Appellate Division, Fourth Department, for consideration of issues which were raised but not determined on the appeal to that Court. In issuing its ruling, the Court of Appeals cited its prior decision in *People v. Hunter*, 17 NY 3d, 725 (2011).

Recent United States Supreme Court Decisions Dealing with Criminal Law and Recent Supreme Court News

The United States Supreme Court concluded its 2010-2011 session on June 28, 2011. As it was ending its term, it issued an interesting decision in a criminal law matter which we were not able to include in our last issue. The Court also granted certiorari in two criminal law matters which involve significant issues, and which will be decided in the next several months. We therefore review these matters for the benefit of our readers. These cases are summarized below. The Court opened its new term on October 3, 2011, and decisions during the new term are expected to begin shortly.

Freeman v. United States, 131 S. Ct. 2685 (June 23, 2011)

In a 5-4 decision, the United States Supreme Court held that defendants who enter into plea agreements recommending a particular sentence as a condition of the guilty plea may be eligible for relief under the Statute permitting defendants sentenced based upon a sentencing range that has been modified to move for a reduced sentence. The Court indicated that since the Defendant's original sentence was based on the sentencing guidelines which were subsequently modified and not on the plea agreement, he was thus eligible for reduction of sentence. Justice Kennedy wrote the majority opinion, and was joined by Justices Ginsburg, Breyer, and Kagan. Justice Sotomayor filed a separate concurring opinion. Chief Justice Roberts and Justices Scalia, Thomas and Alito dissented.

Pending Cases

Maples v. Thomas, 132 S.Ct. __

On October 4, 2011, the United States Supreme Court heard oral arguments in a case which involves an Alabama death row inmate who lost his chance to bring a critical appeal because of a mailroom snafu in a New York law firm. Mr. Maples was sentenced to death in 1995 and was represented pro bono in his state post-conviction appeal by two associates at Sullivan and Cromwell. As required by Alabama rules at the time, the two lawyers associated themselves with the local Alabama attorney in order to be admitted to practice in the State. Although the rules required the Alabama attorney to be jointly and severally responsible for the case, he claimed his only role was to secure the New York attorneys' admission. The three attorneys filed a state post-conviction petition for Mr. Maples in which they raised ineffective assistance of trial counsel. After 18 months, the trial judge denied the petition. The court clerk sent notices of the denial order to the two associations and the Alabama attorney. The associates, however, had left the law firm for other positions, and had failed to inform Mr. Maples or the Court that they no longer represented him. The firm's mailroom returned the denial notices to the court clerk marked "returned to sender and left firm." The Alabama attorney did nothing after receiving his notice, assuming the New York associates were still handling the case.

Mr. Maples actually learned of the denial and the missed appeal deadline when the prosecutor sent him a letter alerting him that the time for filing a federal habeas petition was close to expiring. In the federal habeas petition, which Mr. Maples eventually filed, he raised ineffective assistance of counsel. The federal court denied the petition on procedural grounds—to wit: that the required time period had passed. During oral argument before the Supreme Court, Mr. Maples' new counsel argued that there was sufficient cause in the instant matter to excuse the default which had occurred. It was stated that the State itself had contributed to the default, and that Mr. Maples had effectively been abandoned, so that the delay caused by the attorney conduct could not be imputed to him. A decision is expected within the next few weeks.

As indicated, in the last two days of its past term, the United States Supreme Court also granted certiorari in two criminal law matters which involve significant issues. The first case involves the use by police of GPS tracking devices without a search warrant. The second involves a further refinement of the right to confrontation and a further interpretation of the Court's decision in *Crawford v. Washington.* Details regarding these matters were discussed in the July 15, 2011 issue of the United States Supreme Court Reporter. A summary of those discussions is provided below.

U.S. v. Jones

The Court granted certiorari in this matter on June 27, 2011, and the case was assigned number 10-1259. Granting certiorari from a decision of the Court of Appeals for the District of Columbia Circuit, the United States Supreme Court has agreed to address issues surrounding the government's use of a global positioning system (GPS) tracking device on a defendant's motor vehicle. The question presented by the government's petition for writ of certiorari asked whether the warrantless use of the GPS tracking device to monitor the vehicle's movements on public streets violated the Fourth Amendment. In addition to this question, the Supreme Court directed the parties to brief and argue the following question: "Whether

the government violated Respondent's Fourth Amendment rights by installing the GPS tracking device on his vehicle without a valid warrant and without his consent."

The District Court granted in part and denied in part the Defendant's Motion to Suppress the data obtained from the GPS tracking device, finding that data obtained while the vehicle was on public roads was admissible. After a jury trial, the Defendant was convicted of conspiracy to distribute and to possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base. He was sentenced to life imprisonment. The Court of Appeals reversed the Defendant's conviction, concluding that the warrantless use by police of the GPS device to track his movements 24 hours a day for 28 days was a search under the Fourth Amendment. Attaching the GPS tracker to the Defendant's vehicle defeated the Defendant's reasonable expectation of privacy in his movements over the course of a month.

Several federal and state courts have been divided over whether the use of a GPS tracking device by law enforcement officials can be constitutionally conducted without a judicial warrant. Our own New York Court of Appeals in the case of *People v. Weaver* ruled in a 4-3 decision that a warrant was required with respect to the use of GPS devices. In our Winter 2011 issue, we predicted that because of the conflicting decisions, the issue would have to be addressed by the United States Supreme Court. The issue is now directly before the Court and briefs have been filed in the matter of *U.S. v. Jones*, and a date for oral argument is pending. We will keep our readers advised of developments in this matter.

Williams v. Illinois

Certiorari was granted in this case on June 28, 2011 and was assigned number 10-8505. This is a case in which the Illinois Supreme Court held that a government expert's testimony about a report from a diagnostic laboratory on the male DNA profile derived from vaginal swabs taken from the victim of a sexual assault was not hearsay, and therefore the expert's testimony about the report, during which the expert opined that the DNA profile in that report matched the Defendant's DNA profile in a state database, did not implicate the Defendant's Sixth Amendment confrontation rights. The Illinois Court concluded that it did not need to address whether a statement was testimonial within the meaning of the Confrontation Clause unless the statement was, in fact, hearsay offered to prove the truth of the matter asserted.

The Illinois Court rejected the Defendant's argument that the admission of the DNA report without the testimony of the analyst who prepared it violated his confrontation rights because the report was hearsay. On the contrary, the expert's testimony about the DNA report was not admitted for the truth of the matter asserted, the Illinois Court concluded. The government introduced his testimony to show the underlying facts and data the expert used before rendering an expert opinion in the case.

This case involves further refinements of the Court's decisions in *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009) and *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011). Briefs have been filed in this matter and a decision is expected within the next few months. We will report on the results as soon as a decision is reached.

In terms of general interest, readers should also note that the United States Supreme Court, during the coming term, will in all likelihood hear and decide the issues involving the constitutionality of the recently enacted health care law. The U.S. Court of Appeals for the Eleventh Circuit based in Atlanta, Georgia, recently ruled that the individual insurance mandate went beyond Congress' power to regulate interstate commerce. Twenty-six States have joined in lawsuits attacking major portions of the health care bill. Justice Department lawyers have appealed the Circuit Court ruling to the United States Supreme Court, and that case will be one of the major controversial issues which may be addressed by the Court in the coming term. The Court will also be addressing various immigration matters, including *Gutierrez v. United States,* which involves the question of whether the government is free to deport illegal immigrants who came to this Country as children, and whose parents became lawful residents in the United States. The Ninth Circuit Court of Appeals recently ruled that a parent's status of a lawful permanent residence imputed to the children residing with that parent. This issue will now be squarely presented to the United States Supreme Court.

Cases of Interest in the Appellate Divisions

Discussed below are some interesting decisions from the various Appellate Divisions which were decided from September 1, 2011 to October 3, 2011.

Soares v. Herrick (N.Y.L.J., August 5, 2011, pp. 1 and 3)

In a 3-2 decision, the Appellate Division, Third Department, held that a trial Judge had exceeded his authority when he removed the Albany County District Attorney from prosecuting the Defendants with respect to allegations that they had illegally sold prescription steroids. The Albany County District Attorney's Office had secured an indictment against five Florida residents, charging them with importing and distributing illegal steroids and other human growth hormones in the Albany area. The Defendants had sued the District Attorney in the Federal Court in Florida claiming false arrest and malicious prosecution.

The Defendants had claimed that the civil action created a conflict for the District Attorney's Office and that they should be barred from prosecuting the case. The trial court had agreed with the Defendants, but three members of the Appellate Division, Third Department, determined that the trial court had committed error in granting a Writ of Prohibition in taking the case out of the hands of the District Attorney and giving it to a special prosecutor whom he had appointed. The majority opinion, written by Justice Karen K. Peters, concluded that the Defendants had not demonstrated that the District Attorney's continued prosecution of the cases would result in actual prejudice.

The majority also saw the possibility of a serious public policy issue in accepting the Defendants' argument. The majority stated that acquiescence to a policy by which a criminal defendant, through the simple device of commencing a civil lawsuit, could affect the removal of a duly elected District Attorney established a dangerous precedent that was unwarranted under the circumstances presented in the case at Bar. The mere filing of a civil lawsuit is not enough to demonstrate a conflict. The majority opinion was joined in by Justices Malone and Garry. Justices Rose and Lahtine dissented, arguing that under the circumstances, the trial court was within its discretion to order that the case be tried by a special prosecutor. It appears that due to the closeness of the decision and the issue involved, this case will eventually be determined by the New York Court of Appeals.

People v. Bowden (N.Y.L.J., August 8, 2011, pp. 1 and 6)

In a 3-2 decision, the Appellate Division, First Department, denied the suppression of a gun which police found on a Bronx woman after she fled onto her building's roof when the police knocked at her door. The 3-Judge majority found that the circumstances in question were sufficient to give the police probable cause to detain the Defendant and to pat down the bag. The police had received certain information which led them to appear at the Defendant's apartment. When they knocked on the door they heard scuffling noises followed by the sound of a window being opened. The officers then found the Defendant on the roof climbing a fire escape, holding an object. When told by police not to move, the Defendant dropped the bag, which made a heavy thud. While one of the officers stopped and detained the Defendant, another picked up the bag and found a gun and ammunition therein. The 3-Judge majority, which consisted of Judges Andrias, Saxe and Daniels, determined that the officers' observations, along with their prior information, justified their actions, and that once the Defendant dropped the bag, the police had reasonable grounds to believe that it might contain a weapon. The majority ruling reversed a determination of the Bronx trial court, which had initially granted suppression of the physical evidence.

Justices Tom and Freedman dissented, arguing that the facts in question fell short of providing the reasonable suspicion that the Defendant was committing, or about to commit, a crime. There was therefore insufficient support to uphold a forcible stop and detention that justified the warrantless search of the bag. Due to the sharp split in the Appellate Division, it appears that this case will be headed for the New York Court of Appeals.

People v. Strothers (N.Y.L.J., August 12, 2011, pp. 1 and 6)

In a 4-1 decision, the Appellate Division, First Department, held that the Defendant was entitled to a new suppression hearing, and that therefore his conviction for various drug charges could be subject to a reversal. The Court's majority found that the Defendant was deprived of the effective assistance of counsel because his attorney was late for the evidentiary hearing which had been held, and defense counsel had missed some of the opening proceedings. In the case at bar, defense counsel had arrived during the direct examination of a special agent who had led the task force that had arrested the Defendant. Following the completion of the direct examination, defense counsel proceeded to cross-examine the agent. The prosecution argued that the attorney's tardiness had not affected the outcome of the hearing, and that therefore a new suppression hearing was not required. The 4-Judge majority held, however, that it did not matter whether or not the attorney's lateness had affected the outcome of the

hearing or whether the outcome of the hearing affected the ultimate verdict. The right to counsel is deemed to be so fundamental and absolute that its deprivation, even for a short period of time, cannot be overlooked or excused. The majority, in ordering a new hearing, concluded, "Because of the sanctity of the right to counsel, we need not engage in an analysis as to what transpired in the case during counsel's absence and whether the evidence received, or matters discussed with the Court, were material to the defense." The majority opinion was joined in by Judges Mazzarelli, Andrias, Moskowitz and Roman.

Justice Catterson dissented, arguing that the sanctity of the right to counsel applied to representation at trial but not necessarily at pretrial hearings. Justice Catterson further argued that the Defendant and his defense counsel had waived the right to raise the argument on appeal, since there had been a failure at the initial hearing to ask for some sort of corrective measure, such as asking that the transcript of proceedings that the Attorney had missed, be provided to him. Justice Catterson further stated that he did not think the outcome of the trial would have been any different, even if the ruling at the suppression hearing had been in the Defendant's favor.

People v. Gray (N.Y.L.J., August 12, 2011, p. 1)

In a unanimous decision, the Appellate Division, First Department, reversed a Defendant's conviction and ordered a new trial because of the improper exclusion of his family members and girlfriend from the Courtroom during the testimony from an undercover police officer. The appellate panel found that the trial judge had provided no legitimate justification for barring the persons in question during the Defendant's 2009 trial. The Appellate Court reiterated that trial courts are required to consider alternatives to closure even when they are not offered by the parties. In the case at bar, the Court summarily rejected, without comment, the Defendant's request to allow the presence of the interested family members and the record did not show whether there existed any reasonable accommodation that would have protected the public nature of the criminal proceeding. The Defendant had been found guilty of criminal sale of a controlled substance in the third degree and had received a sentence of 7½ years. After being in prison since 2009, he now faces a new trial.

People v. Wallace

People v. Jenkins (N.Y.L.J., August 23, 2011, pp. 1 and 2)

In two unanimous rulings by the Appellate Division, Fourth Department, it was held that drug offenders could apply for resentencing even though they had violated their parole, pursuant to the recent modifications in the Rockefeller Drug Laws. The Appellate Court relied upon a recent decision by the New York Court of Appeals in *People v. Paulin*, In *Paulin*, which was decided on June 28, 2011, the New York Court of Appeals resolved a split between the Appellate Departments and held that individuals who had been released on parole and were reincarcerated for violating their parole were still eligible to seek resentencing under the Drug Law Reform Act of 2009. The full details regarding the *Paulin* decision were discussed in the Fall issue of our *Newsletter.*

People v. Nisthalal (N.Y.L.J., August 29, 2011, pp. 1 and 3)

In a unanimous decision, the Appellate Division, Second Department, vacated the Defendant's conviction and dismissed the indictment on the grounds that the guilty verdict was against the weight of the evidence. The matter involved a murder conviction of a Queens businessman, and the appellate panel concluded that the case was riddled with witness inconsistencies to such an extent that the prosecution's witnesses were so contradictory as to be unworthy of belief. In vacating the Defendant's conviction, the appellate panel also reached the same result with respect to the co-Defendant, Sweeney.

People v. Kenley (N.Y.L.J., August 31, 2011, pp. 1 and 6)

In a unanimous decision, the Appellate Division, First Department, reversed a Defendant's conviction and ordered a new trial because the police had conducted an unduly suggestive lineup in which only the Defendant matched a key aspect of the description provided by the three witnesses who viewed the lineup. The Defendant weighed nearly 400 pounds, and the witnesses who had described the perpetrator of the crime stated that it was a "huge, big fat black guy." The other persons used as fillers in the lineup weighed 115 to 190 pounds less than the Defendant, and because of his size, he clearly stood out in the lineup. The appellate panel, in issuing its ruling, stated, "We do not mean to suggest that the police are obligated to find grossly overweight fillers when dealing with the situation presented here, and we recognize the practical difficulties that would be involved in doing so. Instead, this situation could call for the use of some kind of covering to conceal the weight difference."

People v. Andrade (N.Y.L.J., September 9, 2011, p. 15)

In a unanimous decision, the Appellate Division, First Department, upheld a Defendant's conviction and determined that the hearsay rule was not violated by the admission of evidence to rebut the Defendant's claim that he was coerced into providing incriminating statements. The Defendant had been involved in a shooting,

and his conviction was partly based on self-incriminating statements that he had made while in custody. On appeal, he claimed that the rule against hearsay and his Sixth Amendment confrontation rights had been violated when the prosecution introduced a videotape and photo array identification to rebut his claims that the incriminating statements were involuntarily obtained. The appellate panel concluded that the Defendant imposed on the prosecution the added burden of proving beyond a reasonable doubt that he had made those statements voluntarily. Thus, by the Defendant's actions, the prosecution was required to tell not just a story of the victim's deaths but also the story of how the Defendant came to make the statements being used against him.

People v. Heidgen (N.Y.L.J., September 16, 2011, p. 1)

In a 3-1 decision, the Appellate Division, Second Department, upheld a Defendant's depraved indifference murder conviction, where the Defendant killed the driver of another vehicle while he was driving drunk. The Court found that the Defendant's actions involved reckless conduct which created a grave risk of death. Justice Jeffrey Cohen dissented, finding that the Defendant's conduct only amounted to recklessness, and that therefore, a reduction to manslaughter in the second degree was the proper decision.

People v. Miller (N.Y.L.J., September 26, 2011, pp. 1 and 2)

In a unanimous decision, the Appellate Division, Second Department, reversed a Defendant's rape conviction on the grounds that he had received ineffective assistance of counsel. The appellate panel concluded that defense counsel failed to make critical objections regarding the admission of evidence and to prejudicial comments made by the prosecutor during summation. The Court concluded that there was no legitimate trial strategy for defense counsel's failures, and that the Defendant was deprived of a fair trial. The appellate panel consisted of Justices Mastro, Hall, Lott and Cohen.

People v. Tucker (N.Y.L.J., September 27, 2011, pp. 1 and 6)

In a 3-1 decision, the Appellate Division, Second Department, reversed the Defendant's conviction, and found that a prosecutor had improperly used the Defendant's post-arrest silence against him during the trial. The prosecutor had commented to the jury, "An innocent person when they are arrested for a crime they didn't commit and they know who did it, will say who did it." The appellate panel majority concluded that the prosecutor's comments were an improper attack on a defendant's right to remain silent, and therefore a reversal was required.

People v. Tavares-Nunez (N.Y.L.J., October 4, 2011, pp. 1 and 2)

In a unanimous decision, the Appellate Division, Second Department, upheld a Defendant's conviction, even though it concluded that a nursing home worker's apology to a police Detective for sexually assaulting an incapacitated Alzheimer's patient should have been suppressed because the inculpatory statement was not spontaneous, but a product of interrogation, and should have been preceded by Miranda warnings. The appellate panel found that despite the error which occurred, proof of guilt was overwhelming, and the error would therefore be considered to be harmless.

For Your Information

Pennsylvania Judge Who Sentenced Kids for Cash Sentenced to Long Prison Term

In a conclusion to a horrendous situation which imposed a blot on the judicial system, a Pennsylvania Judge was sentenced in August to a prison term of 28 years. The Judge, Mark Ciavarella Jr., who served in Luzerne County in Northeastern Pennsylvania, received the long federal prison term for his actions involving a one million dollar bribe from the builder of a pair of juvenile detention centers. The Judge was found guilty of taking the bribes in question so that he could sentence juveniles to the detention centers in order to increase the prison population at the facilities. The Judge was known for a harsh and autocratic courtroom demeanor, and he sentenced children as young as 10, many of whom were first-time offenders convicted of petty crimes, to the juvenile facilities. A second Judge, Michael Conahan, who also participated with Ciavarella in the fraudulent scheme, was also sentenced, at a later date, to a term of 17½ years in federal prison. As a result of the actions of the two Judges, some 4,000 convictions which were issued between the years 2003 and 2008 were overturned. The terrible scandal which rocked the judicial system in Pennsylvania has come to be known as the Kids for Cash scandal, and hopefully such an incident will never again be repeated in any American court system.

New Alzheimer's Study

In an effort to shed some additional light on the causes of Alzheimer's, which affects millions of people each year, a new study, which was conducted at the University of California at San Francisco, reported that seven risk factors have been identified as contributing to the disease. The factors were identified as smoking, depression, low education, diabetes, too little exercise, obesity and high blood pressure in mid-life. The study reported that if these risk factors could be reduced by 25%, approximately half a million Alzheimer's cases in the United States could be avoided each year. The study stated that worldwide, the biggest impact on Alzheimer's cases is low education because there is less of an opportunity for people to use and develop brainpower that can carry them into old age. Smoking and too little exercise were also identified as having a large and significant impact with respect to Alzheimer's disease.

Penalty for Assaulting a Judge Increased

Pursuant to a law which was recently passed by the Legislature and signed by Governor Cuomo, the penalties for assaulting judges during the performance of their duties will become a class-C felony which carries a prison sentence of up to 15 years. The new law became effective in November 2011, and was passed in response to a recent incident in Liberty, New York, where a Judge was attacked by a Defendant who broke free. The Defendant in that case was only charged with a misdemeanor assault, and the Magistrate's Association had recommended the creation of a new felony charge to provide further protection for judges. The new law would apply to both statewide and local justices.

Judicial Pay Commission Issues Its Recommendations for Judicial Salary Increases

After holding several public hearings and considering various factors, the seven-member Special Judicial Compensation Commission issued its recommendations on August 26, 2011. In late August, just prior to the official vote, two of the Commission members, to wit: Robert Fiske, Jr. and Mark S. Mulholland declared publicly that they were in favor of substantial increases in judicial pay. Mr. Mulholland, who is a managing partner at Ruskin, Moscou and Faltischek, in Uniondale, argued that the salary for Supreme Court Justices should be raised to $220,000 a year, beginning April 1, 2012. Mr. Fiske, senior counsel at Davis Polk and Wardwell, suggested a somewhat lower salary, opting for an increase to $195,750. The other members of the Commission, including Chairman William Thompson, Jr., reserved any public comments until the full Commission made its official recommendations on August 26, 2011. On that date, Chairman Thompson announced that the Commission, by a 4-3 vote, was recommending an increase for New York State Supreme Court Judges to $160,000 per year, effective April 1, 2012, with a further increase in 2013 to $167,000, and another increase in 2014 to $174,000. The Commission's proposals will have the force of law unless amended by the Legislature and Governor. Pay for other judges in the State would be raised by the same percentage as Supreme Court Justices, or by 17% in the first year and 27% for the entire three years.

Since the State Budget Director and Governor Cuomo have expressed reservations as to whether the State could afford substantial rate increases at this time, we must await developments during the next few months in order to determine whether the Commission's recommendations will actually go into effect or whether an effort will be made to curtail or modify the increases recommended. Based upon the fact that the Commission has rejected extreme positions on either side of the issue, and has recommended a more moderate and realistic salary adjustment spread over a 3-year period, it appears highly unlikely that either the Legislature or the Governor will seek to overturn the Commission's decisions. Although some individuals and organizations have criticized the Commission's final recommendations, Chairman Thompson, in issuing the Commission's final report, stated that although the panel's majority would have preferred to give more money to the judges, the State's grim economic reality made it necessary for the Commission to recommend more moderate increases and not to endorse raises which would be so large as to encourage the Legislature and the Governor to repudiate the Commission's work.

Judicial Pay Increases Mean Higher Pay for Some District Attorneys

Soon after the Special Commission announced its recommendation for judicial pay increases amounting to 27% over a 3-year period, it was publicly revealed that the increases in judicial salaries would automatically result in pay increases for many of the district attorneys in the State. With the exception of the district attorneys who served within New York City, provisions of the judiciary law link the salaries of district attorneys in some counties with the salary of Supreme Court or County Court Judges. Thus, under the Judiciary Law Section 183-A, the district attorneys in counties outside of New York City with more than 500,000 residents are entitled to the same salary as Supreme Court Justices, and full-time prosecutors in counties with populations between 100,000 and 500,000 receive the same salary as a County Court Judge. Thus it appears that 22 of the 57 counties outside New York City will be immediately affected, and will be required to raise the salaries of their district attorneys.

Due to this situation, many County governments have expressed concerns, since unlike judicial salaries, the salaries of district attorneys are local expenses, which must be handled from already severely depleted local budgets. In a recent article which appeared in the *New York Law Journal* on September 2, 2011, Steven J. Acquario, Executive Director of the New York State Association of Counties, expressed alarm at the looming situation. He stated, "It was incredibly irresponsible not to factor in district attorney salaries while debating judicial salaries, especially as the counties are all earnestly working to cap their property taxes." Due to this unexpected situation, county leaders are calling upon the Governor and the Legislature to provide for some additional funding within the state budget to cover the additional expenses for district attorney increases.

American Bar Association Approves Resolution on Legal Education

Following several reports and recommendations that law schools should include more practical training in their curriculum, the American Bar Association, at its annual meeting in Toronto, recently approved a resolution that encourages legal education providers to develop "practice ready lawyers" by enhancing clinical work and supervised activities and developing more Capstone courses in the final year. Our own New York State Bar Association was a sponsor of the resolution and argued vigorously for its adoption.

Homeowners Still at Risk of Foreclosure

A recent report by the Mortgage Bankers Association indicated that as of the end of this summer, 8.44% of homeowners missed at least one mortgage payment in the previous three-month period. That figure represented an increase from the January–March period. Although delinquent mortgages have dropped somewhat from a record high of 10% of residential mortgages a year ago, the delinquency is still much higher than the normal rate, which used to be about 1.1%. Several other recent reports continue to see a troubled housing market for at least the next 2 years, and only a possibility of a very small improvement in the delinquency rate of mortgages.

As a result of now nearly five years of economic difficulties the number of Americans who own their own homes has declined to the lowest level since 1998. The Nation's home ownership now stands at approximately 66%. This represents a decline from the record high of 69.4% which was reached in 2004. The most recent figures were supplied by the U.S. Census Bureau. Forecasters are predicting that there may be a continued decline, and that home ownership may actually fall below 65%. Each 1% decline in the home ownership rate represents the movement of one million households from ownership to rentals.

Flight from New York?

A recent report from the Empire Center for New York State Policy revealed that 1.6 million N.Y. State residents have moved to other states between 2000 and 2010. The report cited the high cost of living, high state and local taxes and quality of life issues as the reasons most often supplied by those who have left the State. According to the latest census figures, New York State still has approximately 19.3 million people, making it the third most populous state in the Country. It appears that the number

of people who have left have been replaced by newcomers from other countries and other sections of the country. The shifts in population have made the State more diverse in many respects and, for example, recent figures regarding New York City indicate that whites no longer constitute a majority of the City, and that the Hispanic population has risen to about 22%. The number of blacks has stayed relatively stable, at 18%, and the number of Asians has risen dramatically to almost 10% of the City's population.

New Firearm Purchase Statute

In August, Governor Cuomo signed into law a legislative bill that prevents people convicted of some domestic violence misdemeanors from buying firearms. Under the new laws, after a conviction of the added offenses, Judges are to notify the Division of Criminal Justice Services, which is to immediately pass the information to the F.B.I. The newly added offenses include criminal obstruction of breathing, intentional non-fatal choking, and certain misdemeanors involving forcible touching. The new Statute will be effective as of December 3, 2011.

Governor Cuomo Signs New Ethics Laws

At the end of its legislative session, the New York State Legislature passed the Public Integrity Reform Act which sought to impose stricter ethics standards for legislators who also practice law. The legislative bill was signed by Governor Cuomo on August 15th, and the new law will require the disclosure by loyal legislators of their clients. Additionally, appearances before a state administrative agency will be recorded and made public. The disclosure requirements will take effect in mid-2013. The New York State Bar Association supported the passage of the new ethics bill, and State Bar President Vincent E. Doyle stated in a public interview, "We feel strongly that increasing public disclosure will go a long way toward restoring public confidence in government." Some commentators had pressed for even stronger restrictions within the new ethics bill, and it appears that the new law will be carefully monitored to determine its effectiveness in curtailing corrupt and criminal conduct by government officials.

Trials for Civil Commitment of Sex Offenders Fewer Than Expected

Shortly after the Sex Offender Management and Treatment Act took effect in April 2007, governmental authorities expected a large number of contested trials. On the contrary, it has now been determined that sex offenders targeted for civil confinement are overwhelmingly waiving their right to a jury trial and consenting to confinement. Nearly 92% during the first year of the law's enactment agreed to placement in a mental institution. Statistics through June 30, 2011, although indicating an increase in the percentage of jury trials requested, still reveal that nearly 40% consented to confinement and avoided jury trials. In terms of actual numbers through June 30, 2011, 195 sex offenders have been civilly confined, 77 of which voluntarily consented to confinement. Governmental authorities cannot really explain the large number of consensual commitments and are monitoring the situation carefully on a year-by-year basis.

Cases of Unusual Fraud

A recent investigation into cases of fraudulent receipt of governmental monies indicates that payments from the recent stimulus fund first-time homebuyer credit were found to have included nine million dollars to 1,300 prisoners, 241 of whom were serving life sentences. The Unites States Justice Department has also indicated that there appears to be a growing number of Medicare and Medicaid rip-offs, and that some unscrupulous persons are milking these programs for millions of dollars. A report recently issued by the Inspector General for the Treasury Department also stated that the Internal Revenue Service may have allowed illegal immigrant workers to collect 4.2 billion dollars in refundable tax credits. The Senate Finance Committee announced that it was looking into this situation, and that it may have been improper for the IRS to allow refundable tax credits to persons who were not even eligible to legally work in the Country.

In an effort to halt or reduce these cases of fraud, the Justice Department has initiated new investigations and has obtained indictments against some organized crime rings which are engaged in systematic fraud. The report highlighted a situation where 52 members of an Armenian-American organized crime ring were arrested and charged with stealing Medicare funds by engaging in fraudulent billing to the tune of $163 million. In these times of severe budget crisis, a crackdown on fraudulent practices is clearly warranted.

Hispanics and Other Minorities Account for Growth in U.S. Cities

A recent analysis based upon the 2010 census report indicates that population growth in the Nation's largest metropolitan areas over the last decade is largely due to increases in minority populations. The report concluded that as many whites move from the large cities, minority groups such as Hispanics and Asians moved into the large metropolitan areas. Hispanics and Asians led population growth in the Country's 100 largest metropolitan areas over the past decade, growing by 41% and 43% respectively. The population of blacks grew by 12%, and the white population was largely flat. The census figures concluded that the population increases added 11 million Hispanics to the populations of the largest U.S. Cities, nearly 4 million Asians and 3 million blacks. The number of whites increased by just over 400,000.

Poverty in America Rises and Middle Class Shrinks

The Census Bureau reported in September, 2011 that a review of the economic well-being of U.S. households for the year 2010 revealed that the ranks of the Nation's poor have swelled to a record 46.2 million, or nearly 1 in 6 Americans. The official poverty level in the United States is currently established at an annual income of $22,314 for a family of four. The current overall poverty rate of 15.1% represents an increase from 14.3% in 2009. This is the highest level since 1983. The census report also stated that Mississippi was the State with the highest share of poor people, 22.7%. On the other end of the scale, New Hampshire had the lowest poverty rate at 6.6%. Poverty rose among all racial and ethnic groups with the exception of Asians. Child poverty increased from 20.7% in 2009 to 22% in 2010. Poverty among people 65 and older was basically unchanged, and registered at 9%.

A new and separate report by the Pew Charitable Trust confirmed that as the poverty rate has risen, the number of people in the middle class has declined. The report concluded that nearly 1 in 3 Americans who grew up in the middle class have slipped down the economic ladder. The study focused on people who were middle class teenagers in 1979, and who were between 39 and 44 in 2004 and 2006. It defines people as middle class if they fall between the 30th and 70th percentiles in income distribution, which for a family of four is between $32,900 and $64,000 a year as of 2010. The Pew report found that downward mobility was most common among middle class people who were divorced or separated, who did not attend college or who became chronic users of drugs or alcohol.

An additional recent study by two former Census Bureau officials also reported that household income declined by nearly 4% since 2007. Between June 2009, when the current recession officially ended, and 2011, inflation-adjusted median household income fell 6.7% to $49,909. During the recession, from December 2007 to June 2009, household income had fallen by 3.2%. Thus, in the last four years, American families have experienced an overall drop of nearly 10% in household income.

Both reports, and the most recent study, cite the long economic downturn which has existed in the Country and the persistently high unemployment rate as factors which have contributed to both the increase in the Nation's poverty level, the decline of its middle class, and the loss of household income.

Hot Hot Hot!

The National Climatic Data Center recently reported that the United States this past summer endured its hottest period in 75 years, and that the 2011 summer season was the second hottest on record. The average U.S. temperature during the summer of 2011 was 74.5 degrees, which was 2.4 degrees above the long-term (1901-2000) average. Only the dustbowl year of 1936, at 74.6 degrees, was warmer. Four States, Texas, Oklahoma, New Mexico and Louisiana, had their warmest summer ever recorded. Our own State of New York also experienced several unusual days of extreme heat, with New York City reaching a record temperature of 104 degrees on one occasion. As we enter the winter months, we may sometimes reflect on the warm days of summer.

Appellate Division Openings

The New York State Judicial Screening Committee recently announced that it was accepting applications for several openings in the various Appellate Divisions. The listed openings were for the position of Presiding Justice for the Second and Third Departments, and one Associate Justice position at the Appellate Division, First Department, and Appellate Division, Fourth Department. The position of Presiding Justice in the Appellate Division, Third Department, became vacant due to the recent announcement by Justice Anthony Cardona that he is retiring from the position. Justice Cardona has served in the Appellate Division, Third Department, for many years, and left the Bench due to ill health.

The vacancy for Presiding Justice of the Second Department occurred when Justice Gail Prudenti was recently elevated to the position of Chief Administrative Judge.

Another Appellate vacancy has just become available in the Appellate Division, Second Department, with the announcement in late September by Justice Joseph Covello that he will be leaving the Court to join an eight-member law firm in Long Island. The Screening Committee will be interviewing applicants for the Appellate Division vacancies, and is expected to make its recommendations to the Governor. The Governor's announcement regarding new appointments is expected within the coming weeks.

Court System Faces Difficult Labor Negotiations

The contracts of several unions representing various non-judicial employees within the court system is presently in the various stages of negotiations, and because of the State's difficult economic situation, and reductions in the judicial budget, it appears that some tough negotiating times are ahead. There are currently some 12 unions representing 15,000 non-judicial employees. While Governor Cuomo and OCA officials are considering requesting some reductions and give-backs regarding employee benefits, various leaders of the unions involved have strongly indicated that they will not agree to any further reductions. Most vocal among the union leaders is Dennis Quirk, the head of the Court Officers Association, who stated that his 1,700-member union would not agree to any mandatory unpaid furloughs or increased health

insurance contributions. Mr. Quirk stated that the Court system has already laid off employees, and that the union members have already made all the concessions they are going to make.

The court system has already been adversely impacted by budget cuts and employee layoffs, and we hope that labor strife does not prevent the court system from operating in an efficient manner and fulfilling its public service obligation.

FBI Reports Continued Decline in Violent and Property Crimes

The FBI recently released its final figures regarding national crime statistics for the year 2010. It was reported that violent crime dropped 6%, continuing a 4-year decline. Property crime fell 2.7% and continued its decline over the last 8 years. In actual figures, it was reported that nationwide there were approximately 1.2 million violent crimes committed in 2010, and 9 million property crimes. With respect to specific crimes, robbery fell by 10% from the prior year, rape dropped by 5%, and murder, manslaughter and aggravated assault declined by 4%. With respect to property crimes, the largest decline, some 7.4%, involved motor vehicle thefts. Burglaries also decreased by 2%. Although it had been expected that worsening economic conditions would lead to an upturn in criminal activity, the FBI report indicated that an aging national population, better policing and a continuation of high rates of imprisonment for criminals had helped to drive down the national crime rate.

Although nationally crime rates continue to decline, some concern has been raised with respect to the situation in New York City and New York State. According to recent police department statistics, many precincts in New York City have experienced recent increases in criminal activity, and crime has risen sharply at John F. Kennedy Airport. Thus, some concern has also been expressed that the recent reduction in sentences for various drug crimes may be leading to an increase in criminal activity.

Non-Lawyers Ineligible to Serve as District Attorney

In a recent decision by the Appellate Division, Second Department, it was determined that a non-attorney is ineligible to serve as a district attorney. The Appellate Division decision was reached in the case of *Matter of Brown v. Board of Elections*, where a non-lawyer candidate was disqualified from running in Queens County. The Appellate Division relied upon a ruling of the New York Court of Appeals in *Matter of Curry v. Hosley,* 86 NY 2d, 470, where it was held that district attorneys must be licensed lawyers. The term "district attorney," as used in the state Constitution, refers to an "attorney-at-law and an officer of the court" who is bound by the rules of professional ethics.

18-B Funds Depleted in Nassau County

Officials in Nassau County announced in early September that the 3.6 million dollar budget which had been set aside to cover the costs of this year's 18-B attorneys had been depleted. As a result, no further 18-B vouchers would be processed and the County would need at least an additional $500,000 to cover 18-B costs during the balance of the year. The County's Budget Review Office has been asked to look into the situation and to explore where additional funding could be found to see the 18-B program through the end of the year.

Traditional Police Lineups Found to Be Unreliable

A recent study released by the American Judicature Society reveals that eyewitness identifications may be unreliable under certain circumstances. The study found that witnesses should not look at a group of people to pick a perpetrator. Instead they should look at individuals one by one with a detective who doesn't know which is the real suspect. The study found witnesses using the sequential method were less likely to pick innocent persons brought in to fill out the lineup. Gary Wells, an eyewitness identification expert at Iowa State University, and the study's lead researcher, commented "what we want the witnesses to do is don't decide who looks most like the perpetrator, but decide whether the perpetrator is there or not." The Judicature Society is just one of a growing number of research projects which have begun to question the reliability of eyewitness identifications in recent years. With the evolution of DNA evidence, many defendants have been cleared whose convictions were based on eyewitness testimony.

Unemployment for Young Adults Approaches Record Levels

Recent information obtained from the 2010 census, as well as statistics from the Bureau of Labor, reveals that unemployment among young adults, ages 16 to 29, has reached record levels and appears to be at its highest rate since World War II. Only 55.3% of young adults 16 to 29 were employed in 2010, as compared to 67.3% in 2000. The statistics indicate that young males who had a college degree were most likely to lose jobs due to reduced demand on construction, manufacturing and transportation. The statistics also reveal that employment among teenagers is now less than 30%. Andrew Sum, an economist and Director of the Center for Labor Market Studies at Northeastern University, who was involved in detailing some of the most recent statistics, summarized the situation as follows: "We have a monster jobs problem and young people are the biggest losers. The really high levels of underemployment and unemployment will haunt young people for at least another decade."

Seniors Returning to Work

Due to the recent economic recession, dwindling retirement benefits and loss of home values, workers 65 and over are returning to work in record numbers. A recent study by the Employee Benefit Research Institute indicated that the number of U.S. workers 65 or older has grown 24% in five years to a record 6.7 million. This figure is expected to grow in coming years, as more and more baby boomers reach the age of 65 and continue to seek employment. The study indicated that many seniors are accepting part-time work, averaging 15 to 20 hours per week, and that five areas appear to be utilizing the highest number of senior employees. These include home health aides, retail positions, government work, computers and temporary employment through employment agencies. Seniors appear to be seeking flexible hours, and are willing to work for moderate pay. The survey placed the median wages of older workers at approximately $20,000. In the retail industry, many older workers accept positions in sales, replacing stock on shelves and a variety of seasonal positions. Temporary employment agencies have recently reported that retirees have been flocking to their organizations seeking positions. Temporary or seasonal work can be an ideal match for an older work and employer.

Deportation Due to Criminal Conduct Continues to Rise

A recent report issued by the Immigration and Customs Enforcement Bureau indicates that nearly 400,000 people were deported in the fiscal year 2011 which ended September 30th. The agency also indicated that 55% of the 396,906 individuals who were deported had felony or misdemeanor convictions. Officials stated that the number of individuals who were deported and who were convicted of crimes was up 89% from 2008. Among those deported were more than 1,000 people convicted of homicide, 5,800 who were sexual offenders, and nearly 80,000 who were convicted of drug-related crimes or driving under the influence. Officials further reported that two-thirds of those deported had either recently crossed the border, or had done so on a repeated basis.

About Our Section and Members

Annual Meeting, Luncheon and CLE Program

The Section's annual meeting, luncheon and CLE program will be held on Thursday, January 26, 2012 at the Hilton New York in New York City, at 1335 Avenue of the Americas (6th Avenue at 55th Street). The CLE Program at the annual meeting will be held this year at 9:00 a.m.

Our annual luncheon will again be held at 12:00 p.m. and will include a guest speaker and the presentation of several awards to deserving individuals. Detailed information regarding all the events at the annual meeting will be forwarded under separate cover. We urge all of our members to participate in the annual meeting programs.

Fall CLE Program

The Fall CLE program was held on October 29, 2011 in Manhattan. The program involved a discussion on wrongful convictions, and dealt with such topics as false confessions, crime-scene investigations and forensic laboratories in New York State. Speakers included Professor Saul Kassin, from John Jay College, Doctor Peter Pizzola, Pace University, Marvin E. Schechter, Professor Ellen Yaroshefsky, Cardozo Law School, Honorable Jerald S. Carter, Nassau County Court, Anthony J. Girese, Counsel to the Bronx District Attorney, and Guy H. Mitchell, New York State Department of Law. The program was moderated by former Judge Phylis Bamberger. A cocktail reception was held for the participants and panelists immediately following the program.

Financial Report

At a recent meeting of the Executive Committee, Sherry Wallach presented a summary of the Section's financial status. She reported that our surplus has almost doubled in the last year and now stands at just over $45,000. Our annual dues for 2011 are expected to be around $36,000, and our overall budget should be balanced at just under $45,000. The largest expenditure which the Section incurred last year was for the outlay for the awards luncheon at the annual meeting. The luncheon was attended by 141 persons, and the expense of the luncheon was in part offset by the fees charged for the event.

Committee on Sentencing Reform

The need to simplify and modify the sentences and sentencing procedures currently mandated by the Penal Law and Criminal Procedure Law has often been discussed by our Section and other various committees. Despite the formation of several commissions on sentencing reform, little has been done to date. Our Section has therefore established a standing Committee on Sentencing Reform which will attempt to make recommendations in this area. At a recent meeting of our Executive Committee, Tracey Brunecz was named as Chair of the Committee, and Section members Bob Dean, Kevin Kelly and Guy Mitchell were appointed as members. We will keep you advised of the work of this Committee as it progresses.

The Criminal Justice Section Welcomes New Members

We are pleased that during the last several months, many new members have joined the Criminal Justice Section. We welcome these new members and list their names below.

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Alexandra Ashmont
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Brian Francese
Daniel Kleven Gelb
Carolyn B. George
Leigh Gibbons Gilsenan
Meredith Sue Grabill
Lloyd G. Grandy
Michal Gross
Joseph Hamel
Paul Hannaford
Mallory Elysse Harwood
Hilary Ann Hassler
Paula Highers
Michaelan Hill
David Howe
Allison Anne Hoyt
Lincy Marie Jacob
Michael F. Jordan
Scott Keller
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Abigail Sara Kurland
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Ethan Caleb Lerman
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Publication and Editorial Policy

Persons interested in writing for this *Newsletter* are welcomed and encouraged to submit their articles for consideration. Your ideas and comments about the *Newsletter* are appreciated as are letters to the Editor.

Publication Policy: All articles should be submitted to:

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Submitted articles must include a cover letter giving permission for publication in this *Newsletter.* We will assume your submission is for the exclusive use of this *Newsletter* unless you advise to the contrary in your letter. Authors will be notified only if articles are rejected. Authors are encouraged to include a brief biography with their submissions.

For ease of publication, articles should be submitted on a 3½" floppy disk or CD preferably in WordPerfect. Please also submit one hard copy on 8½" x 11" paper, double spaced.

Editorial Policy: The articles in this *Newsletter* represent the authors' viewpoints and research and not that of the *Newsletter* Editor or Section Officers. The accuracy of the sources used and the cases cited in submissions is the responsibility of the author.

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NEW YORK STATE BAR ASSOCIATION

Annual Meeting

January 23-28, 2012

Hilton New York
1335 Avenue of the Americas
New York City

Criminal Justice Section Meeting, Luncheon and Program

Thursday, January 26, 2012

Save the Dates