

HIGH COURT STUDIES

THE DEVELOPMENT OF INDEPENDENT NEW YORK CONSTITUTIONAL JURISPRUDENCE IN CHIEF JUDGE KAYE'S JUDICIAL OPINIONS: AN EMPIRICAL STUDY

*Gordon Eddy**

I. INTRODUCTION

On February 22, 1993, Judith S. Kaye was appointed Chief Judge of the New York State (NY) Court of Appeals, the state's highest court.¹ Prior to her appointment to Chief Judge, she served as an Associate Judge on the Court beginning in 1983.² As an Associate Judge, she stood out from much of the rest of the Court, then headed by Sol Wachtler,³ as an advocate for adjudicating individual rights under the state constitution at a time when the Court decided individual rights issues primarily according to federal standards.⁴ Judge Kaye wrote separately from the Court on many occasions, "advocat[ing] state decisional independence"⁵ on matters of individual rights such as civil liberties, equal protection, and criminal rights.⁶ For this reason, her appointment to the Chief Judgeship gave renewed hope to advocates of state constitutional adjudication in NY.⁷ In early 2007, Chief Judge Kaye was honored by students, scholars, and colleagues for her service and her advancement of state constitutional decision-making during her

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¹ COURT OF APPEALS: STATE OF NEW YORK 13 (2007).

² *Id.*

³ 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, 1164 (1994).

⁴ *Id.* at 1166, 1170.

⁵ *Id.* at 1170.

⁶ *See generally id.* (discussing Kaye's various concurrences and dissents during the Wachtler Era on matters of individual rights).

⁷ *Id.*

fourteen years as Chief Judge and twenty-four years of service on the Court.⁸ These efforts for which she has been deservedly lauded are the subject of this Study.

As an initial matter, the Author feels that it is important to point out what is *not* the purpose of the Study. This Work is *not* meant to call into question the judgment of so many scholars and judges that honor Judge Kaye, or to cast doubt upon the sincerity of her efforts to develop an independent body of NY constitutional jurisprudence. The purpose of this Study is to objectively determine what the effects have been of Judge Kaye's conceded efforts to advance independent state constitutional decision-making since becoming Chief Judge in 1993. The Study seeks to measure the success of Chief Judge Kaye's efforts and to determine how much independent state constitutional jurisprudence she has ultimately been able to advance. This is done, not simply to answer that question, but also in hopes that the information reported herein will be useful to practitioners going before the Court in the future.

II. METHODOLOGY

The Author began data collection by searching commercial electronic databases⁹ for all Court of Appeals cases fitting the following criteria: the case was decided between February 22, 1993 and December 17, 2007; the root word "constitution" appeared in the case; and Chief Judge Kaye wrote an opinion in the case, whether for the Court, concurring or dissenting. The search yielded 138 cases.¹⁰ Chief Judge Kaye's opinions in each of those cases were then reviewed, and those not adjudicating a civil or criminal constitutional individual right that is afforded, in some capacity, concurrently by the Federal and NY Constitutions were removed from the data pool (e.g., the Education Article of the NY Constitution, affording the right to a sound basic education, has no federal counterpart; thus, cases dealing solely with that issue were

⁸ See, e.g., Roberta A. Kaplan, Dedication, *Tribute to Judith S. Kaye*, 70 ALB. L. REV. 799 (2007); Steven C. Krane, Dedication, *Dedication to Judith S. Kaye*, 70 ALB. L. REV. 807 (2007); Alicia R. Ouellette, *Now and Always our Chief: The Honorable Judith S. Kaye*, 70 ALB. L. REV. 815 (2007); Albert M. Rosenblatt, Dedication, *Honoring Chief Judge Judith S. Kaye*, 70 ALB. L. REV. 821 (2007).

⁹ LexisNexis: Law Schools, <http://www.lexisnexis.com/lawschool> (last visited Sept. 1, 2008); Westlaw: Law School, <http://www.lawschool.westlaw.com> (last visited Sept. 1, 2008).

¹⁰ As most of these cases are inapposite to the remainder of the Study, they are not cited herein. A list of these cases and their citation information is on file with the Author.

discarded). The data pool was thus narrowed to forty-three opinions reflecting fifty-one separate issues susceptible to adjudication under the Federal or NY Constitutions, or both.¹¹

Each issue was then evaluated in five categories of adjudicative characteristics: the opinion type, the constitutional principles included in the pleadings, the constitutional right adjudicated, the Chief Judge's adjudicative approach, and finally, whether the Chief Judge's disposition of the issue serves to develop independent NY constitutional jurisprudence. Each issue was classified as reflecting a particular characteristic within each category and assigned an indicator reflecting its classification.¹²

Four different opinion types were used: 1) Chief Judge Kaye writing for the Court without another judge writing a separate opinion; 2) Chief Judge Kaye writing for the Court with another judge writing a separate opinion; 3) Chief Judge Kaye concurring; and 4) Chief Judge Kaye dissenting.

Constitutional principles included in the pleadings were characterized in one of four ways: 1) federal only, where the pleadings claimed only federal constitutional rights; 2) NY only, where the pleadings claimed only NY constitutional rights; 3) federal and NY, where the pleadings claimed rights under both constitutions; and 4) ambiguous, where the pleadings claimed constitutional rights but it was unclear whether they were asserted under the NY or Federal Constitution.

The constitutional rights adjudicated category was the most diverse and, in some cases, amalgamation of the various rights under general headings, where possible, was necessary to the meaningful presentation of results. Where such amalgamation would result in overgeneralization, it was not employed. Thus, certain classifications of rights contain insufficient data from which to draw valid conclusions, as indicated in the various charts and graphs, *infra*, that report the Study's results. Analysis resulted in eleven different "right types": 1) due process (no amalgamation); 2) equal protection (no amalgamation); 3) double jeopardy (no amalgamation due to overgeneralization, thus, insufficient data); 4) taking of private property (no amalgamation due to

¹¹ A list of the cases in which these opinions were delivered and their citation information may be found *infra* at Appendix A.

¹² A legend decoding the indicators used is included at the end of the Master Table of Raw Data *infra* at Appendix A.

overgeneralization, thus, insufficient data); 5) criminal trial rights (a general heading including rights to a jury trial, to proof beyond a reasonable doubt, and to be present and defend pro se); 6) freedom of thought (a general heading including freedom of speech, freedom of the press, and freedom of religion); 7) right to counsel (no amalgamation); 8) right of confrontation (no amalgamation due to overgeneralization, thus, insufficient data¹³); 9) right against excessive fines (no amalgamation due to overgeneralization, thus, insufficient data); 10) right against self incrimination (no amalgamation); and 11) right to privacy (a general heading including the right against unreasonable search and seizure, and the right to probable cause for arrest).

Chief Judge Kaye was found to use three adjudicative approaches in her disposition of the various issues: 1) interstitial, where the opinion addressed the issue on federal grounds first, moving to state grounds only if the issue remained unresolved by the federal grounds;¹⁴ 2) lockstep, where the opinion adopts a federal standard governing an analogous right for state constitutional purposes;¹⁵ and 3) primacy, where the opinion looks first to the state constitution to decide the case, moving to the Federal Constitution only if the issue cannot be resolved under the state's.¹⁶ Chief Judge Kaye did not use the dual sovereignty approach to address any of the fifty-one issues.¹⁷

As is discussed in the Study's Findings,¹⁸ the likelihood that

¹³ The Author is aware that the right of confrontation includes some of the rights included in the "criminal trial rights" class. However, given latter day developments in federal confrontation jurisprudence, see *Crawford v. Washington*, 541 U.S. 36 (2004) and *Davis v. Washington*, 547 U.S. 813 (2006), "confrontation" is used here to refer to the right of cross-examination, and the author believes it would be an overgeneralization to include this right with other criminal trial rights.

¹⁴ See Sinéad McLoughlin, High Court Study, *Choosing a "Primacy" Approach: Chief Justice Christine M. Durham Advocating States Rights in Our Federalist System*, 65 ALB. L. REV. 1161, 1168 (2002).

¹⁵ See *id.* at 1169. Issues categorized as "lockstep" include any in which federal and state jurisprudence are equated, whether because the two analyses are indistinct, see *Michigan v. Long*, 463 U.S. 1032, 1044-45 n.10 (1983), or because analysis proceeds expressly under the state constitution but uses standards for adjudicating the particular right articulated by the United States Supreme Court. Thus, for purposes of this Study, it is possible to decide a case on independent and adequate state constitutional grounds and yet be adopting a federal standard to do so.

¹⁶ See McLoughlin, *supra* note 14, at 1167-68.

¹⁷ Under the "dual-sovereignty" approach, an opinion analyzes an issue under both the federal and state constitutions, even though it could be resolved by one or the other alone. See *id.* at 1169.

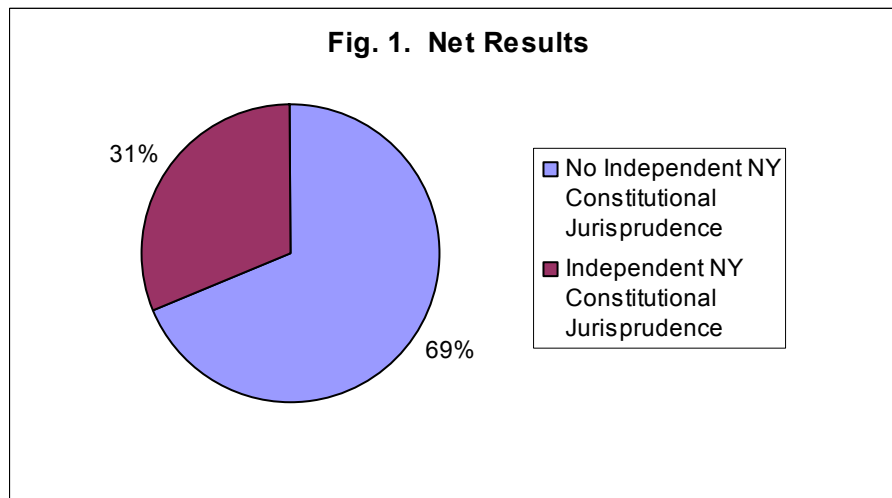
¹⁸ See *infra* Part III.

independent state constitutional jurisprudence will be developed varies depending on the approach a judge uses in deciding the case. Inasmuch as this inquiry is the ultimate point of the Study, in the last category, each issue was assigned a yes or no indicator based on whether Chief Judge Kaye's disposition of it served to develop independent NY constitutional jurisprudence.

These categorizations and classifications are essentially empirical expressions of Chief Judge Kaye's decision-making behaviors with respect to the adjudication of individual constitutional rights. The final results are reported in the Master Table of Raw Data, *infra*, at Appendix A. They were analyzed to glean any decisional patterns that may shed light on the results of Chief Judge Kaye's efforts to develop an independent body of NY constitutional jurisprudence, or that may be of use to practitioners going before the Court in the future.

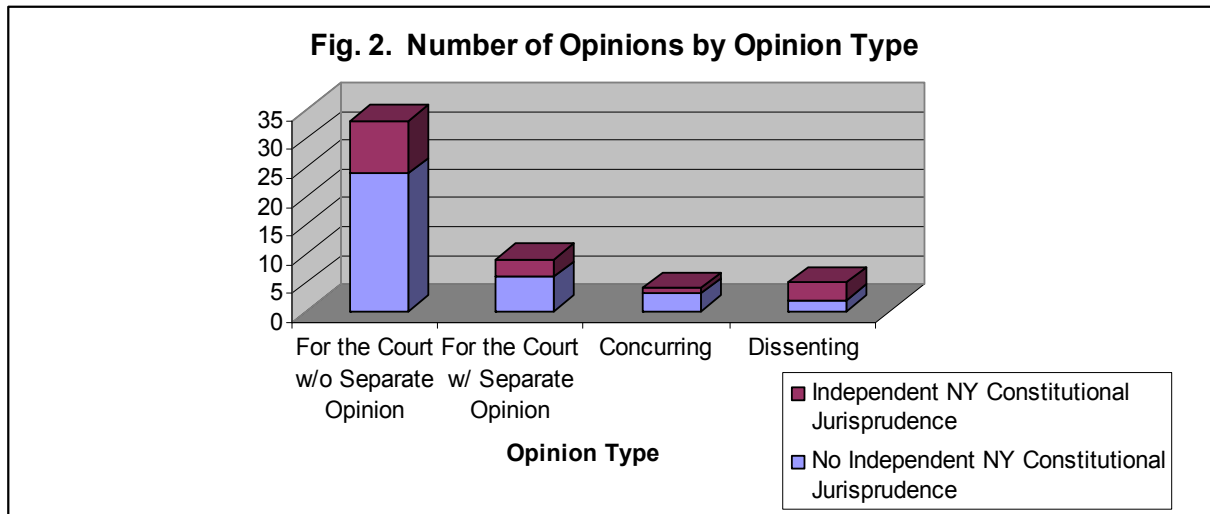
III. FINDINGS

The most general and perhaps most important question to be answered by this Study is how successful have Chief Judge Kaye's efforts to develop a body of independent NY constitutional jurisprudence been? Figure 1 reflects this answer.¹⁹



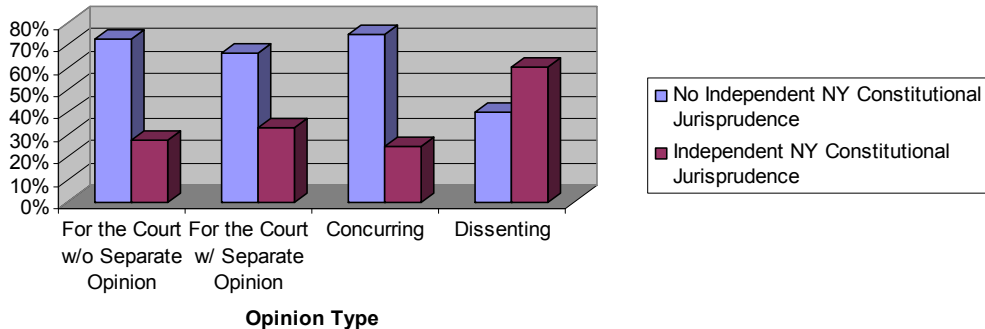
¹⁹ Charts detailing the data underlying Figure 1 and all the other figures presented herein are provided *infra* at Appendix B.

In addressing fifty-one issues, Chief Judge Kaye used independent state constitutional grounds to make her decision sixteen times, or thirty-one percent of the time. Figure 2 helps put this number in context.

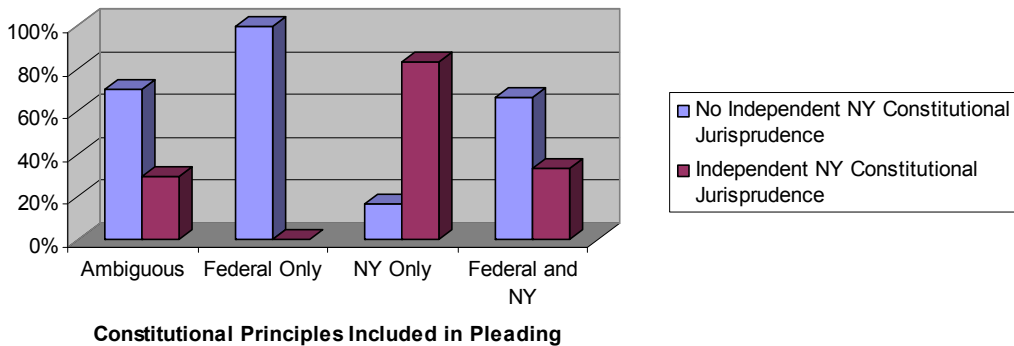


Twelve of the sixteen issues decided on independent state constitutional grounds were decided in opinions written for the Court. Thus, when seeking to decide an issue on independent state constitutional grounds, Chief Judge Kaye is seventy-five percent effective at getting the votes necessary to make her opinions binding on lower courts and future Courts of Appeals. Clearly, her efforts have enjoyed at least a respectable measure of success.

This is not to say that the Chief Judge is afraid to strike out on her own on independent NY constitutional bases. Figure 2 also demonstrates that she concurred or dissented on nine issues, or seventeen percent of the time, during her chiefdom-to-date in cases affecting individual constitutional rights. In nearly half of those opinions, she used independent state constitutional grounds to make her decision. In fact, as Figure 3 illustrates, Chief Judge Kaye is most likely to advance NY constitutional jurisprudence in dissent.

Fig. 3. Effect of Opinion Type on Independent Constitutional Development

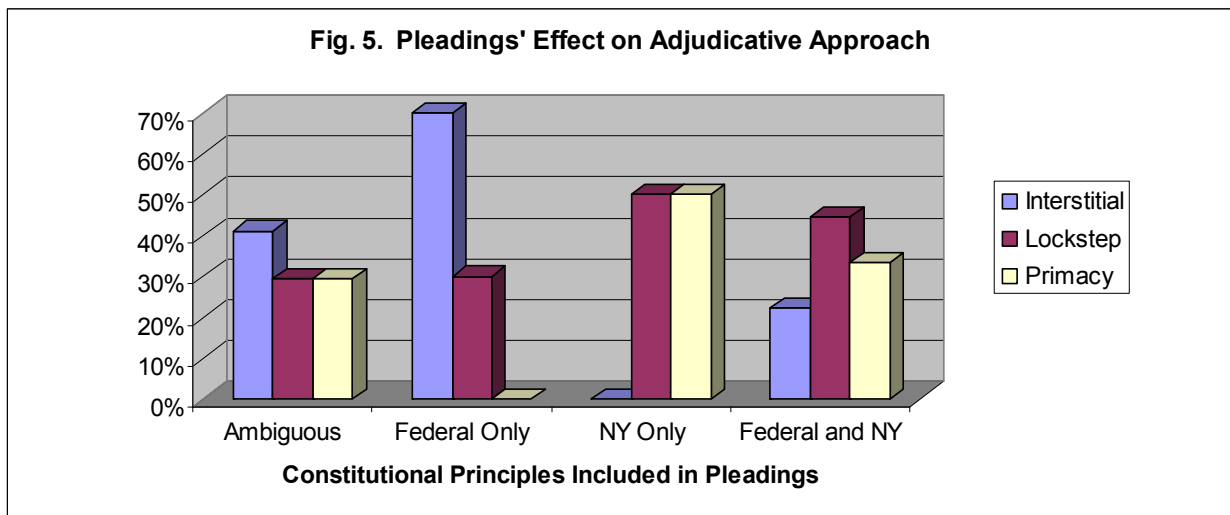
Knowing that our Chief Judge is willing and able to develop individual rights under our state constitution is little more than a novelty to us as practitioners unless we know how to put that information to use. Of course, a lawyer can most directly influence the way a court decides an issue by framing it in an advantageous way in the pleadings to the court. As Figure 4 shows, the parties reap what they sow. If you want to avoid the NY Constitution, don't plead it.

Fig. 4. Pleadings' Effect on Independent NY Constitutional Development

In her more than fourteen years as Chief Judge, Judge Kaye has not invoked the NY Constitution sua sponte even once when the parties claimed individual rights under only the Federal Constitution. Conversely, although her record is not perfect, when a party asserts rights under only the NY Constitution, the Chief Judge decides the issue on that basis an overwhelming eighty-three percent of the time. Also, wary lawyers seeking to have cases

decided on state constitutional grounds should note that equivocation will not serve them well. When the same right is explicitly claimed under both the NY and Federal Constitutions, Judge Kaye is twice as likely to decide the case on federal grounds as on independent state grounds. And, when a party is unclear about where the right they claim originates, decision on independent state constitutional grounds is even less likely.

To some, the results reported in Figure 4 may beg the question: Why, if Chief Judge Kaye is such a champion of independent state constitutional development, do you not get a decision based on the NY Constitution anytime you implicate it in your pleadings, ambiguously or otherwise? Let us not forget that the Chief Judge does not decide cases in a vacuum.²⁰ She is subject to the pressures of the several other Judges of the Court of Appeals who may not share her love of the state constitution, and whose concurrence is needed if the principles she advances are to have any real effect. Thus, by raising federal issues along with NY's in their pleadings, the parties are bringing the Federal Constitution to bear on the NY Constitution and, to an extent, dictating the approach that Chief Judge Kaye takes in deciding the issues.



²⁰ See Bonventre, *supra* note 3, at 1167 (noting the “internal disputes, the competing arguments, the battles and the bargains” that take place in Court of Appeals decision making).

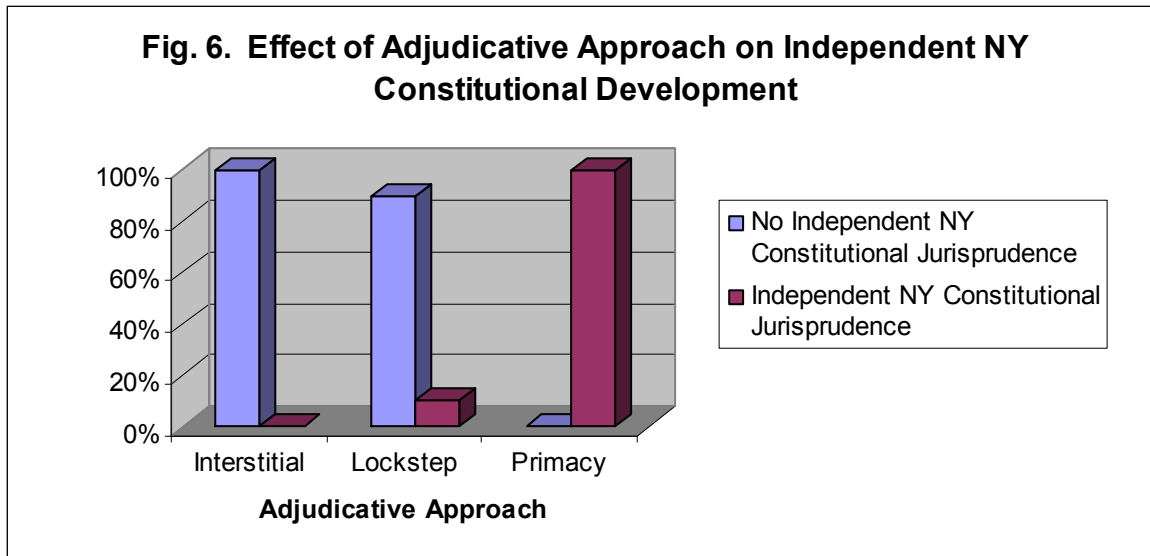


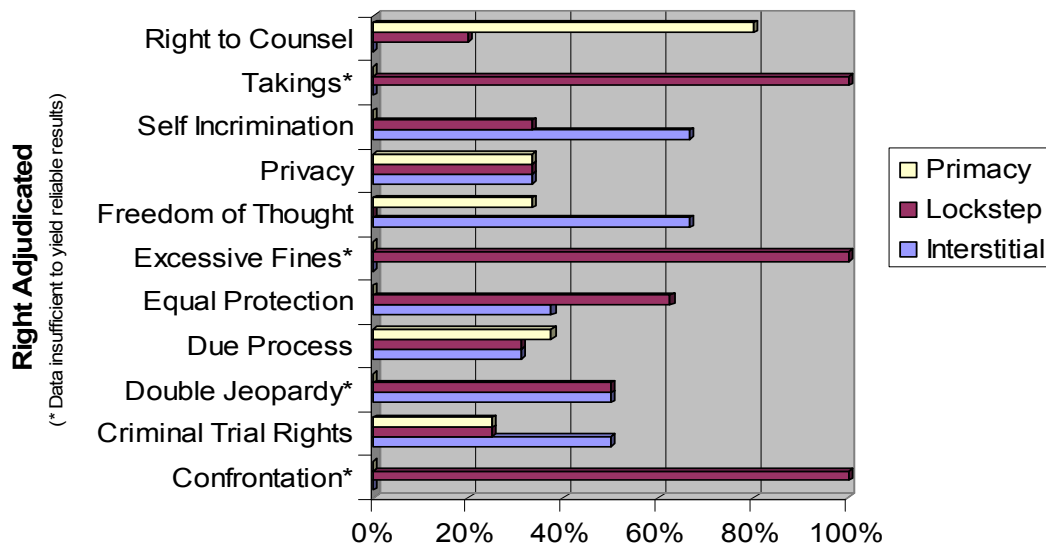
Figure 5 illustrates the effect that the parties' pleadings have on her approach, and Figure 6 illustrates the extent to which her approach dictates whether independent state constitutional jurisprudence is developed. Predictably, it is only when the Chief Judge takes the primacy approach that the parties can be sure their rights will be adjudicated under the state constitution. Judge Kaye has developed independent NY Constitutional principles by taking a lockstep approach only in rare instances,²¹ and has never succeeded in developing independent state constitutional jurisprudence by taking the interstitial approach. Unfortunately, as Figure 5 shows, even when a party pleads rights under the NY Constitution only, there is no guarantee that Chief Judge Kaye will take a primacy approach to deciding their issue. Indeed, she does so only half the time. However, pleading the NY Constitution alone is the only sure fire way to avoid decision by the fatal interstitial approach, and pleading rights under only the Federal Constitution will apparently never yield a decision based on the primacy of NY's constitution.

Interestingly, Figure 5 shows us that where the federal and state constitutions are both implicated, expressly or ambiguously, no decisional approach is overwhelmingly reflected in Chief Judge

²¹ The Study turned up two instances, both in the same case, where Chief Judge Kaye expressly invoked the NY Constitution to decide the case but articulated federal standards to explain what NY's Constitution means. See *Hernandez v. Robles*, 855 N.E.2d 1, 22-34 (N.Y. 2006) (Kaye, C.J., dissenting).

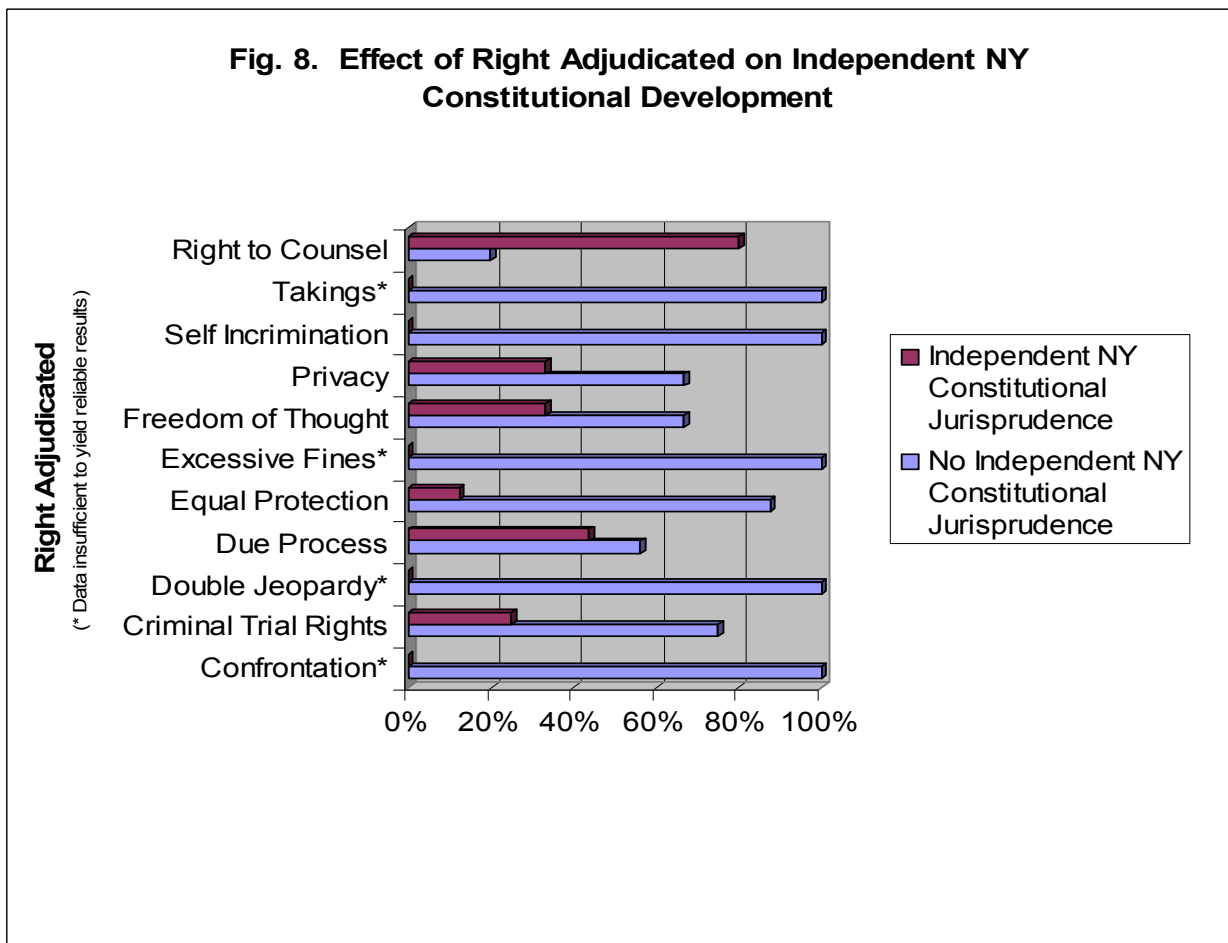
Kaye's opinions. While it may be gleaned that she is more likely to use a primacy approach and less likely to use an interstitial approach when NY and federal rights are expressly pled, and that the converse is also true when they are ambiguously pled, the results in Figure 5 nonetheless suggest that other factors bear on both the decisional approach Judge Kaye is likely to take and the likelihood that the issue will be decided on NY grounds. Thus the Study considered the right being adjudicated as a factor. Figure 7 illustrates that the right at issue may have bearing on what approach Chief Judge Kaye takes in deciding the case.

Fig. 7. Effect of Right Adjudicated on Adjudicative Approach



She is most likely to decide issues of a criminal defendant's right to counsel and matters of criminal and civil due process under a primacy approach. Other issues, such as equal protection issues, issues of a criminal defendant's right against self incrimination, and other criminal trial rights are more likely to be decided under a lockstep or interstitial approach; the former two issue types are apparently never decided by primacy. Privacy rights are equally likely to be adjudicated under any of the three approaches. Interestingly enough, Chief Judge Kaye apparently never

adjudicates rights related to freedom of thought under the NY Constitution in lockstep with the Federal Constitution. Those rights are adjudicated either independently under the NY Constitution, using the primacy approach, or independently under the Federal Constitution, using the interstitial approach. Reading Figure 7 in conjunction with Figure 6 instructs that the right being adjudicated affects the likelihood that Chief Judge Kaye's adjudication will proceed on independent state constitutional grounds. Figure 8 confirms this.



According to the data compiled in this Study, some rights, such as the right against self incrimination, criminal trial rights and equal protection, will rarely, if ever, be decided on independent state constitutional grounds. Some rights, such as privacy rights

and freedom of thought have a fair chance to be so decided. And still other rights, such as due process and the criminal right to counsel, are apparently at least as likely to be decided on independent state constitutional grounds as not.

It must be noted that, for purposes of this Study, the right to counsel is something of an anomaly. NY has a well-developed and well-established body of independent state constitutional jurisprudence on this issue.²² Thus, at this point, although Chief Judge Kaye's efforts must certainly be valuable in maintaining it, development of independent state constitutional jurisprudence with respect to right to counsel is no great change in the wind. The same may not be said for other types of rights where the federal and state dichotomy might not be so well established, or even apparent at all.

When rights other than the right to counsel are involved, the prudent practitioner would do well to look not only at whether Chief Judge Kaye has successfully set forth independent state grounds on which to adjudicate the right, but also at her willingness to diverge from the opinions of the remainder of the Court in deciding the case. Since a judge is more likely to concur or dissent when they feel strongly about the right a court is adjudicating, Chief Judge Kaye's history of concurring and dissenting is instructive here. Figure 9 reflects the frequency with which Chief Judge Kaye concurs, dissents, and writes for a unanimous or divided Court with respect to each issue type identified in this Study.

²² See *People v. Jacobs*, 844 N.E.2d 1126, 1131 (N.Y. 2005) (Smith, G.B., J. dissenting) (“In New York, the right to counsel . . . extends well beyond the right to counsel afforded by the *Sixth Amendment of the United States Constitution* and other State Constitutions.” (citations omitted) (emphasis added)); *People v. Caban*, 833 N.E.2d 213, 222 (N.Y. 2005) (Kaye, C.J.) (“Because our state standard thus offers greater protection than the federal test, we necessarily reject defendant’s federal constitutional challenge by determining that he was not denied meaningful representation under the State Constitution.”); *People v. West*, 615 N.E.2d 968, 970 (N.Y. 1993) (Kaye, C.J.) (“The State right to counsel is a ‘cherished principle,’ rooted in this State’s pre-revolutionary constitutional law and developed ‘independent of its Federal counterpart.’” (quoting *People v. Harris*, 570 N.E.2d 1051, 1054 (N.Y. 1991))).

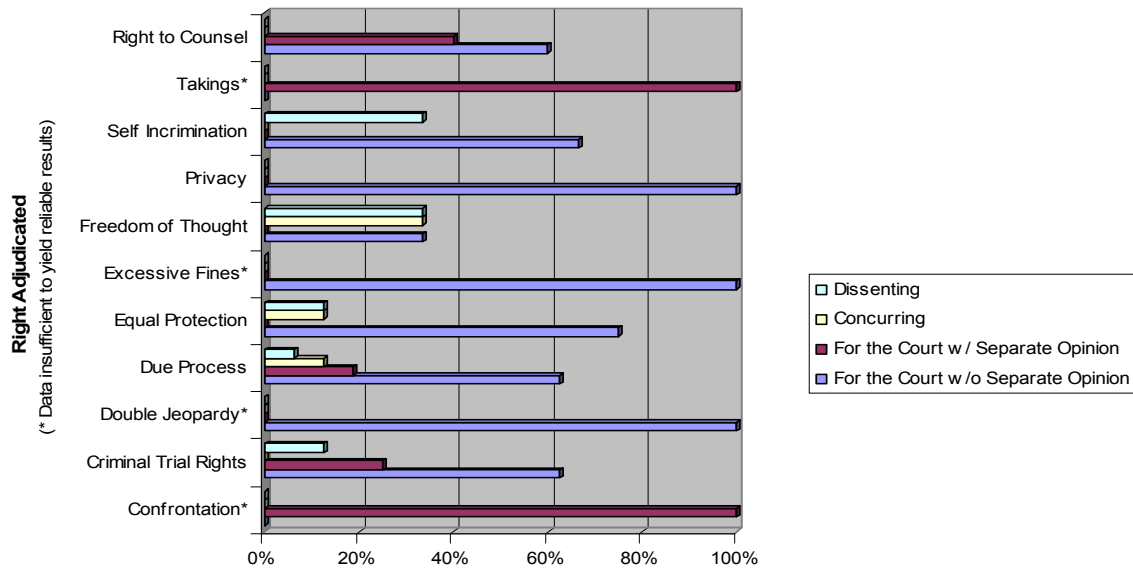
Fig. 9. Effect of Right Adjudicated on Opinion Type

Figure 9 shows that Chief Judge Kaye concurs or dissents most often when freedom of thought or the right against self-incrimination are involved. The unfortunate corollary to this observation is that, as Figure 8 demonstrates, Chief Judge Kaye has not set forth any independent state constitutional jurisprudence in the area of self incrimination, despite that thirty percent of her opinions dealing with that right are dissents. This suggests that, while Chief Judge Kaye may feel strongly about the right against self-incrimination, she is apparently not overly concerned with declaring that the right exists in NY independently of the Federal Constitution. But, when writing on freedom of thought, she advances state constitutional jurisprudence approximately thirty percent of the time: the same rate at which she concurs and at which she dissents when that right is involved.

Also notable, when Figures 8 and 9 are read together, are the privacy and due process right categories. In the realm of privacy rights, although Chief Judge Kaye has had no occasion to write other than for a unanimous Court, she has succeeded in developing independent state constitutional jurisprudence in a third of her cases. Where due process is at issue, Chief Judge Kaye successfully advances NY jurisprudence almost as often as not, and yet has cause to concur or dissent only about twenty percent of the time. These observations suggest that, when it comes to privacy and due process, either she is especially adept at swaying the other judges' votes, that the other judges are also interested in advancing state constitutional principles in this area, or both.

IV. CONCLUSION

As Chief, Judge Kaye's efforts to advance independent state constitutional jurisprudence in NY have been reflected in nearly one-third of her opinions, and have been primarily in the realms of right to counsel, due process, privacy, criminal trial rights, and freedom of thought, with some development in equal protection.²³ Practitioners should take note of these particular right types and plead them separately and independently from their concurrent federal rights when going before Chief Judge Kaye since this pleading method has resulted in most of her development of NY constitutional jurisprudence, and thus the greatest level of protection for those rights in this state. They should also note that, with respect to right to counsel, due process, privacy, and criminal trial rights, Chief Judge Kaye overwhelmingly writes for the Court,²⁴ meaning that the other Judges of the Court are most likely to join in a state constitutional adjudication of these rights.

The bulk of this Study is directed at practitioners because this Author believes that a shift to a primacy approach and, thereby, to greater protection of individual constitutional rights can not be fully effected by any one judge or court alone, but only with the cooperation of the members of the bar. As Chief Judge Kaye herself observed, "It is a continuing disappointment to me that when constitutional issues arise in individual rights cases, the focus is on the Federal Constitution with comparatively little thought

²³ See fig.8, *supra*, at Part III.

²⁴ See fig.9, *supra*, at Part III.

given to our State Constitution. Often, state constitutional issues, when they are even raised, are at best by parallel citation.”²⁵ This will not suffice. With the state of federal constitutional rights in relatively constant flux,²⁶ it is our State’s constitution to which we must look for the establishment of rights that accord with our views as New Yorkers; rights that can exist in perpetuity regardless of what happens in Washington.²⁷ To do this, practitioners must use what we now have to our advantage in the future: They must press for further development where we have enjoyed success in the past. They must understand the Court’s workings so as to help maximize its state constitutional output. And they must provide the Court with an avenue to develop independent state constitutional jurisprudence by presenting cases in procedural postures that enable them to invoke our state’s fundamental law.

²⁵ Judith S. Kaye, Symposium, *State Constitutional Law and the State High Courts in the 21st Century*, 70 ALB. L. REV. 825, 828 (2007).

²⁶ See Vincent Martin Bonventre, Concluding Reflections, *Changing Roles: The Supreme Court and the State High Courts in Safeguarding Rights*, 70 ALB. L. REV. 841, 841–42 (2007) (noting the United States Supreme Court’s “fail[ure] to enforce rights and liberties as vigorously as it should” since the Warren Era).

²⁷ See *id.* at 841 (“I for one . . . would much prefer that my rights and liberties were placed in [state high courts]’ hands than in the majority of the current United States Supreme Court.”).

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Chief Judge Kaye's Judicial Opinions

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APPENDIX A

MASTER TABLE OF RAW DATA

CASE	CITATION	YEAR	OP	PLEAD	RIGHT	APP	IND NY?
People v. Hill	879 N.E.2d 152	2007	S	A	DP	P	Y
Gorghan v. DeAngelis Hernandez v. Robles	857 N.E.2d 523	2006	MP	NY	Dbl Jeop	L	N
Hernandez v. Robles	855 N.E.2d 1	2006	D	NY	EP	L	Y
For the People Theatres of N.Y., Inc. v. City of New York	855 N.E.2d 1	2006	D	NY	DP	L	Y
People v. Jacobs	843 N.E.2d 1121	2005	D	A	Free Tht	P	Y
People v. Rivera	844 N.E.2d 1126	2005	S	USNY	RTC	L	N
People v. Caban	833 N.E.2d 194	2005	D	F	Crim Tr	I	N
People v. Catu D'Ambrosio v. Dep't of Health Bower Assocs. v. Town of Pleasant Valley Bower Assocs. v. Town of Pleasant Valley	833 N.E.2d 213	2005	MP	USNY	RTC	P	Y
People v. Mateo	825 N.E.2d 1081	2005	MP	A	DP	L	N
People v. Mitchell	824 N.E.2d 494	2005	MP	USNY	DP	L	N
People v. Johnson	814 N.E.2d 410	2004	MP	F	EP	I	N
People v. Mitchell	814 N.E.2d 410	2004	MP	F	DP	I	N
In re K.L.	811 N.E.2d 1053	2004	S	A	DP	L	N
In re K.L.	810 N.E.2d 879	2004	MP	USNY	RTC	P	Y
In re K.L.	806 N.E.2d 480	2004	MP	USNY	EP	L	N
In re K.L.	806 N.E.2d 480	2004	MP	USNY	P	L	N
In re K.L.	806 N.E.2d 480	2004	MP	USNY	DP	P	Y
People v. Johnson	804 N.E.2d 402	2003	S	A	Confront	L	N

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County of Nassau v. Canavan	802 N.E.2d 616	2003	MP	USNY	Ex Fine	L	N
County of Nassau v. Canavan	802 N.E.2d 616	2003	MP	USNY	DP	L	N
People v. Stuart	797 N.E.2d 28	2003	C	USNY	DP	P	Y
People v. Abad	771 N.E.2d 235	2002	MP	USNY	P	I	N
People v. Brown	769 N.E.2d 1266	2002	C	F	EP	L	N
People v. Edwards	741 N.E.2d 876	2000	MP	A	P	P	Y
People v. Young	723 N.E.2d 58	1999	MP	USNY	DP	P	Y
People v. Berg	708 N.E.2d 979	1999	MP	USNY	Self Incr	L	N
People v. Longtin	707 N.E.2d 418	1998	MP	A	RTC	P	Y
Hynes v. Tomei	706 N.E.2d 1201	1998	MP	USNY	Self Incr	I	N
Hynes v. Tomei	706 N.E.2d 1201	1998	MP	USNY	Crim Tr	I	N
People v. Ramos	685 N.E.2d 492	1997	MP	A	Crim Tr	I	N
People v. Ramos	685 N.E.2d 492	1997	MP	A	Free Tht	I	N
People v. Nieves	683 N.E.2d 764	1997	MP	A	Crim Tr	I	N
Goodwin v. Perales	669 N.E.2d 234	1996	MP	F	EP	I	N
People v. Page	665 N.E.2d 1041	1996	S	NY	Crim Tr	P	Y
CASE	CITATION	YEAR	OP	PLEAD	RIGHT	APP	IND NY?
People v. Wright	658 N.E.2d 1009	1995	MP	F	DP	I	N
People v. Schaffer	657 N.E.2d 1305	1995	MP	A	DP	I	N
People v. Schaffer	657 N.E.2d 1305	1995	MP	A	EP	I	N
People v. Allen	653 N.E.2d 1173	1995	MP	F	EP	L	N
Gordon v. Brown	644 N.E.2d 1305	1994	S	A	DP	I	N
Hope v. Perales	634 N.E.2d 183	1994	MP	NY	DP	P	Y
People v. Irizarry	634 N.E.2d 179	1994	MP	A	DP	P	Y

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People v. Wesley	633 N.E.2d 451	1994	C	A	DP	I	N
People v. Latham	631 N.E.2d 83	1994	MP	F	Dbl Jeop	I	N
People v. Alls Rent Stabilization Ass'n of N.Y.	629 N.E.2d 1018	1993	D	F	Self Incr	I	N
City v. Higgins	630 N.E.2d 626	1993	S	F	Takings	L	N
People v. Ryan	626 N.E.2d 51	1993	S	USNY	Crim Tr	L	N
People v. Aguilera	623 N.E.2d 519	1993	MP	A	Crim Tr	L	N
People v. Walker	623 N.E.2d 1	1993	MP	A	EP	L	N
Grumet v. Bd. of Educ.	618 N.E.2d 94	1993	C	USNY	Free Tht	I	N
People v. West	615 N.E.2d 968	1993	S	NY	RTC	P	Y
People v. Rosen	613 N.E.2d 946	1993	MP	USNY	Crim Tr	P	Y

Indicator Legend:

Column: "OP" = Opinion Type:

"MP" = For the Court w/o Separate Opinion

"S" = For the Court w/ Separate Opinion

"C" = Concurring

"D" = Dissenting

Column: "PLEAD" = Constitutional Principles Included in

Pleadings:

"A" = Ambiguous

"F" = Federal Only

"NY" = NY Only

"USNY" = Federal and NY

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Column: "RIGHT" = Right Adjudicated:

"DP" = Due Process

"EP" = Equal Protection

"Dbl Jeop" = Double Jeopardy

"Takings" = Taking of Private Property

"Crim Tr" = Criminal Trial Rights

"Free Tht" = Freedom of Thought

"RTC" = Right to Counsel

"Confront" = Right of Confrontation

"Exc Fine" = Excessive Fines

"Self Incr" = Self Incrimination

"P" = Privacy

Column: "APP" = Adjudicative Approach:

"I" = Interstitial

"L" = Lockstep

"P" = Primacy

Column: "IND NY?" = Develops Independent NY ConstitutionalJurisprudence?:

"Y" = Yes

"N" = No

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APPENDIX B

CHARTS ASSOCIATED WITH FIGURES PRESENTED IN TEXT

Fig. 1.

No Independent NY Constitutional Jurisprudence	35	68.63%
Independent NY Constitutional Jurisprudence	16	31.37%
Total	51	100.00%

Fig. 2.

	No Independent NY Constitutional Jurisprudence	Independent NY Constitutional Jurisprudence	total
For the Court w/o Separate Opinion	24	9	33
For the Court w/ Separate Opinion	6	3	9
Concurring	3	1	4
Dissenting	2	3	5
total	35	16	51

Fig. 3.

	No Independent NY Constitutional Jurisprudence	Independent NY Constitutional Jurisprudence	total
For the Court w/o Separate Opinion	73%	27%	100%
For the Court w/ Separate Opinion	67%	33%	100%
Concurring	75%	25%	100%
Dissenting	40%	60%	100%

Fig. 4.

	No Independent NY Constitutional Jurisprudence	Independent NY Constitutional Jurisprudence	total
Ambiguous	12	5	17
Federal Only	10	0	10
NY Only	1	5	6
Federal and NY	12	6	18
total	35	16	51

	No Independent NY Constitutional Jurisprudence	Independent NY Constitutional Jurisprudence	total
Ambiguous	71%	29%	100%
Federal Only	100%	0%	100%
NY Only	17%	83%	100%
Federal and NY	67%	33%	100%

Fig. 5.

	Interstitial	Lockstep	Primacy	total
Ambiguous	7	5	5	17
Federal Only	7	3	0	10
NY Only	0	3	3	6
Federal and NY	4	8	6	18
total	18	19	14	51

	Interstitial	Lockstep	Primacy	total
Ambiguous	41%	29%	29%	100%
Federal Only	70%	30%	0%	100%
NY Only	0%	50%	50%	100%
Federal and NY	22%	44%	33%	100%

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Fig. 6.

	No Independent NY Constitutional Jurisprudence	Independent NY Constitutional Jurisprudence	total
Interstitial	18	0	18
Lockstep	17	2	19
Primacy	0	14	14
total	35	16	51

	No Independent NY Constitutional Jurisprudence	Independent NY Constitutional Jurisprudence	total
Interstitial	100%	0%	100%
Lockstep	89%	11%	100%
Primacy	0%	100%	100%

Fig. 7.

	Interstitial	Lockstep	Primacy	total
Confrontation*	0	1	0	1
Criminal Trial Rights	4	2	2	8
Double Jeopardy*	1	1	0	2
Due Process	5	5	6	16
Equal Protection	3	5	0	8
Excessive Fines*	0	1	0	1
Freedom of Thought	2	0	1	3
Privacy	1	1	1	3
Self Incrimination	2	1	0	3
Takings*	0	1	0	1
Right to Counsel	0	1	4	5
total	18	19	14	51

	Interstitial	Lockstep	Primacy	total
Confrontation*	0%	100%	0%	100%
Criminal Trial Rights	50%	25%	25%	100%
Double Jeopardy*	50%	50%	0%	100%
Due Process	31%	31%	38%	100%
Equal Protection	38%	63%	0%	100%
Excessive Fines*	0%	100%	0%	100%
Freedom of Thought	67%	0%	33%	100%
Privacy	33%	33%	33%	100%
Self Incrimination	67%	33%	0%	100%
Takings*	0%	100%	0%	100%
Right to Counsel	0%	20%	80%	100%

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Fig. 8.

	No Independent NY Constitutional Jurisprudence	Independent NY Constitutional Jurisprudence	total
Confrontation*	1	0	1
Criminal Trial Rights Double Jeopardy*	6	2	8
Due Process	2	0	2
Equal Protection	9	7	16
Excessive Fines*	7	1	8
Freedom of Thought	1	0	1
Privacy	2	1	3
Self Incrimination	2	1	3
Takings*	3	0	3
Right to Counsel	1	0	1
	1	4	5
total	35	16	51

	No Independent NY Constitutional Jurisprudence	Independent NY Constitutional Jurisprudence	total
Confrontation*	100%	0%	100%
Criminal Trial Rights Double Jeopardy*	75%	25%	100%
Due Process	100%	0%	100%
Equal Protection	56%	44%	100%
Excessive Fines*	88%	13%	100%
Freedom of Thought	100%	0%	100%
Privacy	67%	33%	100%
Self Incrimination	67%	33%	100%
Takings*	100%	0%	100%
Right to Counsel	100%	0%	100%
	20%	80%	100%

Fig. 9.

	For the Court w/o Separate Opinion	For the Court w/ Separate Opinion	Concurring	Dissenting	total
Confrontation Criminal Trial Rights	0	1	0	0	1
Double Jeopardy	5	2	0	1	8
Due Process	2	0	0	0	2
Equal Protection	10	3	2	1	16
Excessive Fines	6	0	1	1	8
Freedom of Thought	1	0	0	0	1
Privacy	3	0	1	1	3
Self Incrimination	3	0	0	0	3
Takings	2	0	0	1	3
Right to Counsel	0	1	0	0	1
total	3	2	0	0	5
total	33	9	4	5	51

	For the Court w/o Separate Opinion	For the Court w/ Separate Opinion	Concurring	Dissenting	total
Confrontation*	0%	100%	0%	0%	100%
Criminal Trial Rights	63%	25%	0%	13%	100%
Double Jeopardy*	100%	0%	0%	0%	100%
Due Process	63%	19%	13%	6%	100%
Equal Protection	75%	0%	13%	13%	100%
Excessive Fines*	100%	0%	0%	0%	100%
Freedom of Thought	33%	0%	33%	33%	100%
Privacy	100%	0%	0%	0%	100%
Self Incrimination	67%	0%	0%	33%	100%
Takings*	0%	100%	0%	0%	100%
Right to Counsel	60%	40%	0%	0%	100%