CRIMINAL

FIRST DEPARTMENT

People v Collins, 7/9/20 – **SUPPRESSION / GRANTED**
The defendant appealed from a judgment of NY County Supreme Court, convicting him upon his guilty plea of 3rd degree CPW and criminal possession of a firearm. The First Department reversed and dismissed the indictment. The appeal from the judgment brought up for review an order denying suppression. Police pursuit significantly impeded freedom of movement and thus required reasonable suspicion, whereas such a predicate was not needed for mere surveillance. The actions here began as permissible observation, but then police turned on their lights and sirens to cross the street against traffic and pull up ahead of the defendant. The maneuver was intimidating and conveyed an attempt to intrude upon his freedom of movement. Since there was no reasonable suspicion, such actions were unlawful. When the defendant discarded a handgun during the illegal pursuit, he did not voluntarily abandon it. The Legal Aid Society of NYC (Rachel Pecker, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03852.htm

Property Clerk, NYPD v Nurse, 7/9/20 – **CIVIL FORFEITURE / HEARING**
The plaintiff appealed from an order of NY County Supreme Court, which sua sponte dismissed a civil forfeiture complaint. The First Department vacated the dismissal and remanded for a hearing. Following the defendant's arrest, his vehicle was impounded. He pleaded guilty to criminal possession of a firearm and was sentenced to five years' probation. The forfeiture action was not precluded by the determination at a *Krimstock* hearing (*Krimstock v Kelly*, 306 F3d 40)—that the defendant's retention of his vehicle pending resolution of a forfeiture action did not pose a heightened risk to public safety. Here the distinct issue was whether the vehicle was subject to forfeiture because the defendant used it to commit his crime. The plaintiff established that the defendant did so use it, but the defendant presented evidence that the vehicle was needed for work and to pick up his children from school. Forfeiture would impose excessive hardship, particularly given that this was the defendant's sole criminal offense. On this record, an issue of fact existed as to whether civil forfeiture was proper, warranting an evidentiary hearing.
http://nycourts.gov/reporter/3dseries/2020/2020_03866.htm

SECOND DEPARTMENT

People v Campbell, 7/8/20 – **EXPERTS / NO FOUNDATION**
The defendant appealed from a judgment of Kings County Supreme Court, convicting him of two counts each of 5th and 7th degree criminal possession of a controlled substance and other crimes. The Second Department modified by vacating the 5th degree possession counts and ordered a new trial as to those counts. The People relied on the testimony of a NYPD criminalists who performed testing upon the subject substances. Their opinion testimony was inadmissible, because the People failed to lay a foundation. Each criminalist tested the purity of a sample of the substance recovered from the defendant by using tests

which relied on comparison to a known standard. However, the People failed to introduce evidence as to the accuracy of the standard. The Legal Aid Society of NYC (William Carney, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03800.htm

People v Taylor, 7/8/20 – ***BATSON*** **/ DISSENT**
The defendant appealed from a judgment of Queens County Supreme Court, convicting her of 2nd and 3rd degree assault and petit larceny. The Second Department modified by vacating the 3rd degree conviction and dismissing it as an inclusory concurrent count of 2nd degree assault. Two justices voted to reverse based on a *Batson* issue. At step one of the *Batson* protocol, the trial court found that the defendant made out a prima facie case of race-based discrimination as to the prosecutor's use of peremptory challenges against six prospective jurors. At step two, the prosecutor addressed the basis for each such challenge. Regarding one prospective juror, the prosecutor stated that she "was from Trinidad. She's not African-American." To the extent that the prosecutor was arguing that, as a Trinidadian, the panelist was not African- American, such was not an appropriate argument at step two. At step one, the court had already determined that the panelist was a member of the cognizable racial group. The People failed to carry their minimal burden of proffering a facially nondiscriminatory reason, and Supreme Court erred by not seating the prospective juror. Appellate Advocates (Sam Feldman, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03807.htm

People v Wilkinson, 7/8/20 – **SENTENCES / CONCURRENT**
The defendant appealed from a judgment of Westchester County Supreme Court, convicting him of 2nd degree murder, 1st degree robbery, 1st degree burglary, and 2nd degree assault. The Second Department modified, finding that the sentences imposed for burglary and assault must run concurrently to each other, since those crimes did not involve disparate or separate acts. Thomas Keating represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03808.htm

People v Alman, 7/8/20 – **MISTRIAL / MANIFEST NECESSITY**
The defendant appealed from a judgment of Nassau County Supreme Court, convicting him of 2nd degree obstructing governmental administration and resisting arrest. The Second Department affirmed. After summations at the first trial, defense counsel informed the court that the defendant would not consent to any alternate jurors replacing a juror. The alternates were discharged. During deliberations, Juror No. 6 had to be discharged because she did independent research, told jurors what she learned, and discussed the case with her husband. The court stated that it would declare a mistrial "upon necessity." A second trial and the instant appeal ensued. The defendant contended that Supreme Court had improperly declared a mistrial. However, when the trial court stated that it planned to do so, he had failed to object. In any event, there was a manifest necessity.
http://nycourts.gov/reporter/3dseries/2020/2020_03799.htm

THIRD DEPARTMENT

People v Jones, 7/9/20 – **INVENTORY SEARCH / IMPROPER**
The defendant appealed from an Albany County Supreme Court judgment convicting him, upon his plea of guilty, of 2nd degree CPW and DWI. The Third Department reversed. The appeal brought up for review the denial, after a hearing, of the defendant's motion to suppress a loaded pistol found in his vehicle. The denial of suppression was error. The inventory search policy proffered by the People was reasonable; it was designed to meet legitimate objectives, while limiting the discretion of the officer in the field. However, the officer who searched the vehicle did not comply with the policy's requirement that each impounded vehicle must be completely inventoried. One justice dissented. Danielle Reilly represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03826.htm

People v Perez, 7/9/20 – **CPL 440.10 MOTION / HEARING NEEDED**
The defendant appealed from an order of Schenectady County Court, which summarily denied his CPL 440.10 motion to vacate a judgment convicting him of attempted 3rd degree criminal sale of a controlled substance. The Third Department reversed. The defendant raised the same issue regarding ineffective assistance of counsel that he had in a prior 440 motion, except that the instant motion contained an affidavit from his plea counsel. The attorney admitted that he did not do an investigation, seek discovery, or attack arguably fatal deficiencies in the People's case. Further, counsel had erroneously advised the defendant—whom he knew was an immigrant from the Dominican Republic and a lawful permanent resident—that he would not be deported as a result of a guilty plea. The defendant asserted that, but for the IAC, he would not have pleaded guilty. A hearing was needed; the matter was remitted. Derek Andrews represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03825.htm

People v Chambers, 7/9/20 – **SENTENCES / ILLEGAL**
The defendant appealed from a judgment of Albany County Court, upon a verdict, convicting him of multiple crimes, including two counts of 2nd degree criminal sale of a controlled substance. The Third Department modified the judgment. The sentences imposed upon the above-named counts—15 years in prison plus five years' post-release supervision—exceeded the statutory range and were thus illegal. *See* Penal Law § 70.71 (2) (b) (ii). The sentences were vacated and the matter remitted for resentencing. Henry Meier III represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03822.htm

FAMILY

FIRST DEPARTMENT

Matter of Avrie P. (Meliza T.), 7/9/20 – **NEGLECT / REVERSED**
The mother appealed from a Bronx County Family Court order, which found that she neglected the subject children. The First Department reversed and dismissed the petitions. The 10-year-old daughter fled the apartment because she was bored and wanted to play in the park. The mother chased her and caught up, but the child refused to go home. As a last resort, the mother pulled her by the arms and grabbed her hair. Under the circumstances presented, such force did not constitute excessive corporal punishment, nor did the mother neglect her son by leaving him unsupervised when she ran after her daughter. Bryan Greenberg represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03849.htm

Matter of Claudia B. v Darrin N., 7/9/20 – **EX-BOYFRIEND / SPERM DONOR**
The respondent appealed from orders of NY County Family Court, which (1) denied his motion to dismiss the petitioner's paternity petition on equitable estoppel grounds and ordered him to submit to DNA testing; and (2) declared him to be the biological father of the subject child. The First Department affirmed. After the parties' relationship ended, the petitioner asked the respondent to donate sperm so she could conceive. He agreed. When the respondent donated 17 vials of semen to a fertility center, the parties were still negotiating an agreement providing that he would have no parental rights or responsibilities. No binding agreement was ever reached and executed. Thus, there was no basis to invoke equitable estoppel based on the petitioner's purported fraudulent conduct. In the motion court, the respondent did not request a hearing, and he was not entitled to one, since he did not explain what information he would have elicited on cross-examination of the petitioner to buttress his estoppel claim.
http://nycourts.gov/reporter/3dseries/2020/2020_03861.htm

SECOND DEPARTMENT

Matter of Nicholas G. (Candace G.), 7/8/20 – **NEGLECT / AFFIRMED**
The mother appealed from a Suffolk County Family Court order directing the temporary removal of the child. The Second Department affirmed. DSS established that the removal was necessary to avoid imminent risk. The standard treatment protocol for a child with leukemia included chemotherapy, even after the child was in remission. Upon remission, a substantial number of malignant cells remained, and they started multiplying when chemotherapy stopped. The mother presented no evidence contradicting that chemotherapy was the only effective treatment for the child and that vitamin therapy and other treatments chosen were not effective.
http://nycourts.gov/reporter/3dseries/2020/2020_03781.htm

THIRD DEPARTMENT

Matter of Burnett v Andrews-Dyke, 7/9/20 – **TESTIMONY / UNSWORN**
The mother appealed from an order of Ulster County Family Court, which held her in willful violation of a prior support order and committed her to jail for three months. The Third Department reversed and remitted for a new hearing. Family Ct Act § 433 gave Family Court discretion to let a party testify by phone to avoid undue hardship. Here the court granted such permission, but did not require that the mother testify from a location where a notary would be available to swear her in. At the hearing, the court noted that the mother was not in such a location, but permitted her to give unsworn testimony. Thereafter, in a written decision, the court held that the mother's testimony was not competent, because she had not been sworn. Yet the court had allowed that to occur. Family Court should have taken corrective action, such as administering the oath itself. Lindsay Kaplan represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03838.htm

Matter of Kimberly H. v Daniel I., 7/9/20 – **CUSTODY / CLAIM STATED**
The mother appealed from an order of Saratoga County Family Court, which dismissed her pro se custody modification petition, finding that she failed to state a cause of action. The Third Department reversed. The mother alleged that the father took the child to visit an inmate convicted of murder, causing the child significant distress; that he refused to allow requested additional parenting time, as contemplated by a 2018 order on consent; and that he threatened to take away the mother's court-ordered parenting time. In addition, the mother averred that she had completed therapeutic counseling, was continuing with further therapy, and was a fit parent. These allegations were sufficient to warrant an evidentiary hearing. The matter was remitted. The Rural Law Center of NY (Keith Schockmel, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_03830.htm

Matter of Deborah H. v Alana AA., 7/9/20 – **GRANDMOTHER / VISITATION**
The mother appealed from an order of Ulster County Family Court, which granted the maternal grandmother's application for visitation with the subject child. The Third Department affirmed. The parents stipulated that the grandmother had standing, which was also fully supported by the record. Visitation was in the best interests of the child, age seven, who had lived with the grandparents for nearly half her life. Testimony established that the child and grandmother enjoyed a loving relationship, the grandmother had nurturing skills, and the mother's objections were unfounded. The visitation schedule, calling for weekday overnight visits and one weekend visit each month, properly provided the child with regular contact with the grandmother.
http://nycourts.gov/reporter/3dseries/2020/2020_03832.htm