

DATE **NAME OF CASE (DOCKET NUMBER)**

8-29-11 Sheila Aronberg, etc., et al. v. Wendell Tolbert, et al. (A-9-10; 066414)

When an uninsured motorist's cause of action is barred by N.J.S.A. 39:6A-4.5(a), an heir has no right of recovery under the Wrongful Death Act, N.J.S.A. 2A:31-1 to -6.

8-29-11 Blanca Gonzalez v. Wilshire Credit Corporation, et al. (A-99-09; 065564)

The post-foreclosure-judgment agreements in this case constitute a stand-alone extension of credit. In fashioning and collecting on such a loan, a lender or its servicing agent cannot use unconscionable practices in violation of the Consumer Fraud Act.

8-26-11 Debra Ann Lombardi v. Christopher J. Masso, et al. (A-28/29-10; 066488)

In this case alleging breach of contract and fraud in a real estate transaction, the Appellate Division correctly determined that the trial court's original summary judgment order dismissing several of the defendants was issued in error, the trial judge was well within his discretion in revisiting and vacating the interlocutory summary judgment order, and the law of the case doctrine did not apply to bar reconsideration under these circumstances.

8-25-11 In the Matter of Gerald M. Saluti, an Attorney at Law (D-70-10; 067548)

The action of the Supreme Court to suspend Gerald M. Saluti from the practice of law for failure to comply with fee arbitration committee determinations qualifies as an exception to the automatic stay provision of the U.S. Bankruptcy Code and Saluti is suspended from practice pending his compliance.

8-24-11 State v. Larry R. Henderson (A-8-08; 062218)

The current legal standard for assessing eyewitness identification evidence must be revised because it does not offer an adequate measure for reliability; does not sufficiently deter inappropriate police conduct; and overstates the jury's ability to evaluate identification evidence. Two modifications to the standard are required. First, when defendants can show some evidence of suggestiveness, all relevant system and estimator variables should be explored at pretrial hearings. Second, the court system must develop enhanced jury charges on eyewitness identification for trial judges to use. Defendant is entitled to a new pretrial hearing consistent with this opinion to determine the admissibility of the eyewitness evidence introduced at his trial.

8-24-11 State v. Cecilia X. Chen (A-69-08; 063177)

Even without any police action, when a defendant presents evidence that an identification was made under highly suggestive circumstances that could lead to a mistaken identification, trial judges should conduct a preliminary hearing, upon request, to determine the admissibility of the identification evidence.

8-23-11 Fair Share Housing Center, Inc. v. N.J. State League of Municipalities (A-36-10; 066228)

The League of Municipalities is a "public agency" under the Open Public Records Act and must provide access to "government record[s]" that are not subject to an exemption.

8-22-11 Robert Buck v. James R. Henry, M.D. (A-10-10; 065860)

The case is remanded for a Ferreira conference. Buck acted in good faith in filing affidavits of merit from two different medical specialists; and if the conference had been conducted as required and the trial court found deficiencies, Buck would have had additional time to submit an affidavit that conforms to N.J.S.A. 2A:53A-41. In the future, a physician

defending against a medical malpractice claim, who admits treating the plaintiff, must include in his answer the medical specialty, if any, in which he was involved when rendering treatment to the plaintiff.

8-8-11 Department of Children and Families, Division of Youth and Family Services v. T.B. (A-21-10; 066294)

Susan did not fail to "exercise a minimum degree of care" under N.J.S.A. 9:6-8.21(c)(4)(b) because her conduct did not rise to the level of gross negligence or recklessness. Therefore, her name must be removed from the Child Abuse Registry.

8-1-11 In the Matter of Steven P. Perskie, a Former Judge of the Superior Court (D-75-10; 067680)

By clear and convincing evidence, former Judge Steven P. Perskie's conduct as charged in Counts I and III for the formal complaint violated Canons 1, 2A, 2B, and 3C(1) of the Code of Judicial Conduct and R. 1:12-1(f). There is not clear and convincing evidence that respondent deliberately misled the Senate Judiciary Committee as charged in Count II. Respondent is censured.

7-28-11 Whirlpool Properties, Inc., v. Director, Div. of Taxation (A-25-10; 066595)

For corporate taxpayers having a substantial nexus to New Jersey, the Throw-Out rule may apply constitutionally only to untaxed receipts from states that lack jurisdiction to tax the corporation due to insufficient connection with the corporation or due to congressional action such as 15 U.S.C.A. §§ 381-84(commonly referred to as "P.L. 86-272"), but not to receipts that are untaxed because a state chooses not to impose an income tax.

7-28-11 J.D. v. M.D.F. (A-115-09; 065499)

In this domestic violence matter, the trial court failed to sufficiently articulate its findings and conclusions and the record contains insufficient

evidence to sustain the determination to enter a Final Restraining Order. The matter is remanded to the trial court for a re-hearing to protect M.D.F.'s due process rights and to permit the trial court to evaluate the testimony and the evidence.

7-27-11 Richard Luczejko v. City of Hoboken
(A-38-10; 066580)

The Appellate Division properly analyzed the facts of this case and concluded that the use of the condominium complex is residential and, therefore, no sidewalk liability attaches for the injury to plaintiff.

7-26-11 State v. Timyan Cabbell/State v. John Calhoun
(A-89/90-09; 065129)

Both defendants were denied their federal and state constitutional rights to confront Karine Martin, a key State's witness, before the jury. For that reason, Martin's out-of-court statement to the police incriminating defendants should not have been read to the jury and the admission of that statement was not harmless error.

7-25-11 Pomerantz Paper Corporation v. New Community Corporation, et al. (A-41/42-10; 066531)

In this dispute between two business entities regarding purchase prices and payment for products, the trial court's findings that were central to its evaluation of the buyer's Consumer Fraud Act counterclaim fail for want of sufficient credible evidence in the record, and the appellate panel erred in deferring to those findings and, by extension, in affirming the trial court's conclusions. Furthermore, the panel erred in its analysis of the seller's breach of contract claim by imposing a duty of written notice of non-delivery on the buyer that is found neither in the Uniform Commercial Code nor in the course of dealing between the parties.

7-21-11 State v. Marie Hess (A-113-09; 066015)

Defendant was denied her constitutional right to the effective assistance of counsel because her attorney failed to present and argue mitigating evidence at sentencing. Also, the plea agreement provisions that restrict the right of counsel to argue for a lesser sentence are void.

7-20-11 New Jersey Division of Youth and Family Services v. R.D. (A-2-10; 066070)

Unless the parties are on notice that Title Nine abuse or neglect proceedings are to be conducted under the clear and convincing evidence standard constitutionally required for guardianship/termination of parental rights proceedings under Title Thirty and appropriate accommodations are made for the fundamentally different natures of these proceedings. Title Nine determinations cannot be given preclusive effect in later Title Thirty proceedings.

7-19-11 In the Matter of Nicholas R. Foglio, Fire Fighter (M2246D), Ocean City (A-16-10; 066482)

An appointing authority that chooses to bypass a candidate that ranked higher on a competitive civil service examination must provide a statement of "legitimate" reasons for the bypass. Where, as here, the reason advanced was boilerplate, equally applicable to any bypass case and utterly lacking in specific explanatory language, it was not sufficient to satisfy the appointing authority's reporting obligation.

7-7-11 William W. Allen v. V and A Brothers, Inc., et al. (A-30-10; 066568)

(1) Employees and officers of a corporation may be individually liable under the Consumer Fraud Act (CFA) for acts they undertake through the corporate entity; and (2) the individual defendants are not collaterally estopped from relitigating the quantum of damages attributable to the CFA violations.

7-6-11 International Schools Services, Inc. v. West Windsor Township (A-114-09; 066060)

West Windsor Township properly denied a property tax exemption to International Schools Services, Inc. (ISS), a nonprofit entity, for the tax years 2002 and 2003 because the commingling of effort and entanglement of activities and operations by ISS and its profit-making affiliates was significant and substantial, with the benefit in the form of direct and indirect subsidies flowing only one way - from ISS to the for-profit entities.

6-21-11 Passaic Valley Sewerage Commissioners v. St. Paul Fire and Marine Insurance Company (A-97-09; 065793)

Under the terms of a policy that defines "loss" as "money damages," an insurer has no obligation to indemnify its insured for the value of a settlement consisting of services and transferred assets.

6-21-11 Magdy Abouzaid, et al. v. Mansard Gardens Associates, LLC, et al. (A-5-10; 066223)

Because a plaintiff's claim for negligent infliction of emotional distress under Portee v. Jaffee, 84 N.J. 88 (1980), may involve physical sequelae and, therefore, is potentially covered by a "bodily injury" provision of a defendant's commercial general liability insurance policy, the burden of defense must be borne by the insurer until the question of physical injury clearly drops out of the case.

6-21-11 Vasil Kovalcik v. Somerset County Prosecutor's Office (A-43-10; 066529)

The judgment is affirmed to the extent that it concluded that the documents are not exempt as protected by an order of confidentiality. The judgment is reversed to the extent that it held that the documents are also not exempted personnel records. That aspect of the matter is remanded to the trial court for further proceedings during which the parties shall be given an adequate opportunity to marshal

sufficient proofs as to the nature of the contents of the particular documents and the specific educational requirements for employment as a detective in the Prosecutor's Office to enable the court to apply the statute in accordance with the analysis the Court has set forth.

6-16-11 Donald Nuckel v. Borough of Little Ferry Planning Board (A-3/4-10; 066096)

A (d)(1) variance under N.J.S.A. 40:55D-70 is required because the proposed driveway constitutes a second principal use, which is prohibited by the zoning ordinance. Because the proposed driveway will reduce the buffers between the nonconforming use and a conforming use, a (d)(2) variance will also be necessary unless the planning board determines that the intensification of the nonconformity is insubstantial.

6-15-11 State v. L.H. (A-31-09; 066436)

The judgment of the Appellate Division is reversed and the matter is remanded to the Law Division (1) for the entry of an order (a) vacating the entire award of 2,145 days of gap-time credits originally granted on September 18, 2009 and (b) remanding defendant L.H. to serve the sentence imposed on that date without any credit for gap time; and (2) for the entry of a corrected judgment of conviction reflecting no days of gap-time credit.

6-14-11 Karen Wood v. New Jersey Manufacturers Insurance Company (A-44-10; 066643)

The right to trial by jury attaches to a Rova Farms claim that an insurer in bad faith failed to settle a claim within the policy limits.

6-9-11 Joseph A. Donelson v. DuPont Chambers Works (A-112-09; 065628)

Given the facts before the Court, lost wages are recoverable in a Conscientious Employee Protection Act (CEPA) case, even in the absence of a constructive discharge.

6-9-11 State v. George Calleia (A-32-10; 066446)

If a victim's state-of-mind hearsay statements are relevant to show the victim's conduct, and if such conduct also can give rise to motive when it is known or probably known to the defendant, then the statements are admissible for the purpose of establishing motive subject to the usual balancing under N.J.R.E. 403. Any error in this case stemming from the cumulative nature of the hearsay testimony is harmless.

6-9-11 State v. Dwayne Gillispie (A-101-09; 064819)
State v. Gregory Buttler

Although the admission at trial of other-crimes evidence that provided unnecessary details of an earlier crime was unduly prejudicial and was not outweighed by an probative value, the error was harmless because there was independent, overwhelming proof that defendants Gillispie and Buttler were guilty.

6-9-11 In the Matter of Richard J. Simon, An Attorney at Law
(D-51-10; 067340)

An attorney who sues a current client to recover a fee for legal services in an effort to withdraw from representation violates RPC 1.7(a)(2). Respondent is reprimanded for his unethical conduct.

6-8-11 State v. Zarik Rose (A-111-09; 065010)

The disputed evidence was admissible under the New Jersey Rules of Evidence. It properly went to defendant's motive, intent and plan, and the probative value of the evidence was not outweighed by its prejudice. In this appeal, the Court also ends the

practice of invoking res gestae as an explanation for the admission of evidence.

- 6-8-11 State v. Andrea Hernandez, a/k/a Andrea Rosario
(A-64-09; 064946)
State v. Derrick Wayne Rose, a/k/a Derrick W. Stewart
(A-65-09; 064945)

Both defendants are entitled to precisely what Rule 3:21-8 provides: credits against all sentences "for any time served in custody in jail or in a state hospital between arrest and the imposition of sentence" on each case. The Rule must be consistently applied to promote uniformity in sentencing; there is no room for discretion in either granting or denying credits.

- 6-7-11 Peter Risko v. Thompson Muller Automotive Group, Inc.
(A-27-10; 066502)

Essentially for the reasons expressed in Judge Carchman's dissent, a new trial on damages is warranted based on the cumulative effect of counsel's comments during summation, which suggested that jurors would be reported for violating the law if they rejected the notion that the case could be worth more than \$1 million.

- 6-7-11 County of Hudson v. State of New Jersey, Department of Corrections (A-74-09; 064676)

Contract claims against the State must be asserted through the timely service of a notice of claim, pursuant to the Contractual Liability Act, N.J.S.A. 59:13-1 to -10. Only following the expiration of the time period imposed by the Act may a contract claim become the subject of a complaint or, if appropriate, be added to an existing complaint. The County of Hudson's amended complaint against the State, through which expanded claims were added, was properly dismissed for failure to comply with the statutory notice requirement.

6-7-11 Too Much Media, LLC, et al. v. Shellee Hale (A-7-10; 066074)

Although New Jersey's Shield Law allows news reporters to protect the confidentiality of sources and information gathered through their work, online message boards are not similar to the types of news entities listed in the statute; therefore, defendant Shellee Hale was not entitled to claim the privilege in this defamation case that is grounded in comments she posted on an Internet message board.

6-1-11 Denise A. Perrelli v. Bridget Pastorelle and Paul Pastorelle (A-22-10; 066207)

N.J.S.A. 39:6A-4.5(a) bars a person who was injured while a passenger in her own uninsured automobile from pursuing a personal injury action to recover economic and noneconomic damages for those injuries.

6-1-11 Frederick W. Voss v. Kristoffe J. Tranquilino, et al. (A-110-09; 066153)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Lisa's opinion.

5-26-11 State v. New Jersey v. Aaron P. Schmidt (A-35-10; 066538)

Because defendant unequivocally consented to the breath test, his later failures to provide the necessary volume and length of breath samples did not render his earlier consent ambiguous or conditional. Thus, defendant remained among those who have consented and, hence, was not entitled to reading of the Additional Statement.

5-25-11 O Builders & Associates, Inc. v. Yuna Corporation of N.J. (A-34-10; Docket No. 066490)

Defendant's motion to disqualify Attorney Lee was correctly denied because defendant failed to satisfy

its burden of proving that the matters disclosed during the February 2008 consultation were "the same or substantially related" to this lawsuit, and that the information disclosed during that consultation was "significantly harmful" to defendant in this lawsuit.

5-24-11 Raymond Arthur Abbott, et al. v. Fred G. Burke, Commissioner of Education, et al. (M-1293)

The Appropriations Clause creates no bar to judicial enforcement under the circumstances presented here. The funding to the Abbott districts in FY 2012 must be calculated and provided in accordance with the School Funding Reform Act of 2008. Relief is limited to the plaintiff class of children from Abbott districts for whom the Court has a historical finding of constitutional violation and for whom the Court has specific remedial orders in place through Abbott XX.

5-18-11 Kent Motor Cars, Inc. d/b/a Honda of Princeton v. Reynolds and Reynolds, Co. (A-102/103-09)

(1) Because the Dealerships seek trebling of counsel fees and damages that were already trebled in Wilson, allowing the Consumer Fraud Act claim to proceed following an inexcusable violation of Rule 4:5-1(b)(2) will result in substantial prejudice to Reynolds; and permitting the contribution claim will allow for fair compensation and prevent Reynolds from avoiding responsibility for an alleged regulatory violation.
(2) Because the claims in Wilson did not relate to leasing or financing, they did not give rise to a duty to defend within the meaning of the Universal policy's coverage for violations of "truth-in-lending or truth-in-leasing" laws.

5-17-11 Gregory Russo v. Board of Trustees, Police and Firemen's Retirement System (A-20-10)

In this case in which a policeman was involved in a fire rescue that caused injury to him and a victim's death, the officer was improperly denied accidental disability benefits for his mental injury because of

an incorrect application of the standards set forth in Patterson v. Board of Trustees, 194 N.J. 29 (2008).

5-12-11 Ming Yu He v. Enilma Miller (A-81-09)

The jury's award cannot stand because the trial court provided a sufficient explanation for remittitur and its decision was supported by the record.

5-11-11 Donald C. Sachau v. Barbara Sachau (A-33-10)

Because the judgment of divorce was silent regarding the value to be ascribed to the marital home if it was not sold upon the triggering event - the emancipation of the youngest child - it fell to the court to supply that omitted term. Pacifico v. Pacifico, 190 N.J. 258 (2007), presumes value as of the trigger if the sale takes place at that time. Here, because there was no agreement to the contrary, the marital home should have been valued as of the date of the sale.

4-28-11 State v. R.T. (A-73-09)

The members of the Court being equally divided on whether the trial court committed reversible error by instructing the jury on voluntary intoxication, the Appellate Division's judgment reversing and remanding the case for a new trial is affirmed.

4-27-11 State v. W.B. (A-80-09)

(1) Defendant's recorded statement was admissible; (2) if a law enforcement officer's notes are lost or destroyed before trial, a defendant, upon request, may be entitled to an adverse inference charge; (3) Dr. Coco's statistics-based expert testimony on victim credibility was beyond the permissible scope of CSAAS evidence, but it did not compel reversal; (4) testimony regarding D.L.'s complaint more than one and one-half years after defendant's sexual assault was properly admitted as fresh complaint testimony; (5) defendant's conviction is not reversible based on the jury charge provided; and (6) the playback of

defendant's videotaped confession did not constitute an abuse of discretion.

4-26-11 State v. Germaine A. Handy (A-108-09)

The dispatcher's conduct - advising an officer on the scene that there was an outstanding warrant when the warrant contained a differently spelled name and a different date of birth - was objectively unreasonable and violated the Fourth Amendment to the United States Constitution and Article I, Paragraph 7, of the New Jersey Constitution. Evidence uncovered during the search incident to the arrest must be suppressed.

4-26-11 State of New Jersey v. William E. Rivera, a/k/a Juan Rivera (A-11-10)

A trial court's sua sponte obligation to instruct the jury in respect of any defense - whether affirmative or tailored to negate an element of the offense - is triggered only when the evidence clearly indicates or clearly warrants such a charge, without the trial court having to scour the record in detail to find such support.

4-12-11 IMO Anthony Stallworth, Camden County Municipal Utilities Authority (A-6-10)

In imposing discipline, the Civil Service Commission did not adequately consider the public employee's entire record of misconduct and disregarded its obligation to state with particularity its reasons for rejecting the Administrative Law Judge's findings and conclusion. The matter is remanded to the Commission for reconsideration and a more thorough explanation of the Commission's ultimate decision.

4-11-11 Amin Yousef, et al. v. General Dynamics Corporation, et al. (A-88-09)

The trial court properly weighed the public-interest factors in finding that defendants failed to carry their burden of demonstrating that New Jersey is a

"demonstrably inappropriate" forum. Therefore, the trial court did not abuse its discretion in denying the forum non conveniens motion.

3-31-11 State v. Kelvin L. McLean a/k/a Kevin McLean (A-98-09)

The opinion offered by the officer does not meet the requirements needed to qualify it as a lay opinion and permitting the officer to testify about his opinion invaded the fact-finding province of the jury.

3-31-11 State v. Michael Hayes (A-13-10)

Under the circumstances, a short adjournment should have been granted to permit Hayes to obtain conflict-free counsel to advance his application to withdraw his guilty pleas. Because Hayes was required to proceed without counsel, a fair and informed judgment of whether he should have been allowed to withdraw his pleas cannot be reached. The case is remanded to the trial court for a properly counseled Slater hearing, to be conducted under the "interests of justice" pre-sentencing burden of proof codified in Rule 3:9-3(e).

3-29-11 Policemen's Benevolent Association, Local No. 11 v. City of Trenton (A-116-09)

The language of the collective bargaining agreement between the City of Trenton and the Policemen's Benevolent Association plainly supports the arbitrator's interpretation that payment of straight-time compensation was contemplated for the ten-minute muster period that the City required employees to work prior to their scheduled start time. The arbitrator's interpretation of the agreement is plausible and, thus, survives the reasonably debatable standard of review.

3-23-11 GMAC v. Rosanna Pittella v. Pine Belt Enterprises, Inc. (A-15-10)

Any order that compels or denies arbitration shall be considered final for purposes of appeal, but the trial

court retains jurisdiction to address other issues pending the appeal.

3-22-11 State v. Michael Gore (A-77-09)

State v. Cleveland, 6 N.J., 316 (1951), is superseded by the New Jersey Rules of Evidence. Rule 803(c)(5) permits the admission of a defendant's unsigned and unacknowledged transcribed statement, used to refresh a witness' memory as past recollection recorded, provided there is no objection and all foundational requirements, including Rule 803(b)(1), are satisfied. Although the trial court erroneously permitted the formal confession statement to be moved into evidence after the record had closed, plain error does not exist because there is no reasonable likelihood that admission of the statement caused the jury to reach a conclusion that it otherwise would not have reached.

3-17-11 Town of Kearny v. Discount City of Old Bridge, et al.
(A-76-09)

A non-record owner of property is not entitled to individualized notice that redevelopment is being considered but only to newspaper publication. If that party does not object or challenge the blight designation at the hearing or in a timely action in lieu of prerogative writs, the issue is foreclosed. In addition, a leasehold interest is an "interest in land" that, standing alone, can be condemned. In that instance, the lessee has the same rights as any other condemnee, including the right to bona fide negotiations. Because bona fide negotiations did not occur here, the condemnation complaint must be dismissed.

3-16-11 Lawrence B. Seidman, et al. v. Clifton Savings Bank, S.L.A., et al. (A-100-09)

On the record presented in this case, plaintiff Seidman failed to satisfy his burden to overcome the effect of the business judgment rule and to demonstrate that the stock option grants and restricted stock awards given to the directors of

defendant Bancorp under the 2005 Equity Incentive Plan constituted corporate waste.

3-16-11 Laura Higgins, et al. v. Mary F. Thurber, et al.
(A-12-10)

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Fisher's opinion below. Although a potential claim sounding in legal malpractice may have been raised in the probate proceeding, it cannot be said that plaintiffs had a "full and fair opportunity to litigate those claims or that it would otherwise be equitable to bar this subsequent suit" under the entire controversy doctrine.

3-15-11 Tina Kieffer, et al. v. Best Buy, et al. (A-104-09)

All Cleaning Solutions Company had no contractual obligation to indemnify American Industrial Cleaning Company or Best Buy in the absence of a legal determination that All Cleaning caused, by its "negligence, omission, or conduct," the injuries suffered by plaintiff.

3-14-11 State v. Dashawn Miller (A-94-09)

(1) The trial court did not err in replaying video-recorded witness testimony at the jury's request; (2) the jury charge concerning defendant's decision not to testify was not plain error; and (3) the court mistakenly did not address the Yarbough factors and its reasoning for imposing consecutive sentences cannot be sufficiently discerned from the record. Thus, defendant's conviction is affirmed and the case is remanded for resentencing.

3-10-11 IMO Provision of Basic Generation Service for the Period Beginning June 1, 2008 (A-75-09)

The Board of Public Utilities was not entitled to rely on the comments of private parties to satisfy its basic administrative law obligation to act with

transparency through the provision of prior notice and opportunity for comment. As a matter of due process the Court must vacate the decision authorizing the pass-through of costs to ratepayers pending a new BPU proceeding addressing the subject.

3-9-11 State v. Jason Shelley (A-109-09)

The Appellate Division correctly vacated defendant Jason Shelley's conviction under N.J.S.A. 2C:35-7 for distributing illicit drugs within 1,000 feet of a school because the inclusion of a small kindergarten class in a day care center does not transform the center into an elementary school for purposes of construing and applying the statute.

3-8-11 State v. Jamiyl Dock (A-8-10)

Artwell's ruling presumptively banning the use of restraints on witnesses constitutes a new rule of law with prospective application.

3-3-11 State v. Eduardo McLaughlin (A-68-09)

Because the state of mind of the declarant of the hearsay offered here was not directly relevant to the prosecution of defendant and the hearsay statement itself, without redaction, imputed to defendant the intent to commit a crime, its admission was error.

2-8-11 Paul Morgan v. Kristin Morgan (n/k/a Leary) A-1-10)

The Appellate Division correctly found that defendant Paul Morgan did not establish de facto shared custody and that the trial court's decision prohibiting plaintiff Kristin Morgan from relocating required reversal. The Appellate Division's remand order, however, is modified to permit the trial court to take into account the changes in circumstances that have occurred since the evidence was heard by the trial judge four years ago.

2-1-11 State v. William Acevedo, Jr. (A-95-09)

Defendant's sentence was not "illegal" and therefore not subject to modification on PCR.

1-31-11 G.D. v. Bernard Kenny and The Hudson County Democratic Organization, Inc. (A-85-09)

Defendants in this case were entitled to assert truth as a defense to the defamation and other related tort actions, even though G.D.'s conviction was subject to an expungement order. In addition, G.D. failed to establish that the flyers were not substantially accurate. Moreover, G.D. had no reasonable expectation of privacy that information so long in the public domain before the entry of the expungement order would be erased from the public's mind or from papers already widely disseminated.

1-26-11 N.J. Division of Youth and Family Services v. P.W.R. (A-79-09)

Because the record in this matter did not demonstrate proof of actionable abuse or neglect of a minor, the court's findings of violations under Title Nine, N.J.S.A. 9:6-8.21 to -8.73, were insufficient as a matter of law. The judgment of the Appellate Division is reversed and the abuse and neglect judgment against P.W.R. is vacated.

1-25-11 State v. Daniel Twian Brown (A-67-09/A-17-10)

At the time Brown fled through a window onto a roof next door, the police had engaged in no misconduct; thus, there was no seizure of any sort in the apartment. When the police arrested Brown after he came down from the roof, they did not need an arrest warrant because they had probable cause to arrest him in a public place (1) for armed robbery committed outside their presence and (2) for resisting arrest, which they observed.

1-20-11 State v. Damu Alston (A-72-09)

Defendant's statements after he waived his right to counsel, when clarified, were not an assertion of his right to counsel, and the police officer's questions did not exceed the scope of permissible clarification.

1-19-11 State v. Eileen M. Ciancaglini (A-92/93-09)

Defendant Ciancaglini's conviction in 2006 for refusing to take a breathalyzer test does not constitute a prior conviction for purposes of determining her sentence for driving while intoxicated in 2008.

1-12-11 Hopewell Valley Citizens' Group, Inc. v. Berwind Property Group Development Co., et al. (A-83-09)

The circumstances presented in this case satisfy the standards in Rule 4:69-6(c) and warrant enlargement of the forty-five-day period because "it is manifest that the interest of justice so requires."

12-10-10 Lula M. Henry v. New Jersey Department of Human Services (A-69-09)

There is no equitable basis on which to extend the statute of limitations on Henry's retaliation claim. That cause of action accrued at or before the date she resigned in 2004, after being told that if she had not complained, she may have been reclassified. However, a hearing is required to determine whether the discovery rule applies to the discrimination claim. When Henry requested reclassification, she was given a reason that had nothing to do with discrimination, which may have misled her into not pursuing the issue. She is entitled to assert that she had no reasonable suspicion of discrimination until 2006.

12-10-10 David Johnson v. Molly V.G.B. Johnson (A-91-09)

The principles established in Fawzy were intended to be applicable to all child custody arbitrations, including those conducted under the Alternative Procedure for Dispute Resolution Act. The record created by the arbitrator in this matter, which included a recitation of all evidence considered, a recapitulation of every interview and observation he conducted, a full explanation of the underpinnings of the award, and a separate opinion on reconsideration, satisfies the spirit of Fawzy and is an acceptable substitute for a verbatim transcript.

12-2-10 Joyce Quinlan v. Curtiss-Wright Corporation
(A-51-09)

The jury charge on plaintiff's retaliation claim was not in error and the jury's verdict in favor of plaintiff on that count was amply supported by the evidence. In addition, on the record presented, there was sufficient evidence of egregiousness to permit or to support the punitive damages awarded to plaintiff.

11-23-10 Paula Alexander , et. al. v. Seton Hall University
(A-87-09)

The payment of unequal wages on the discriminatory basis of age or sex is proscribed by New Jersey's Law Against Discrimination (LAD), and each payment of such discriminatory wages constitutes an actionable wrong that is remediable under the LAD. The two-year statute of limitations applies to such violations by merely cutting off the untimely portion of such claims, thereby limiting the damages recoverable for past discriminatory compensation. As a result, plaintiffs' complaint was timely in respect of the allegedly discriminatory wages they received during the two years immediately prior to the filing of their complaint.

11-18-10 The Committee to Recall Robert Menendez v. Nina Wells
(A-86-09)

The matter is ripe for adjudication and the text and history of the Federal Constitution, as well as the principles of the democratic system it created, do not allow the states the power to recall U.S. Senators. Those portions of the UREL and the State Constitution

which authorize the recall of U.S. Senators are unconstitutional.

11-15-10 Robert R. Dean, et al. v. Barrett Homes, Inc. et al.
(A-15-09)

The economic loss rule embodied in the Products Liability Act precludes recovery of damages for harm that the EIFS caused to itself. The purpose of the Act to provide a remedy for harm that a defective product causes to people or property. There is no room to expand it to create a new remedy for the cost of replacing the product based on assertions that it failed to perform as expected. However, because the EIFS was not fully integrated into the structure, plaintiffs retain a cause of action against the product's manufacturer to the extent that the product caused damage to the house or its immediate surroundings.

11-9-10 In the Matter of the Civil Commitment of W.X.C.
(A-33-09)

The Court concludes that the Sexually Violent Predator Act (SVPA) is remedial and regulatory in nature, and that its incidental effects, including the use of confinement as part of the treatment methodology, do not alter the essential character of the statute. The Court thus declines to conclude that the SVPA is transformed into a punitive, and therefore unconstitutional, enactment merely because it applies to some individuals, like defendant, who were not provided with specialized treatment prior to civil commitment.

10-27-10 In the Matter of the Expungement Petition of D.H.
(A-82-09)

In the context of an expungement application and in order to give full expression to the Legislature's will, a mandatory order of permanent forfeiture of public employment must be severed from - and preserved from the expungement of - the conviction that originally triggered the order of forfeiture.

10-26-10 State v. Brian M. Yohnnson (A-37-09)

State v. O'Neill does not apply in this case, where police did not use a "question-first, warn-later" approach and defendant said nothing relevant to the crimes being investigated before receiving proper warnings. Under the familiar totality of the circumstances test, defendant's waiver of his rights was knowing, voluntary, and intelligent.

10-18-10 Raymond Marcinczyk v. State of New Jersey Police Training Commission (A-19-09)

The agreement that plaintiff Raymond Marcinczyk was required to sign before attending police academy training, in which he agreed that he would not assert any claims for injuries or other damages sustained as a result of the training, was invalid because it contravened public policy as expressed in the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 59:12-3. A public entity cannot condition the provision of a public service on the recipient's execution of a waiver of liability.

9-30-10 Melissa Lee v. Carter-Reed Company, L.L.C. (A-38-09)

Based on a review of the record, Melissa Lee's claims, Carter Reed's defenses, and the applicable substantive law, and in light of the analysis of the predominance, superiority, and manageability factors of Rule 4:32-1(b) (3), the trial court mistakenly exercised its discretion in not certifying the class of New Jersey Relacore purchasers on Lee's Consumer Fraud Act claim.

9-29-10 In the Matter of D.C. & D.C., Minors (A-71-09)

Under the Child Placement Bill of Rights Act, N.J.S.A. 9:6B-1 to -6, visitation between siblings placed outside the home is presumed in the period before adoption, and the Division has an independent obligation to facilitate visitation. To oppose visitation, the Division must prove it is contrary to the child's welfare under the standards provided in the Child Placement Bill of Rights Act. After adoption, adoptive parents are free, within the same limits as biological parents, to raise their child as they see fit. Parental autonomy is not absolute, however. A biological or adoptive family may be

ordered to permit third-party visitation where necessary to avoid harm to the child.

9-21-10 City of Long Branch v. Jui Yung Liu, et al. (A-9-09)

In this eminent domain action, the trial court properly determined that the expanded dry beach (previously tidally flowed) that was produced by the government-funded beach replenishment program fell within the public trust doctrine and was not the property of the upland owners, the Lius. Therefore, the Lius were not entitled to compensation for property they did not own. In addition, the jury determination that a reasonably willing purchaser would not have paid substantially more for the property with the furnishings, fixtures, and equipment was not a miscarriage of justice. The Court rejects the Lius' contention that they did not receive just compensation for their property.

9-20-10 State v. Frank Dellisanti (A-29-09)

Defendant Frank G. Dellisanti effectively waived his right under Rule 3:16(b) to be present throughout his criminal trial, therefore his convictions are affirmed.

9-13-10 Roy M. Victor v. State of New Jersey (A-2-09)

The Court concurs in the Appellate Division's judgment that the verdict must be reversed and the matter remanded for a new trial. The Court does so because, regardless of whether or not there is room in the Law Against Discrimination's strong protective embrace of persons with disabilities to recognize that there may be circumstances in which a failure to accommodate in and of itself gives rise to a cause of action, this plaintiff's claim for failure to accommodate cannot meet the proofs required on his prima facie case.