

# New York Law Journal

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8—NO. 67 • \$3.00

NEW YORK, THURSDAY, OCTOBER 4, 2007

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## NEWS IN BRIEF

**Linklaters Capital Markets Partner Joins White & Case**  
 White & Case has recruited a capital markets partner from the New York office of Linklaters. N. Adele Hogan has advised issuers and underwriters on a variety of securities offerings in industries including financial institutions, telecommunications, transportation, oil and gas, and health care. She is the current chair of the securities regulation committee of the New York City Bar Association and a member of the federal securities law committee of the American Bar Association. She became a partner in the New York office of London-based Linklaters in 2005. She was previously a senior attorney at Cravath, Swaine & Moore. — *Anthony Lin*

**Ex-Cravath Associate Pleads Guilty in Underage Sex Scandal**  
 A former Cravath, Swaine & Moore associate has pleaded guilty to rape charges stemming from his sexual relationships with three underage girls. James P. Colliton pleaded guilty to second- and third-degree rape felony charges as well as one count of patronizing a prostitute and agreed to one-year prison sentences on each charge, to be served concurrently. He also agreed to register as a sex offender. Mr. Colliton, 43, has already served 10 months in prison and is expected to be released after his Oct. 11 sentencing. At the time of his indictment last year prosecutors with the Manhattan District Attorney's Office alleged that Mr. Colliton, a former tax lawyer, paid the mother of a 15-year-old girl and her 13-year-old sister to have sex with the teens, allowing the latter to move into a midtown Manhattan apartment he maintained while living primarily in Poughkeepsie with his wife and five children. He also admitted to paying a third girl for sex. Mr. Colliton was fired from Cravath when his conduct came to light and he was briefly a fugitive before being arrested at a seedy East Village hotel. As a convicted felon, Mr. Colliton is subject to automatic disbarment. — *Anthony Lin*

**Parties Appeal Ruling on Attorney Advertising Rules**  
 Both sides in the federal court case that resulted in many of the new restrictions on lawyer advertising in New York being declared unconstitutional have appealed to the U.S. Court of Appeals for the Second Circuit. The rules, instituted Feb. 1 by the four presiding Appellate Division justices after months of controversy within the legal community, were upheld by a 10-9 vote by Northern District Judge Frederick J. Scullin (S.D.N.Y. 2007-1007). The judge decided that most of the new advertising restrictions against firms using nicknames or monikers like the "Heavy Hitters" contravene of judges and testimonials from active clients. — *William*

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## Panel Rejects Court's Ban On Pregnancy

BY MARK FASS

A FAMILY COURT judge overstepped her authority by barring a homeless, drug-addicted Rochester woman from becoming pregnant before she regained custody of her four children, an Appellate Division, Fourth Department, panel has ruled.

The panel declined to address constitutional issues, instead granting respondent Stephanie Pendleton's motion to vacate on a narrow, statutory basis.



Justice Hurbutt

"[We] conclude that the court should have granted respondent's motion because it had no authority to impose the 'no pregnancy' condition," Justice Robert G. Hurbutt wrote for the unanimous panel in *Matter of Bobblejan P.*, 8013.

Ms. Pendleton gave birth to a daughter, Bobblejan, on March 23, 2003.

"Because [Bobblejan's] parents, were homeless crack cocaine addicts and Bobblejan tested positive for crack cocaine upon birth, the court removed her from respondents and placed her with a relative," Justice Hurbutt wrote.

After Ms. Pendleton failed to appear at a hearing for a neglect petition filed by the Department of Human Services, Monroe County Family Court Judge Marilyn L. O'Connor granted the department's proposed plan. Judge O'Connor added several

## Justices React Skeptically To Judge Selection Challenge

BY LAUREL NEWBY

WASHINGTON—U.S. Supreme Court justices yesterday appeared skeptical of arguments challenging the constitutionality of New York's long-standing convention system for nominating Supreme Court candidates.

The Court heard oral argument in *New York State Board of Elections v. Lopez Torres*, on appeal from the U.S. Court of Appeals for the Second Circuit, which upheld Eastern District Judge John Gleeson's injunction against the state's 86-year-old system for nominating candidates.

Mr. Rossmann urged the Court to find "inappropriate" the lower courts' application of strict scrutiny to what he called "routine core party associational activity."

"Leaders" developing candidates, recommending candidates,

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"The nub of your case is that the political bosses in effect are controlling the process because they tell the delegates who to vote for."



Justice Souter



Justice Scalia

"It's a basic judgment not to have judges popularly elected, and your objection amounts to saying 'No, judges ought to be popularly elected.'"

## Study Finds 'Quite Extreme' Disparities In Immigration Judges' Asylum Rulings

BY MARK HARBLETT

IMMIGRATION judges in New York like their colleagues in other states

Court-by-Court Breakdown

Immigration Data '06-'07

petition filed by the Department of Human Services, Monroe County Family Court Judge Marilyn L. O'Connor granted the department's proposed plan. Judge O'Connor added several additional conditions, including a bar on future pregnancies.

"[Ms. Pendleton] shall not get pregnant again until and unless she has actually obtained custody and care of Robblean-P. and every other child of hers who is in foster care and has not been adopted or institutionalized," Judge O'Connor ordered. Ms. Pendleton had three other such children.

"All babies deserve more than to be born to parents who have proven they cannot possibly raise or parent a child," Judge O'Connor wrote. "The cycle of neglect often created by such

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**BY DANIEL WISE**

A SCHOOL-BUS attendant who left a sleeping 7-year-old on a 12-passenger bus after it arrived at the student's school is guilty of attempted endangerment of the child's welfare, a judge in Brooklyn ruled last week after a bench trial.

Judge Michael Gerstein, a Civil Court judge assigned to Criminal Court, rejected the bus attendant's defense that "a mistake is just a mistake" and that she did not have sufficient knowledge that her conduct would result in harm to the child to support a conviction for attempted child endangerment under Penal Law §260.10, a class B misdemeanor.



Judge Gerstein

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Appellate Division  
FIRST JUDICIAL DEPARTMENT

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## DECISIONS OF INTEREST

**FIRST DEPARTMENT**

■ **CIVIL PRACTICE:** Plaintiff's motion to dismiss summary judgment motion for failure to comply with §3212(a) denied. *Alexandris v. Suede Night Club, Supreme Court, New York* (p. 26, col. 1).

■ **SECOND DEPARTMENT**

■ **REAL PROPERTY:** Issues of fact of whether defendant is exempted from §7-210 precludes summary judgment. *Galarza v. Guillen, Supreme Court, Kings* (p. 26, col. 1).

■ **CONTRACTS:** Absent evidence of intent to benefit third party, contractual privity contract breach claim dismissed. *Staten Island New York CVS v. Gordon Retail Development LLC, Supreme Court, Richmond* (p. 27, col. 1).

■ **CIVIL PRACTICE:** Court lacks subject matter jurisdiction; monetary jurisdictional limit exceeded. *82 Glen Cove LLC v. H&Y Cleaners Inc., District Court, Nassau* (p. 27, col. 3).

■ **INSURANCE LAW:** Insurer's motion to reargue denial of motion to sever two pending claims denied. *Annette Medical PC v. State Farm Mut. Auto. Ins. Co., District Court, Nassau* (p. 28, col. 1).

■ **REAL PROPERTY:** Countrywide fails to comply with newly enacted provisions of Home Equity Theft Prevention Act. *Countrywide Home Loans Inc. v. Taylor, Supreme Court, Suffolk* (p. 28, col. 1).

**THIRD DEPARTMENT**

■ **WORKERS' COMPENSATION:** Correction officer entitled to statutory presumption that death arose from employment; board reversed. *Walter v. Thompson v. Genesee County Sheriff's Department, App. Div.* (p. 26, col. 1).

**UNITED STATES COURTS**

■ **ADMINISTRATIVE LAW:** Court rejects challenge to regulation requiring global positioning technology in taxicabs. *Alexandra v. New York City Taxi and Limousine Commission, SDNY* (p. 28, col. 3).

■ **ELECTION LAW:** State election board partly dismissed from suit claiming "Molinar" mandated place on 2006 ballot. *Miravanski v. Pataski, SDNY* (p. 29, col. 1).

■ **CIVIL PRACTICE:** Culpability of exercise ball's Chinese maker cannot be considered for non-economic loss apportionment. *Schmelzer v. Hilton Hotels Corp., SDNY* (p. 30, col. 3).

■ **BUSINESS LAW:** Disclosure of transfer agent fees paid by funds leads to dismissal of securities fraud claims. *In re Smith Barney Fund Transfer Agent Litigation, SDNY* (p. 31, col. 1).

■ **INTELLECTUAL PROPERTY:** Uncontradicted evidence of independent creation defeats claim that child's book infringed copyright. *Maharam v. Patterson, SDNY* (p. 31, col. 3).

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**BY MARK HAMBLETT**

IMMIGRATION judges in New York like their colleagues in other states continue to deny asylum applications at wildly different rates, according to a study released last week.

The rate at which 36 New York immigration judges rejected asylum requests ranged from 91.6 percent to 9.5 percent during fiscal year 2001 to 2006, which ended Oct. 1, according to the study by Transnational Records Access Clearinghouse (TRAC) at Syracuse University.

The TRAC study, which covered 184,997 asylum decisions by more than 200 judges, shows that judges are all over the map when it comes to granting asylum.

"The unusual persistence of these disparities, no matter how the asylum cases are examined, indicates that the identity of the judge who handles a particular matter often is more important than the underlying

Cities with Largest Caseloads	Number Decided	Judges	Lowest Denial Rate (%)	Highest Denial Rate (%)	Range
New York	4,657	36	95	97	82
Miami	29,406	26	21.8	97.6	75.8
Los Angeles	14,931	51	27	66	59.6
San Francisco	13,316	23	26.5	66.7	60.2

SOURCE: TRAC Reports, Inc.

facts," the report states. "Because equal justice under the law is a fundamental goal of American jurisprudence, the new findings about the day-to-day operations of the immigration courts are disturbing."

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## Attendant Faces Jail for Leaving Sleeping Child on Bus

The bus attendant, Victoria M. Afia, will face a maximum sentence of three months in jail when Judge Gerstein sentences her on Nov. 19, in rejecting Ms. Afia's defense, Judge Gerstein found that she, like all bus attendants hired by the New York City Department of Education, had been trained to take measures to prevent a sleeping child from being left on a bus.

Because Ms. Afia had failed to take the required precautions, Judge Gerstein found that Isahak M., 7, was left on his bus after it had arrived at his school in Canarsie and was then driven "halfway across Brooklyn" to the Bensonhurst area.

When Isahak awakened, Judge Gerstein recounted, the boy, finding himself in an

unfamiliar neighborhood, let himself off the bus. A stranger then found him in the "middle of the street" and brought him to a nearby police station.

In finding that Ms. Afia was well aware of the dangers of leaving a sleeping child on a bus, Judge Gerstein relied heavily on the testimony of two prosecution witnesses who had been her instructors at the center used by the Department of Education to train bus drivers and attendants.

Standard training at the center, the two instructors testified, teaches attendants to identify on a "trip sheet" whether each student assigned to a bus is present or absent.

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