NEW YORK LAW SCHOOL

NYLS Law Review

Vols. 22-63 (1976-2019)

Volume 52
Issue 2 *The LeGaL Foundation LGBT Law Conference*

Article 7

January 2007

In re Simone D.

Erin E. Martin
New York Law School Class of 2008

VOLUME 52 | 2007/08

ERIN E. MARTIN

In re Simone D.

ABOUT THE AUTHOR: Erin E. Martin is a 2008 J.D. candidate at New York Law School.

"There is no treatment in psychiatry more frightening than electroconvulsive therapy . . . . There also is no treatment in psychiatry more effective."[1]

While it is well settled in the state of New York that the scope of cross-examination is within the sound discretion of the trial court,[2] this power is not absolute, and an abuse of discretion is grounds for reversal.[3] The principle of judicial notice is equally well settled.[4] Although a court may take judicial notice of general common knowledge, such as the laws of nature and the geographical locations of countries, a court should not take judicial notice of matters specific to its own knowledge.[5] Occasions do arise, however, when a court may take judicial notice of matters within its own knowledge. Nevertheless, such action is only considered proper if the court takes certain steps, such as obtaining the consent of the parties and allowing possible discrepancies to be cured.[6]

In *In re Simone D.,* the New York Court of Appeals addressed whether the Appellate Division, Second Department erred in finding that the trial court had properly curtailed the cross-examination of a psychiatrist called by the petitioner, Creedmoor Psychiatric Center ("Creedmoor"), during a proceeding for an order to administer electroconvulsive therapy[7] ("ECT") to a patient without her consent.[8]

---

1. KITTY DUKAKIS & LARRY TYE, SHOCK: THE HEALING POWER OF ELECTROCONVULSIVE THERAPY, at vii (2006).

2. *See* People v. Schwartzman, 24 N.Y.2d 241, 244 (1969); People v. Perez, 749 N.Y.S.2d 425 (2d Dep't 2002); People v. Sul, 652 N.Y.S.2d 57, 58 (2d Dep't 1996); Ingebretsen v. Manha, 631 N.Y.S.2d 72, 73 (2d Dep't 1995); People v. McGriff, 607 N.Y.S.2d 980, 981 (2d Dep't 1994); People v. Diaz, 570 N.Y.S.2d 149 (2d Dep't 1991).

3. *See* Friedel v. Bd. of Regents of Univ. of N.Y., 296 N.Y. 347, 352 (1947); People v. Mothon, 729 N.Y.S.2d 541, 544 (2d Dep't 2001). *See generally* 5 AM. JUR. 2D *Appellate Review* § 591 (2006); 98 C.J.S. *Witnesses* §§ 448, 494 (2006).

4. "Judicial notice" is defined as a "court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact." BLACK'S LAW DICTIONARY 863–64 (8th ed. 2004).

5. *See* Brown v. Piper, 91 U.S. 37, 42 (1875) ("Of private and special facts, in trials in equity and at law, the court or jury, as the case may be, is bound carefully to exclude the influence of all previous knowledge."); Weatherton v. Taylor, 187 S.W. 450, 452 (Ark. 1916) ("The personal knowledge of the chancellor is not judicial knowledge of the court, for there is no way of testing the accuracy of the knowledge which rests entirely within the breast of the court."); 5 ROBERT A. BARKER & VINCENT C. ALEXANDER, NEW YORK PRACTICE: EVIDENCE IN NEW YORK STATE AND FEDERAL COURTS § 2:3 (2006).

6. *See infra* pp. 315–17.

7. Electroconvulsive therapy is commonly referred to as ECT.

> With electroconvulsive therapy, electrodes are placed on the head and an electric current is applied to induce a seizure in the brain. For reasons that aren't understood, the seizure alleviates depression. Usually five to seven treatments, one treatment every other day, are given. Because the electric current can cause muscle contractions and pain, the person receives general anesthesia during treatments. Electroconvulsive therapy may cause some temporary (rarely permanent) loss of memory.

THE MERCK MANUAL OF MEDICAL INFORMATION 407 (Robert Berkow et al. eds., Home ed. 1997). Other side effects of ECT include disorientation and confusion. *See* THE ENCYCLOPEDIA OF PSYCHIATRY, PSYCHOLOGY, AND PSYCHOANALYSIS 130 (Benjamin B. Wolman ed., 1996); *see also* AMERICAN PSYCHIATRIC GLOSSARY 71–72 (Narriman C. Shahrokh & Robert E. Hales eds., 8th ed. 2003); RICHARD SLOANE, THE SLOANE-DORLAND ANNOTATED MEDICAL-LEGAL DICTIONARY 724–25 (1987). In the United States, more than one hundred thousand patients currently receive ECT each year. DUKAKIS &

The Court of Appeals affirmed the Second Department's holding that curtailing the cross-examination of the witness was within the sound discretion of the trial court.[9] In the wake of its decision, however, the Court of Appeals implicitly reversed the well-established rule that a court should not rely on its own knowledge during the adjudication of a case without taking the proper procedural steps to establish that knowledge on the record.[10] The decision of the Court of Appeals essentially establishes that a court may, in fact, take judicial notice of its own knowledge without confirming such knowledge on the record.[11]

Diagnosed with a severe depressive disorder, Simone D. was admitted to Creedmoor in 1994 and began receiving ECT treatments the following year.[12] Throughout the course of her treatment at Creedmoor, Simone D. was subjected to approximately 148 ECT treatments without her consent pursuant to several court orders.[13] In November 2005, Creedmoor once again sought a court order to administer ECT without Simone D.'s consent, claiming that without such treatment she became unresponsive, aggressive, and refused to eat.[14] At a hearing before the Supreme Court, Queens County, the psychiatrist who administered the treatment at Creedmoor, Dr. Ella Brodsky, testified.[15] Dr. Brodsky explained the physical and emotional ramifications of the patient's disease, such as her refusal to communicate or interact, and stated that ECT had previously worked to cure such problems.[16] Dr. Brodsky further opined that there were no other alternatives available to Simone D. because previous options, such as medication, had failed.[17]

During the cross-examination of Dr. Brodsky, Simone D.'s attorney attempted to elicit information regarding the possible painful side effects that ECT

TYE, *supra* note 1, at 9. Furthermore, "more than two out of three ECT patients are women, a trend that holds whether the treatment is given in Finland or England, New Zealand or . . . Neenah, Wisconsin." *Id.* at 14.

8. *In re* Simone D., 9 N.Y.3d 828, 829 (2007).

9. *Id*.

10. "A judge who has personal knowledge of some fact bearing on the case should promptly advise counsel of this knowledge, and afford the parties the opportunity to clarify any factual inconsistencies or to move for recusal." PRINCE, RICHARDSON ON EVIDENCE § 2-205 (Richard T. Farrell ed., 2002) (1998) (citing Sam & Mary Hous. Corp. v. Jo/Sal Mkt. Corp., 474 N.Y.S.2d 786, 788 (2d Dep't 1984), *aff'd*, 64 N.Y.2d 1107 (1985); *In re* Justin EE, 544 N.Y.S.2d 892 (3d Dep't 1989)).

11. *See infra* pp. 315–17.

12. *In re* Simone D., 821 N.Y.S.2d 248, 251 (2d Dep't 2006) (Crane, J., dissenting), *aff'd*, 9 N.Y.3d 828 (2007).

13. *Id.*

14. *See id.* at 250 (majority opinion).

15. *Id.* at 249.

16. *See id.* at 250.

17. *Id.*

may have previously had on the patient.[18] Rather than allowing this line of questioning to continue so that Simone D.'s attorney could establish the potential harm caused to the patient through the use of ECT, the court intervened, claiming that "it was familiar with the workings of ECT."[19] The court also sustained Creedmoor's objections to questions regarding the possible negative neurological and biological effects that ECT could cause, such as seizures and hemorrhages, as well as the "dosage and duration of ECT."[20]

At the conclusion of the hearing, the trial court issued an order allowing Creedmoor to administer ECT without Simone D.'s consent.[21] Simone D. appealed. Upon review of the record below, a majority of the appellate court affirmed that Creedmoor "established by clear and convincing evidence that the appellant [Simone D.] lacked the capacity to make a reasoned decision with respect to the proposed treatment and that the proposed treatment was narrowly tailored to give substantive effect to her liberty interest."[22] Although the dissent argued that the lower court had unfairly truncated the cross-examination of Dr. Brodsky to the detriment of Simone D., the majority found that the lower court acted well within its discretion.[23] The majority also rejected the dissent's argument that the lower court improperly relied on its own knowledge when it interrupted the cross-examination and claimed to know about the potential painful side effects of ECT.[24]

---

18. *See id.* at 252 (Crane, J., dissenting). Simone D. claimed that the ECT treatment caused her pain. *Id.* There was also evidence that "Simone D. had experienced cognitive impairment from ECT, resulting in its discontinuance in 1996." *Id.*

19. *See id.*

20. *Id.* Simone D.'s counsel also requested that the court appoint an independent psychiatric examiner, but the court refused, explaining that it was a matter of discretion. *Id*. at 251 (majority opinion).

21. *Id.* at 249.

22. *Id.* at 250.

23. *Id*. The majority also found that the length of the hearing transcript clearly showed that the cross-examination was not curtailed. *Id.* at 251 ("Indeed, while the direct examination of Dr. Brodsky encompassed only 13 pages of the hearing transcript, the cross-examination covered 44 pages."). However, courts have previously found that the length of a cross-examination does not determine its sufficiency. Selly v. Port of N.Y. Auth., 321 N.Y.S.2d 683, 685 (2d Dep't 1971) ("The court told the cross-examiner he had five minutes more, saying, 'You have had over an hour and a quarter. That is enough.' When the five minutes were up the court terminated the cross-examination . . . . [P]rematurely terminating cross-examination . . . [was a] reversible error.").

24. *Simone D.,* 821 N.Y.S.2d at 251 ("[T]here is no indication in the record that the court based its decision on its own knowledge."). The dissent argued that the lower court's reliance on its personal knowledge was an error because: (1) a judge must obtain the parties' consent to consider facts outside the record, (2) the court became an unsworn witness whose knowledge could not be questioned, and (3) the knowledge was not memorialized on the record. *Id.* at 252–53 (Crane, J., dissenting). The crux of the dissent's argument was that because the trial court relied on its own knowledge of ECT, without establishing such knowledge on the record, it cannot be determined if the necessary burden was met. *Id.* at 253 ("Put simply, there is no way to determine whether the petitioner met its burden because much of the evidence was contained only in the court's mind.").

Following the appellate court's decision, Simone D. appealed to the Court of Appeals. In a three-paragraph decision, the Court of Appeals found that "[w]hile specific evidentiary rulings can be debated, the patient's attorney was allowed to and did make clear to the court all the claimed weaknesses in the psychiatrist's testimony."[25] Rather than specifically addressing the issue of judicial notice, which was raised by the dissent, the Court of Appeals found that the trial court did not "exclud[e] any evidence material to the only disputed issue: whether the proposed treatment was narrowly tailored to give substantive effect to the patient's liberty interest, taking into consideration all relevant circumstances."[26] By accepting that the trial court's decision to look to its own knowledge of ECT was not an error, the Court of Appeals essentially held that New York State courts may now take judicial notice of matters within their own knowledge without establishing such knowledge on the record.

Judicial notice is a means by which a court may circumvent the process of establishing formal evidentiary proof.[27] When a court seeks to take judicial notice of an adjudicative fact, the fact in question must be one of either general knowledge or a fact "which can be ascertained by reference to readily available sources whose accuracy is not subject to reasonable dispute."[28] Personal knowledge alone

25. *Simone D.*, 9 N.Y.3d at 829.

26. *Id.* The law that controls matters dealing with the administration of treatment to a patient without his or her consent is found in the seminal New York Court of Appeals case *Rivers v. Katz*, 67 N.Y.2d 485 (1986). *Rivers* held that "[i]n our system of a free government, where notions of individual autonomy and free choice are cherished, it is the individual who must have the final say in respect to decisions regarding his medical treatment . . . to insure that the greatest possible protection is accorded his autonomy and freedom." 67 N.Y.2d at 493. The petitioner for the administration of treatment without a patient's consent must show by clear and convincing evidence that the patient is incapable of making a decision regarding her treatment. *Id.* at 497; *see also In re* Michael L., 809 N.Y.S.2d 194, 195 (2d Dep't 2006) (discussing the higher standard of proof). Furthermore, the treatment sought must be "narrowly tailored to give substantive effect to the patient's liberty interest." *Rivers*, 67 N.Y.2d at 497. In order to determine whether the treatment is appropriate, the court must take "into consideration all relevant circumstances, including the patient's best interests, the benefits to be gained from the treatment, the adverse side effects associated with the treatment and any less intrusive alternative treatments." *Id.* at 497–98; *see also* Steven Mintz, Note, *The Nightmare of Forcible Medication: The New York Court of Appeals Protects the Rights of the Mentally Ill Under the State Constitution*, 53 BROOK. L. REV. 885, 909–11 (discussing the balancing of factors that a court must perform under *Rivers*). Although *Rivers* dealt with the administration of antipsychotic drugs, it has also been determined that ECT is an intrusive procedure; thus, *Rivers* applies. *See, e.g., In re* Adam S., 729 N.Y.S.2d 734 (2d Dep't 2001); *In re* Rosa M., 597 N.Y.S.2d 544 (Sup. Ct. N.Y. County 1991). *Rivers* has also been found to apply to cases where a child services agency seeks to administer psychiatric medicine to a foster child without the parent's consent. *See, e.g., In re* Martin F., 820 N.Y.S.2d 759 (Fam. Ct. Monroe County 2006).

27. 29 AM. JUR. 2D *Evidence* § 24 (2006).

28. 5 BARKER & ALEXANDER, *supra* note 5, § 2:3; *see also* People v. Jones, 73 N.Y.2d 427, 431 (1989); Carter v. Metro North Assocs., 680 N.Y.S.2d 239, 240 (1st Dep't 1998) ("[A] court may only apply judicial notice to matters of common and general knowledge, well established and authoritatively settled, not doubtful or uncertain. The test is whether sufficient notoriety attaches to the fact to make it proper to assume its existence without proof.") (quoting Dollas v. W.R. Grace & Co., 639 N.Y.S.2d 323, 323 (1st Dep't 1996)). Procedurally, judicial notice may be taken upon the urging of one of the parties or may be taken *sua sponte*. PRINCE, RICHARDSON ON EVIDENCE, *supra* note 10, § 2-202 ("[F]airness should

will rarely fall into either one of these two categories because the required standard is objective, not subjective.[29] Furthermore, judicial notice of adjudicative facts based on a court's own knowledge is often found to be improper.[30]

Prior to the decision of the Court of Appeals in *In re Simone D.*, New York appellate courts consistently found that if a court erroneously takes judicial notice it is grounds for reversal.[31] For example, the First Department found that a court may not restrict cross-examination by taking judicial notice if doing so would deny the objecting party an opportunity to fully litigate the issues.[32] In *People v. King*, the prosecution failed to notify the defense that the alleged rape victim had filed an application to receive financial assistance from the Crime Victims Compensation Board.[33] After this fact came to light, the trial judge refused to allow the defendant's attorney the opportunity to re-call the victim for further cross-examination about whether she had filed the application for remuneration. Instead, the trial judge took "judicial notice" of this fact, even though the victim's credibility was at issue.[34] Upon review, the First Department rea-

require, however, that in either event, the Judge afford the parties the opportunity to be heard as to the propriety of taking judicial notice in the particular instance."). While judicial notice of the law is governed by New York statutory law, judicial notice of facts has expanded through the common law system, which could account for some of the inconsistencies. *Id.* § 2-101.

29. 5 BARKER & ALEXANDER, *supra* note 5, § 2:3. Examples of the types of adjudicative facts of which the courts have taken judicial notice include: "public records, the court's own records, public officials, census data, geographical facts, historical facts, current events, days and dates, human characteristics, animal characteristics, matters of commerce and trade, scientific and mechanical facts." *Id.* § 2:4; *see, e.g.*, Khatibi v. Weill, 778 N.Y.S.2d 511 (2d Dep't 2004) (holding it proper to take judicial notice of undisputed court records); *see also* Grant v. Zachman, 825 N.Y.S.2d 621 (4th Dep't 2006) (holding it proper to refuse to take judicial notice of the nonparty status of a person in a lawsuit because it was not common knowledge). Recently, a New York court took judicial notice of the effects of the September 11, 2001, terrorist attacks on certain New York City communities. Fabcon East, L.L.C. v. Steiner Bldg. Co. NYC, No. 24639/02, slip op. at 13–14 (Sup. Ct. Kings County Dec. 12, 2005).

30. *See, e.g.*, Cent. Hanover Bank & Trust Co. v. Eisner, 276 N.Y. 121 (1937) (holding that it was improper for the court to rely on its personal knowledge arising from an independent investigation of the property in question); Blonder & Co. v. Citibank, N.A., 808 N.Y.S.2d 214 (1st Dep't 2006) (holding that it was an improper exercise to take judicial notice of the court's own beliefs of international banking practices); *Dollas*, 639 N.Y.S.2d 323 (1st Dep't 1996) (holding that it was an error to take judicial notice of personal knowledge that asbestos products were never used at the area in question in light of contradictory evidence); People v. Dow, 162 N.Y.S.2d 960 (4th Dep't 1957) (holding it improper for the judge to take judicial notice that he knew how the arraignment system functioned during a certain period of time when adjudicating a *coram nobis* proceeding); Gibson v. Von Glahn Hotel Co., 185 N.Y.S. 154 (1st Dep't 1920) (holding that it was improper to take judicial notice of the court's personal knowledge that the defendant's establishment was a hotel).

31. *See supra* note 30 and accompanying text; *see also* Chicago Title Ins. Co. v. Mazula, 832 N.Y.S.2d 685 (3d Dep't 2007); NYC Medical & Neurodiagnostic, P.C. v. Republic Western Ins. Co., 798 N.Y.S.2d 309 (2d Dep't 2004).

32. People v. King, 659 N.Y.S.2d 469, 470 (1st Dep't 1997) ("The court in taking 'judicial notice' and foreclosing cross-examination . . . deprived defense counsel of an opportunity to challenge that [victim's] credibility.").

33. *Id*. at 469–70.

34. *Id.* at 470.

soned that by foreclosing cross-examination and taking judicial notice, the trial court had deprived the defense of an opportunity to challenge the victim's credibility with regard to whether she had filed the application.[35] Therefore, it was improper for the trial judge to prohibit the defendant from cross-examining the victim.[36]

Erroneously curtailing cross-examination is only one example of improper judicial notice.[37] The Court of Appeals has held that "[i]t is elementary that a judge should not decide an issue upon personal knowledge of facts outside the record."[38] In *Central Hanover Bank & Trust Co. v. Eisner*, an action to foreclose a mortgage, the trial judge was dissatisfied with the referee's proposed value of the property in question, and embarked upon his own personal investigation of the property to determine its value.[39] In effect, when establishing the value of the property during the adjudication of the case, the trial judge took judicial notice of his own knowledge.[40] The Court of Appeals found the judge's decision improper because it denied the parties the opportunity to challenge the evidence through cross-examination or to introduce evidence to the contrary.[41]

For seventy years, the principle established in *Central Hanover*—that a court should not take judicial notice of facts outside of the record, such as its own knowledge—was good law. For example, in *NYC Medical & Neurodiagnostic, P.C. v. Republic Western Insurance Co.*, the defendant filed a motion to dismiss for lack of personal jurisdiction.[42] In denying the defendant's motion, the trial court conducted its own Internet investigation into the plaintiff company's background and business in order to establish the necessary jurisdictional contacts with New York.[43] The appellate court reversed and held that by relying on its own investigation, the trial court improperly took judicial notice because it "went outside the record in order to arrive at its conclusions, and deprived the parties an opportunity to respond to its factual findings."[44]

While the case law prior to *In re Simone D.* clearly established that a court should refrain from taking judicial notice of matters within its own knowledge,[45] there were still occasions when a court's decision to take such notice was upheld,

35. *Id.*

36. *Id.*

37. *See infra* pp. 316–17.

38. Cent. Hanover Bank & Trust Co. v. Eisner, 276 N.Y. 121, 125 (1937).

39. *See id.*

40. *See id*.

41. *Id*.

42. 798 N.Y.S.2d 309, 311 (2d Dep't 2004).

43. *Id.* at 313.

44. *Id.* ("[T]here was no showing that the Web sites consulted were of undisputed reliability, and the parties had no opportunity to be heard as to the propriety of taking judicial notice in the particular instance.").

45. *See supra* notes 28–31 and accompanying text.

but only if the appropriate steps were taken.[46] In *Sam & Mary Hous. Corp. v. Jo/Sal Mkt. Corp.*, the trial judge took judicial notice of her personal knowledge that could potentially harm the credibility of the plaintiff's witness.[47] According to the Second Department, it was not an error for the trial judge to take judicial notice of her personal knowledge, because she informed the parties of the knowledge and gave the plaintiff an opportunity to cure the potential discrepancies.[48] Furthermore, the Court of Appeals affirmed the Second Department's holding that it was not improper for the trial judge to take judicial notice of her own knowledge because such knowledge was confirmed on the record.[49]

In *In re Simone D.*, the Court of Appeals found that the trial court's decision to take improper judicial notice of its own knowledge of ECT was a "debat[able]"[50] evidentiary ruling and that "when . . . viewed as a whole, the record show[ed] no abuse of discretion."[51] This decision significantly weakens the prior case law on judicial notice, which had established that a court should not take judicial notice of matters within its own knowledge. In the wake of this decision, courts will be able to circumvent the formalities of taking proper judicial notice of matters within their own knowledge. Rather than confirming their knowledge on the record, judges can instead simply rely on their wide latitude of

46. *Compare* Sam & Mary Hous. Corp. v. Jo/Sal Mkt. Corp., 474 N.Y.S.2d 786 (2d Dep't 1984), *aff'd*, 64 N.Y.2d 1107 (1985) (holding that it was appropriate for the trial judge to take judicial notice of personal knowledge because she informed the attorneys and gave the potentially harmed party an opportunity to address any inconsistencies of the judicially noticed fact), *with* Delorenzo v. Tyrell Paving Co., No. 2005-1108 (2d Dep't 2006) (holding that it was an error by the court to rely on outside facts without the parties' consent), Hillside Place, LLC v. Pervin, No. 2002-851 (Sup. Ct. App. Term 2003) (holding that it was improper to take judicial notice of knowledge of other cases without the parties' consent), *and* Silberman v. Antar, 654 N.Y.S.2d 319 (2d Dep't 1997) (holding that it was an error by the court to rely on personal knowledge without the parties' consent). *See* Sangirardi v. State, 613 N.Y.S.2d 224 (2d Dep't 1994) (holding that it was proper for the judge to take judicial notice of his own personal knowledge regarding fiscal crises that were part of an earlier case cited by the claimants in their brief); *In re* Justin EE, 544 N.Y.S.2d 892 (3d Dep't 1989) (holding that while it was inappropriate to take judicial notice of the respondents' previous criminal histories without providing them an opportunity to dispute the veracity, it was a harmless error); *see also* 1 CHRISTOPHER B. MUELLER & LAIRD C. KIRKPATRICK, FEDERAL EVIDENCE § 50 (2d ed. 2006) ("The personal experience or private knowledge of the judge is not a proper foundation for judicial notice, although trial judges occasionally overlook this well-established rule."); 2 MCCORMICK ON EVIDENCE § 329 (6th ed. 2006) ("It is not a distinction easy for a judge to follow in application, but the doctrine is accepted that actual private knowledge by the judge is no sufficient ground for taking judicial notice of a fact as a basis for a finding or a final judgment, though it may still be a ground, it is believed, for exercising certain discretionary powers, such as granting a motion for new trial to avoid an injustice, or in sentencing.").

47. 474 N.Y.S.2d at 788.

48. *Id.*

49. *Sam & Mary Hous. Corp.*, 64 N.Y.2d at 1108 ("Order affirmed . . . for the reasons stated in the memorandum of the Appellate Division.").

50. 9 N.Y.3d at 829.

51. *Id.*

discretion.[52] In effect, the Court of Appeals has abolished the requirements that a court confirm its knowledge on the record and allow the litigants the opportunity to challenge that knowledge when the court takes judicial notice of matters within its own knowledge.

The potential consequences of this decision are pervasive. Cases may be decided on incomplete records, and parties may be deprived of the opportunity to fully litigate their cases.[53] The issue of judicial notice arises in countless cases, on matters as diverse as child custody, personal injury, sex offender registration, and property valuation.[54] Since the issue of judicial notice is not confined to a single litigant or case, the negative effects of this decision will be widespread.

52. *See id.*

53. *See* N.Y. C.P.L.R. 2002 (McKinney 2007); *see, e.g.*, People v. Dennis, 697 N.Y.S.2d 599 (1st Dep't 1999) (holding that the court's failure to record voir dire proceedings and, therefore, maintain a complete record was reversible error); People v. Smith, 670 N.Y.S.2d 46 (2d Dep't 1998) (holding that a missing record and insufficient reconstruction hearing mandated a reversal); People v. Fleming, 634 N.Y.S.2d 115 (1st Dep't 1995) (holding that the absence of a stenographic record coupled with the inability of a reconstruction hearing to cure the incomplete record was reversible error).

54. *See generally* Chicago Title Ins. Co. v. Mazula, 832 N.Y.S.2d 685 (3d Dep't 2007) (title insurance case); People v. Woods, 815 N.Y.S.2d 843 (4th Dep't 2006) (appeal from a determination that the defendant was a certain risk level according to the Sex Offender Registration Act); Malpezzi v. Ryan, 815 N.Y.S.2d 295 (3d Dep't 2006) (personal injury case arising from a pit bull attack); *In re* Anjoulic J., 794 N.Y.S.2d 709 (3d Dep't 2005) (custody dispute involving a child's grandmother).