

APPELLATE DIVISION ON APPEAL: THE JUSTICES'
RATES OF AGREEMENT, REJECTION, AND
VINDICATION BY THE COURT OF APPEALS

*Jason A. Cherna**

*Jessica Blain-Lewis***

*Vincent Martin Bonventre****

*For the Center for Judicial Process*****

I. INTRODUCTION

New York State's intermediate appeals justices vary widely in their rates of success on review by the Court of Appeals, the State's highest court. At one end, there are those justices whose votes and opinions, whether majority or dissent, are consistently ratified by the high court. At the other end, there are those whose positions are regularly rejected. Analogously, when some of the justices dissent against the majority decision of their court, they are

* Student Executive Editor, Center for Judicial Process; Albany Law School, Class of 2008; B.A., Monmouth University.

** Former Student Executive Editor, Center for Judicial Process; J.D., Albany Law School, Class of 2005; B.A., SUNY Plattsburgh; Assistant District Attorney, Albany County, New York.

*** Director, Center for Judicial Process; Ph.D., M.A.P.A., University of Virginia; J.D., Brooklyn Law School; B.S., Union College; Professor of Law, Albany Law School; Editor, *State Constitutional Commentary*.

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**** The Center for Judicial Process is an independent, nonpartisan, nonprofit organization devoted to the interdisciplinary research and study of courts and judges, including decision-making and voting, the judicial role and selection, and other facets of the nature of the judicial process.

frequently vindicated by a reversal at the Court of Appeals. Other justices only see their minority positions rejected a second time upon appeal at the state's highest court. These and other related observations are among the findings of a study examining Appellate Division decisions reviewed by the Court of Appeals since the year 2000.

The study examined every non-unanimous decision of each of the four departments of the New York State Appellate Division rendered between January 1, 2000 and December 31, 2005, which was in turn reviewed on appeal by the Court of Appeals by June 2006, the point at which the data collection for this study was completed.¹ There were a total of 254 such Appellate Division decisions in which at least one justice wrote an opinion or cast a vote dissenting from the result reached by the majority.²

This report begins with a preliminary overview of the study, providing some general observations about the number of decisions in the study from each Appellate Division department as well as some highlights of the findings about individual justices. This report then outlines the findings concerning those Appellate Division justices with high success rates when their opinions and votes have been subject to Court of Appeals review, and those justices with contrastingly low rates. Next, this report surveys those justices whose Appellate Division dissents have often become

¹ The research for this study was conducted using Westlaw and LexisNexis, as well as the websites for each of the four departments of the Appellate Division and the website of the Court of Appeals. See New York State Court of Appeals Homepage, <http://www.courts.state.ny.us/ctapps> (last visited Feb. 20, 2007); New York State Unified Court System: Appellate Divisions, <http://www.courts.state.ny.us/courts/appelatedivisions.shtml> (last visited Feb. 20, 2007) (providing links to each department's website). Searches were conducted to collect every divided decision of the Appellate Division rendered from January 1, 2000 through December 31, 2005. The history of each decision was then searched to determine if it was appealed to the Court of Appeals. Every such divided Appellate Division decision that was reviewed on appeal by the Court of Appeals by June 2006 was used for this study.

² The reasons for the traditional focus on divided decisions in judicial studies have been elaborated countless times. Suffice it to say that such decisions are much more revealing of the judges' individual views than are the unanimous decisions that often, if not typically, mask those views in compromise and collegiality. See HENRY J. ABRAHAM, *THE JUDICIAL PROCESS* 237 (7th ed. 1998) (explaining that a decision signed by one member of a court is more likely "the product of many minds"); DAVID M. O'BRIEN, *STORM CENTER: THE SUPREME COURT IN AMERICAN POLITICS* 265 (2d ed. 1990) (discussing how "unanimous opinion[s] are] the result of negotiations and compromises"); C. HERMAN PRITCHETT, *THE ROOSEVELT COURT* xii (1948) (explaining how divided decisions supply a window into a court's "inner sanctum"); Vincent Martin Bonventre, *New York's Chief Judge Kaye: Her Separate Opinions Bode Well for Renewed State Constitutionalism at the Court of Appeals*, 67 *TEMP. L. REV.* 1163, 1167 (1994) (noting that unanimous decisions are "more compromise than conviction").

Court of Appeals majority rulings and those justices whose dissents rarely or never have. A brief conclusion offers some final thoughts and suggests some possible patterns corresponding to the high and low success rates of the justices. Finally, detailed findings of the study are illustrated in graphs and tables within this report to facilitate readily visual comparisons and contrasts.³

II. OVERVIEW

Of the total 254 divided Appellate Division decisions reviewed by the Court of Appeals, the largest proportion, nearly one half, was from the First Department. The smallest proportion was from the Third Department. Specifically, and in descending order, 118 of the decisions, or 46% of the total, were from the First Department; 55 decisions, or 22%, were from the Second Department; 51 decisions, or 20%, were from the Fourth Department; and 30 decisions, or 12%, were from the Third Department.⁴

The Court of Appeals affirmed 176 of the total 254 Appellate Division decisions, or 69%. The Second Department was affirmed the most frequently. In descending order, the rate at which the divided decisions were affirmed was 80% for the Second Department; 70% for the Third Department; 67% for the Fourth Department; and 65% for the First Department.⁵

Among the individual Appellate Division justices, the variations were more pronounced—indeed, much more so. Regarding rates of success upon Court of Appeals review—that is, the frequency with

³ Additionally, the raw data for this study are reflected in the detailed charts appended to this report. The figures in this report are derived from the data reflected in those charts.

⁴ These proportions correspond to the total number of divided decisions reviewed or not reviewed by the Court of Appeals from each department. From January 1, 2000 through December 31, 2005, the period of Appellate Division decisions studied, the First Department rendered 351 total divided decisions; the Second Department rendered 225; the Third Department rendered 128; and the Fourth Department rendered 174. Notably, these proportions do not correspond to the total decisional output from each department, whether the decision was unanimous or not, or whether or not reviewed by the Court of Appeals. The Second Department decided the most cases overall. For example, in calendar years 2004 and 2005, the Second Department handed down, respectively, 3,642 and 3,890 slip opinions, while the First Department handed down 2,387 and 2,313; the Third Department handed down 1,583 and 1,875; and the Fourth Department handed down 1,961 and 1,900.

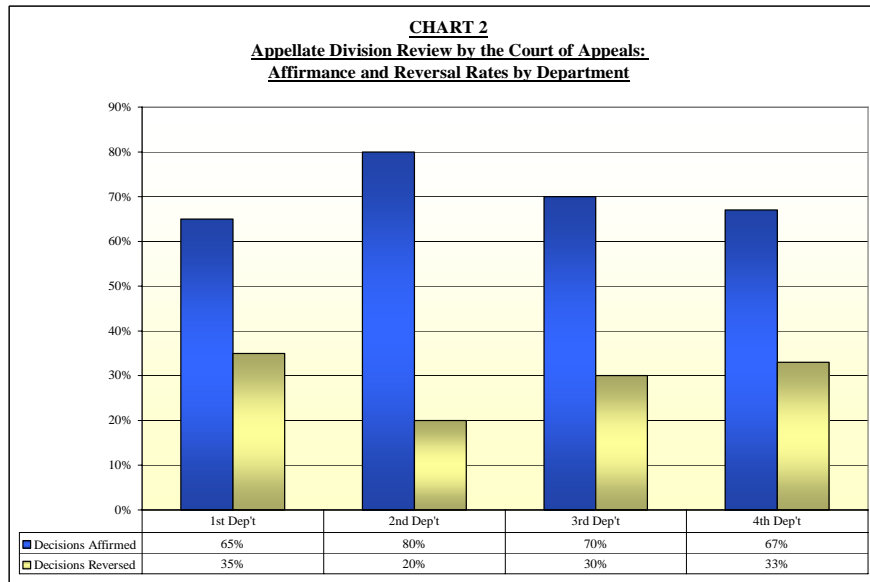
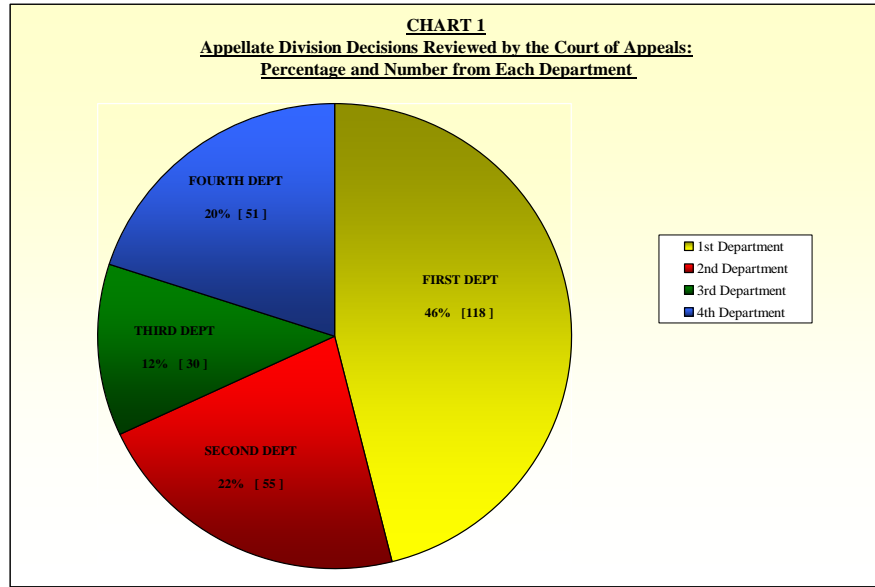
⁵ The First Department, which had the lowest rate of affirmance and, thus, the highest rate of reversal, also had the highest rate of review. Of the total 351 divided decisions rendered by the First Department from January 1, 2000 through December 31, 2005, 118, or 34%, had been reviewed by the Court of Appeals on appeal by June 2006. For the Second Department it was 55 divided decisions reviewed out of 225, or 24%. For the Third Department, 30 divided decisions reviewed out of 128, or 23%. For the Fourth Department, 51 divided decisions reviewed out of 174, or 29%.

which the high court reached the same result on appeal as that for which the justice had written an opinion or cast a vote in a divided decision—the differences are dramatic. So, for example, there are justices, such as Justice Thomas Mercure of the Third Department, with whom the Court of Appeals has agreed at a very high rate. For Mercure, the agreement rate was 100%. He participated in fifteen divided decisions at the Appellate Division, and, on appeal, the high court reached the same result for which he had voted in every case. By contrast, there are justices, such as Justice John Lahtinen also of the Third Department, who have had much less success. Lahtinen participated in twenty divided decisions, and the Court of Appeals agreed with his vote only four times—an agreement rate of only 20%.

Among the frequent dissenters, there is Justice Peter Tom of the First Department. He cast a dissenting vote in twenty-three cases, the most for any Appellate Division justice during the period studied. Justice Samuel Green of the Fourth Department dissented eighteen times, or in 82%, of the divided decisions in which he participated, a higher rate than for any other Appellate Division justice. There are other justices who dissented less frequently but were vindicated on appeal by the state's high court whenever they did. So, for example, Presiding Justice Gail Prudenti of the Second Department, the late Justice Myriam Altman also of the Second Department,⁶ and Justice Mercure of the Third Department, each dissented twice and were vindicated both times. On the other hand, some of those who sit on the Appellate Division such as Justices Anita Florio and Daniel Luciano of the Second Department, and Justice Anthony Carpinello of the Third Department, each dissented several times but were never vindicated on appeal by the Court of Appeals.

These and other related observations about the individual justices of the Appellate Division emerged from the current study. The balance of this report, both in the discussions that follow and in the accompanying tables and graphs, provide a more complete account of the most salient findings.

⁶ Justice Altman passed away on January 29, 2005. *Deaths: Altman, Honorable Myriam J.*, N.Y. TIMES, Jan. 31, 2005, at B8.



III. COURT OF APPEALS AGREEMENT AND REJECTION: THE HIGH AND LOW RATES

As noted at the outset, there are Appellate Division justices with whom the Court of Appeals always or nearly always agrees, and there are others whose votes and positions the high court usually

rejects. Among those justices with the highest rates of agreement by the Court of Appeals, Justice Mercure's record surely stands out as particularly strong. The high court's agreement with all fifteen of the votes he cast in divided Appellate Division decisions—including the two votes he cast in dissent—is perhaps the most remarkable. Other especially notable records include those of Justices Milton Williams and David Friedman of the First Department; Presiding Justice Prudenti, the late Justice Altman, and Justice Gabriel Krausman of the Second Department; Presiding Justice Cardona and Justice Robert Rose of the Third Department; and Justice John Lawton of the Fourth Department.⁷

Presiding Justice Prudenti, like Mercure, had a perfect record on review by the Court of Appeals during the period studied. She participated in five divided Appellate Division decisions, and the high court agreed with her vote in every case, including two where she dissented. The Court of Appeals agreement rate for Justice Altman was 91%, reflecting ratification of ten of her eleven votes in divided Appellate Division decisions, including both of her dissenting votes. For Justice Krausman, the agreement rate was 80%, or twelve of his fifteen votes, including three of his four dissenting votes.

The Fourth Department's Justice Lawton had a 77% agreement rate by the Court of Appeals, or seventeen of his twenty-two votes, including six of eight dissenting votes. Justices Williams and Friedman of the First Department had their votes ratified by the Court of Appeals, respectively, in 74% and 73% of the divided cases in which they each participated. For Williams this included six of nine dissenting votes, and for Friedman, this included seven of eleven dissenting votes.

The Third Department's Justice Rose had an agreement rate of 76%, or thirteen of seventeen divided decision votes. Notably, he joined his court's majority in every case—not once did he cast a vote in dissent. Presiding Justice Cardona of the Third Department, on the other hand, disagreed with the majority six times during the study period. Of all his votes cast in divided decisions, the Court of Appeals agreed with 67% of them, or eight of twelve, including three

⁷ While other Appellate Division justices might have established notable records, the discussion in this report is limited to those records that seem the most distinctive and to those justices who were still active during the latter part of the covered study period, with the exception of Justice Altman who passed away early in the last year of the study period but was included in this study.

of those in dissent.

At the opposite end of the spectrum are those justices with whom the Court of Appeals has disagreed at rates that are just as high. The previously mentioned record of Justice Lahtinen is particularly striking. The high court rejected 80% of the results for which he voted in divided Appellate Division decisions. That is, the Court of Appeals disagreed with sixteen of his twenty votes, including eleven of his fourteen votes in dissent. Other justices with significantly high rejection rates are Justices Florio, Luciano, and Gloria Goldstein of the Second Department; Justices Carpinello and Karen Peters of the Third Department; and Justice Leo Hayes of the Fourth Department.

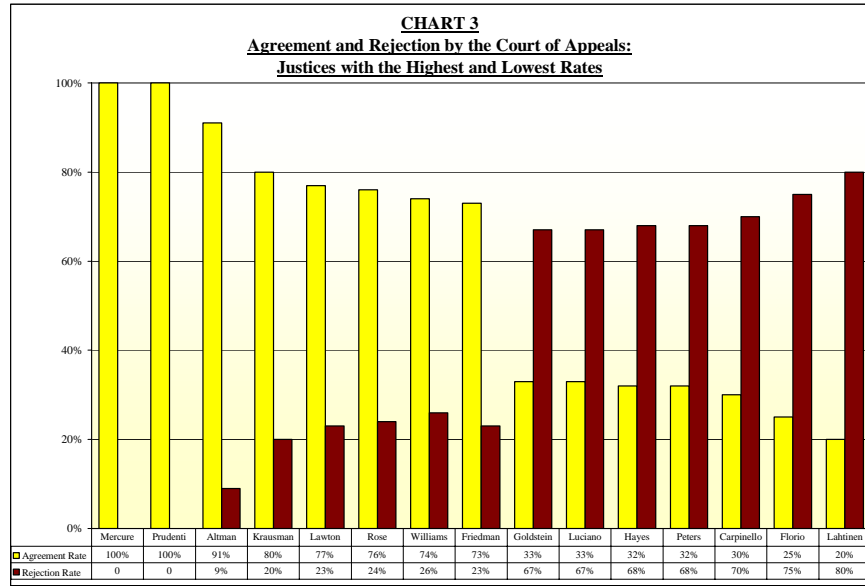
TABLE 1

<u>High Agreement Rates</u>	<u>High Rejection Rates</u>
Mercure: 100%	Lahtinen: 80%
Prudenti: 100%	Florio: 75%
Altman: 91%	Carpinello: 70%
Krausman: 80%	Peters: 68%
Lawton: 77%	Hayes: 68%
Rose: 76%	Luciano: 67%
Williams: 74%	Goldstein: 67%
Friedman: 73%	
Cardona: 67%	

Justice Florio's votes in divided Appellate Division decisions were rejected by the Court of Appeals 75% of the time, or nine of twelve votes; this includes six votes in dissent, none of which the high court vindicated. The Third Department's Justice Carpinello had seven of his ten divided-decision votes rejected by the high court, or 70%, including all five of his dissenting votes. Justice Peters of the same department had a 68% rejection rate, representing thirteen of her nineteen votes, including eight of her nine votes in dissent.

The Court of Appeals rejected the vote of the Second Department's Justice Luciano 67% of the time, or six of the nine votes he cast in divided decisions. Notably, the six rejected votes were the same six he cast in dissent. From the same department, Justice Goldstein also had a 67% rejection rate. In her case, this represents twelve out of eighteen votes, including eleven out of thirteen votes in dissent. From the Fourth Department, Justice

Hayes had a Court of Appeals rejection rate of 68%, representing twenty-one of thirty-one votes, including all but one of his thirteen votes in which he dissented from the majority of his court.



IV. APPELLATE DIVISION DISSENT, COURT OF APPEALS VINDICATION

Among those Appellate Division justices who cast the most dissenting votes or who dissented in a high proportion of those divided decisions in which they participated, some saw their positions frequently adopted on appeal by the Court of Appeals, and others never or rarely did. First Department Justice Tom’s Appellate-Division-high number of twenty-three dissenting votes comprised 46% of his total fifty votes in divided decisions. Nine of those twenty-three were vindicated by the high court. Fourth Department Justice Green’s Appellate-Division-high dissent rate of 82% represented eighteen of the twenty-two divided-decision votes he cast during the studied period. The Court of Appeals agreed with only five, or 28%, of those dissenting votes.

Other justices with a high number of dissenting votes during the period studied include Justices Richard Andrias and Angela Mazzarelli of the First Department; each cast twenty-two votes in dissent. For Andrias, these 56% of his total thirty-nine votes in divided decisions were vindicated ten times by the Court of Appeals, for a 45% vindication rate. For Mazzarelli, these 46% out of forty-

eight total votes were vindicated six times—a 27% rate. Also from the First Department, Justice David Saxe dissented twenty times, or in 40%, of the fifty divided decisions in which he participated. Six of his dissenting votes were vindicated, or 30%.

TABLE 2

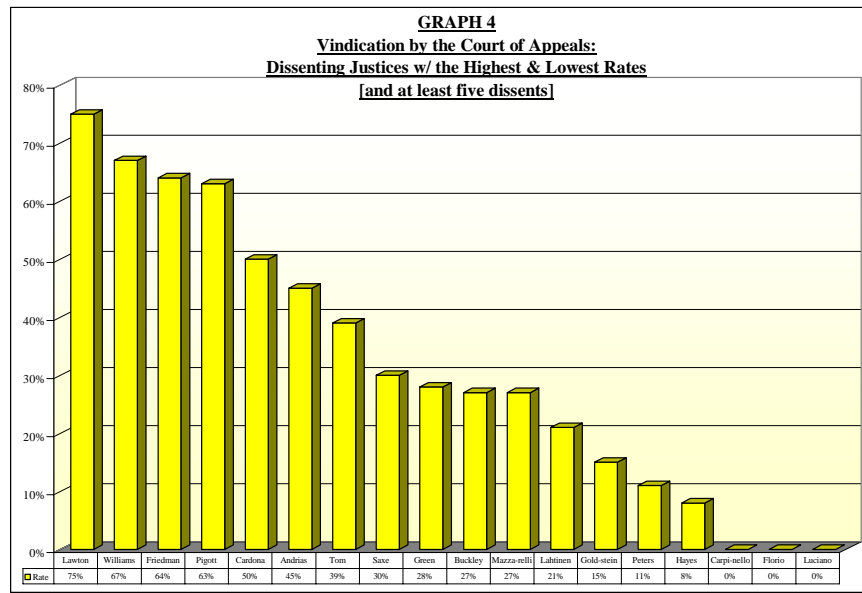
<u>High Dissent Rates</u>	<u>High Vindication Rates</u>	<u>Low Vindication Rates</u>
Green: 82%	Mercure: 100%	Carpinello: 0%
Goldstein: 72%	Prudenti: 100%	Florio: 0%
Lahtinen: 70%	Altman: 100%	Luciano: 0%
Luciano: 66%	Krausman: 75%	Hayes: 8%
Andrias: 56%	Lawton: 75%	Peters: 11%
Peters: 53%	Williams: 67%	Goldstein: 15%
Florio: 50%	Friedman: 64%	Lahtinen: 21%
Cardona: 50%	Pigott: 63%	Buckley: 27%
Carpinello: 50%	Cardona: 50%	Mazzarelli: 27%
Mazzarelli: 46%		
Tom: 46%		
Saxe: 40%		

Of those justices with very high vindication rates, many are, not surprisingly, the same who have previously been identified as having high Court of Appeals agreement rates. Justices Mercure, Prudenti, and Altman each had a 100% vindication rate for their respective two dissenting votes. Justices Krausman, Lawton, Williams, and Friedman also had especially strong records of vindication. For Krausman, the Court of Appeals agreed with his dissenting vote 75% of the time, or three out of four of his votes cast in dissent. For Lawton it was also 75%, or six out of eight dissenting votes vindicated on appeals; for Williams, 67%, or six out of nine; and for Friedman, 64%, or seven out of eleven.

In addition to Presiding Justice Prudenti of the Second Department, two other Presiding Justices had high vindication rates. Presiding Justice Eugene Pigott of the Fourth Department was vindicated 63% of the time by the Court of Appeals, or five of his eight dissenting votes. And, as previously noted in discussing his high agreement rate, Presiding Justice Cardona of the Third Department was vindicated 50% of the time, or three of his six votes cast in dissent.

Again, not surprisingly, some of the justices with the lowest vindication rates were among those with the lowest agreement rates (i.e., highest rejection rates). Justices Carpinello, Florio, and Luciano each had zero percent vindication rates. The Court of Appeals agreed with none of their respective five, six, and six dissenting votes. Additionally, previously mentioned Justices Hayes, Peters, Goldstein, and Lahtinen were rarely vindicated. For Hayes, only one dissenting vote out of thirteen was embraced by the Court of Appeals, or only 8%. For Peters, it was one out of nine for 11%; for Goldstein, two out of thirteen for 15%; and for Lahtinen, three out of fourteen for 21%.

Finally, among the Presiding Justices of the four departments, only Presiding Justice John Buckley of the First Department had a particularly low vindication rate—*equaling* 27%. The Court of Appeals agreed with only three of his eleven dissenting votes.



V. CONCLUSION

Two points should be made before closing. The first is a caveat necessary to avoid misleading implications; the second will suggest some possible threads tying the foregoing figures together.

First, the rates of Court of Appeal agreement, rejection, and vindication do not necessarily correlate to good or bad, right or wrong, or wise or foolish. The authors of the report certainly do not

believe that they do. Likewise, a high agreement rate does not necessarily suggest a better judge nor does a high rejection rate necessarily identify a worse one. This is analogously so for the vindication rates. Indeed, there are votes of Appellate Division justices with which the authors wholeheartedly agree but with which a majority of the Court of Appeals did not. There are dissents that we believe should have been vindicated but were not. What can be said about the rates discussed in this report is that they represent degrees of success on review by the Court of Appeals. The authors do not posit much more than that.

Second, there are identifiable patterns that appear, at least on a preliminary examination, to correspond to high rates of Court of Appeals agreement and rejection, respectively. For example, among those justices with the highest agreement and vindication rates, Justices Tom and Friedman of the First Department and Justices Mercure and Rose of the Third Department, each had voting records in civil cases that were very strongly pro-defendant—plaintiffs did not often win their votes. On the other hand, several of the justices with the highest rejection rates and lowest vindication rates had strong pro-plaintiff voting records, which included Justice Mazzarelli of the First Department, Goldstein of the Second Department, Lahtinen and Peters of the Third Department, and Hayes and Green of the Fourth Department. Similarly, voting records that largely favored the individual over government in civil litigation also corresponded to low success rate upon Court of Appeals review. Justices Luciano and Florio of the Second Department and Lahtinen and Peters of the Third Department had such records. Further examination of such intriguing correlations was beyond the scope of the current study. What is suggested by the initial indications here, however, is worthy of further research.⁸

⁸ It might also be noted that, while the rates identified herein do reflect patterns established over a period of years and would not, therefore, be expected to change dramatically over a short period of time, neither should it be expected that the rates will remain entirely static. In fact, by way of illustration, while publication of this study was pending, the Court of Appeals reviewed and affirmed a 3-2 decision of the Appellate Division, Third Department, in which Justices Mercure and Carpinello voted together in the majority. Hence, while Mercure's extremely high rate of Court of Appeals agreement persisted, Carpinello's especially high rate of rejection by that court did not. See *Catholic Charities of the Diocese of Albany v. Serio*, 859 N.E.2d 459 (N.Y. 2006), *aff'g* 808 N.Y.S.2d 447 (App. Div. 2006).

APPENDIX

Table 3

	Cases	Court of Appeals Affirmed	Court of Appeals Reversed	Pro Criminal Prosecution	Pro Criminal Defendant	Pro Gov't	Pro Individual
Total	254	—	—	—	—	—	—
1st Dep't	118	77	41	21	8	13	5
2nd Dep't	55	44	11	13	0	7	3
3rd Dep't	30	21	9	3	0	5	2
4th Dep't	51	34	17	14	3	5	3

Table 3 (cont.)

	Pro Civil Plaintiff	Pro Civil Defendant
1st Dep't	31	40
2nd Dep't	12	20
3rd Dep't	6	14
4th Dep't	5	21

Table 4

1st Dep't	Tom	Sullivan	Marlow	Andrias	Lerner	Buckley
Total Divided Cases	50	48	18	39	31	40
Court of Appeals Agreement	27	33	13	22	12	19
Court of Appeals Disagreement/Rejection	23	15	5	17	19	21
Votes in Dissent	23	11	4	22	8	11
Vindications	9	5	3	10	2	3
Pro Criminal Prosecution	9	11	4	4	3	3
Pro Criminal Defendant	7	1	1	6	4	0
Pro Government	6	6	2	4	2	4
Pro Individual	1	4	0	3	3	1
Pro Civil Defendant	16	22	7	13	7	22
Pro Civil Plaintiff	11	4	4	9	12	9

Table 4 (cont.)

1st Dep't	Rosenberger	Rubin	Wallach	Saxe	Nardelli	Williams
Total Divided Cases	32	22	17	50	33	34
Court of Appeals Agreement	12	6	13	29	21	25
Court of Appeals Disagreement/Rejection	20	16	4	21	12	9
Votes in Dissent	15	12	5	20	5	9
Vindications	4	2	2	6	2	6
Pro Criminal Prosecution	0	3	3	7	7	8
Pro Criminal Defendant	13	0	1	4	3	0
Pro Government	1	0	2	4	3	3
Pro Individual	2	5	0	4	3	1
Pro Civil Defendant	4	2	10	11	11	17
Pro Civil Plaintiff	12	12	1	19	6	5

Table 4 (cont.)

1st Dep't	Gonzalez	Catterson	Mazzarelli	Ellerin	Friedman	Sweeny
Total Divided Cases	22	7	48	39	44	4
Court of Appeals Agreement	16	3	20	10	32	0
Court of Appeals Disagreement/Rejection	6	4	28	29	12	4
Votes in Dissent	4	1	22	15	11	2
Vindications	2	0	6	3	7	0
Pro Criminal Prosecution	4	1	3	5	9	0
Pro Criminal Defendant	2	3	5	7	1	0
Pro Government	3	1	3	0	6	0
Pro Individual	2	1	5	3	0	0
Pro Civil Defendant	3	0	7	6	18	2
Pro Civil Plaintiff	8	1	24	18	10	2

Table 5

2nd Dep't	H. Miller	Schmidt	Ritter	Skelos	Crane	Luciano
Total Divided Cases	16	15	7	1	14	9
Court of Appeals Agreement	7	8	5	0	8	3
Court of Appeals Disagreement/Rejection	9	7	2	1	6	6
Votes in Dissent	8	4	2	0	7	6
Vindications	1	0	0	0	2	0
Pro Criminal Prosecution	4	4	1	0	0	0
Pro Criminal Defendant	0	0	0	0	1	1
Pro Government	1	0	1	0	1	0
Pro Individual	3	1	0	0	2	3
Pro Civil Defendant	3	7	3	1	5	3
Pro Civil Plaintiff	5	3	2	0	5	2

Table 5 (cont.)

2nd Dep't	Lifson	Rivera	Adams	Goldstein	Spolzino	Krausman
Total Divided Cases	1	8	9	18	2	15
Court of Appeals Agreement	1	5	5	6	2	12
Court of Appeals Disagreement/Rejection	0	3	4	12	0	3
Votes in Dissent	0	2	2	13	1	4
Vindications	Lifson	0	0	2	1	3
Pro Criminal Prosecution	1	0	2	1	0	5
Pro Criminal Defendant	1	0	0	3	0	0
Pro Government	0	2	3	1	0	1
Pro Individual	0	1	1	2	0	0
Pro Civil Defendant	Lifson	2	0	3	2	4
Pro Civil Plaintiff	1	3	3	8	0	4

Table 5 (cont.)

2nd Dep't	Flori o	S. Miller	Smit h	Altma n	Prudenti	Mastr o	Friedman
Total Divided Cases	12	14	9	11	5	5	14
Court of Appeals Agreement	3	6	7	10	5	5	3
Court of Appeals Disagreement/Rejection	9	8	2	1	0	0	11
Votes in Dissent	6	4	1	2	2	0	5
Vindications	0	0	0	2	2	0	0
Pro Criminal Prosecution	0	1	3	4	0	1	2
Pro Criminal Defendant	2	1	0	0	0	0	2
Pro Government	0	2	0	1	0	0	1
Pro Individual	3	3	0	0	0	0	2
Pro Civil Defendant	5	3	3	4	2	3	2
Pro Civil Plaintiff	2	4	3	2	3	1	5

Table 5 (cont.)

2nd Dep't	Townes	McGinit y	Feuerstei n	O'Brien	Thompson	Bracke n
Total Divided Cases	6	12	12	5	7	4
Court of Appeals Agreement	4	6	8	3	3	3
Court of Appeals Disagreement/Rejection	2	6	4	2	4	1
Votes in Dissent	2	7	3	1	2	0
Vindications	0	1	1	0	0	0
Pro Criminal Prosecution	0	0	2	0	2	1
Pro Criminal Defendant	0	6	0	1	0	0
Pro Government	2	1	1	1	1	1
Pro Individual	0	0	0	0	0	0
Pro Civil Defendant	1	5	4	2	4	0
Pro Civil Plaintiff	3	0	5	1	0	2

Table 5 (cont.)

2nd Dep't	Sullivan	Mangano	Joy	Cozier	Santucci
Total Divided Cases	4	1	2	8	8
Court of Appeals Agreement	3	1	2	7	6
Court of Appeals Disagreement/Rejection	1	0	0	1	2
Votes in Dissent	0	0	1	1	1
Vindications	0	0	1	0	0
Pro Criminal Prosecution	1	0	1	2	2
Pro Criminal Defendant	0	0	0	1	0
Pro Government	1	1	0	1	1
Pro Individual	0	0	0	0	0
Pro Civil Defendant	0	0	0	5	2
Pro Civil Plaintiff	2	0	1	0	1

Table 6

3rd Dep't	Mercuré	Crew	Lahtinen	Kane	Peters	Rose	Spain
Total Divided Cases	15	22	20	9	19	17	15
Court of Appeals Agreement	15	13	4	4	6	13	9
Court of Appeals Disagreement/Rejection	0	8	16	5	13	4	6
Votes in Dissent	2	6	14	3	9	0	6
Vindications	2	2	3	0	1	0	2
Pro Criminal Prosecution	1	1	2	0	2	1	0
Pro Criminal Defendant	1	1	0	0	1	0	2
Pro Government	2	3	0	2	0	4	3
Pro Individual	1	2	3	1	5	0	0
Pro Civil Defendant	10	11	2	1	3	9	7
Pro Civil Plaintiff	0	4	13	5	8	3	3
Majority	13	16	6	6	10	17	9

Table 6 (cont.)

3rd Dep't	Cardona	Mugglin	Carpinello
Total Divided Cases	12	10	10
Court of Appeals Agreement	8	4	3
Court of Appeals Disagreement/Rejection	4	6	7
Votes in Dissent	6	2	5
Vindications	3	1	0
Pro Criminal Prosecution	1	0	1
Pro Criminal Defendant	0	1	0
Pro Government	1	1	2
Pro Individual	1	2	2
Pro Civil Defendant	5	2	3
Pro Civil Plaintiff	4	4	2
Majority	6	8	5

Table 7

4th Dep't	Scudder	Pigott	Gorski	Martoche	Lawton	Kehoe	Hayes
Total Divided Cases	25	24	21	3	22	32	31
Court of Appeals Agreement	18	15	7	1	17	20	10
Court of Appeals Disagreement/Rejection	7	9	14	2	5	12	21
Votes in Dissent	7	8	12	0	8	8	13
Vindications	3	5	2	0	6	4	1
Pro Criminal Prosecution	4	2	2	1	4	10	8
Pro Criminal Defendant	3	1	4	0	1	1	2
Pro Government	3	3	1	0	2	2	4
Pro Individual	1	2	2	0	1	3	2
Pro Civil Defendant	12	6	1	2	8	12	5
Pro Civil Plaintiff	2	5	11	0	6	4	10
Majority	18	16	9	3	14	24	18

Table 7 (cont.)

4th Dep't	Green	Hurlbutt	Pine	Smith	Wisner	Burns
Total Divided Cases	22	21	21	2	16	13
Court of Appeals Agreement	9	13	9	2	13	6
Court of Appeals Disagreement/Rejection	13	8	12	0	3	7
Votes in Dissent	18	6	6	0	3	2
Vindications	5	3	1	0	2	0
Pro Criminal Prosecution	1	3	2	1	2	5
Pro Criminal Defendant	10	4	2	0	3	2
Pro Government	2	3	1	0	1	1
Pro Individual	1	0	4	0	1	0
Pro Civil Defendant	1	10	7	1	5	2
Pro Civil Plaintiff	7	1	5	0	3	3
Majority	4	15	15	2	13	11