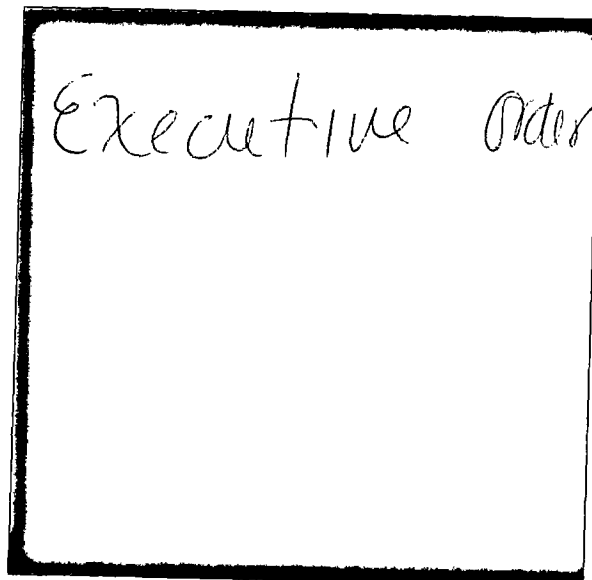




Judiciary Assistance Team to help firms recover lost documents related to their cases in New Jersey.

Regardless of any stopgap measures available, however, Tuesday's attack has created a climate of uncertainty for firms that have not been able to reach their offices because of the city's closure of Manhattan below 14th street.

For residents of 140 Broadway, one block east of the former World Trade Center and home to several firms, little is known about the condition of documents and equipment inside.

"The windows have been blown out on the first two levels of the building," said Robert S. Kelner, whose medical malpractice and personal injury firm, Kelner & Kelner, resides

Firms locate more missing, find new space. Page 2

standing outside Chase Plaza after calling her husband. "I don't think anyone had any concept that they were going to collapse."

Ms. Kelner said she was enveloped by a cloud of smoke and trampled as she tried to retreat to the Chase building.

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■ **Criminal Practice Hurst, Bronx (p.**

■ **Election Law: M. v. Molinaro, Richmo**

■ **Government: F. New York (p. 18, co**

■ **Torts: Morales v. Hospitals Corp., Bro**

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■ **Criminal Practice Angel Quiles, Sulliv**

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■ **Alternative Dispute Sphere Drake Ins. National Ins. Co. 2d**

U.S. DISTRICT

■ **Business Law: SDNY (p. 21, col. 4.**

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■ **Criminal Practice, C. Schwarz, T. V col. 6).**

■ **Intellectual Property Cinema Corp. v. Ru SDNY (p. 22, col. 3**

Pataki Uses Emergency Power

BY JOHN CAHER

ALBANY — Governor Pataki yesterday invoked his emergency powers to suspend various statutory time limitations. The Governor suspended the limitations in an executive order which he has the authority to issue in times of disaster.

In a statement released last night, the Governor said the order will suspend all statutes of limitations on civil and criminal judicial proceedings as well as deadlines for filing appeals. He said the suspension "will provide some comfort to individuals and businesses whose work has been disrupted by the cowardly and despicable attack on the World Trade Center. Our judicial system operates with strict deadlines. By temporarily suspending these, we will allow New Yorkers to cope with the tragedy without the added worry that valuable legal rights will be compromised or lost."

Under §29-a of Article 2-B of the Executive Law, the Governor issued Executive

Order No. 113.7 to temporarily suspend:

- §201 of the Civil Practice Law and Rules (CPLR) to the extent that it would bar actions whose time would expire between Sept. 11 and a future date to be determined.

- §5513 of the CPLR as it relates to a limitation period that concludes during the period beginning Sept. 11.

- §§30.10 and 30.30 of the Criminal Procedure Law to the degree that it would serve to bar criminal prosecutions in the period between Sept. 11 and a future date.

- §§460.10, 460.30, 460.50 and Article 460 of the Criminal Procedure Law as it relates to a limitation on the time to appeal from Sept. 11 until further notice.

Additionally, the Governor temporarily suspended, from Sept. 11 until further notice is given, "any other statute, local law, ordinance, order, rule or regulation or part thereof, establish-

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Agencies Face Reconstruction Of Lost Records

BY TAMARA LOOMIS

AFTER weathering the worst disaster in New York's history with no apparent loss of life, two federal agencies whose regional offices were located in the World Trade Center are now facing a different kind of loss.

Both the Securities and Exchange Commission and the Equal Employment Opportunity Commission housed their regional operations in 7 World Trade Center.

The building is now gone, along with all of the offices' records.

"Clearly what happened was a severe blow," Wayne Carlin, the SEC's Northeast

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are raised as to where the drugs ended up or who used them. The prosecutor argues that the testimony is relevant because it tends to show that a guilty verdict would be morally reasonable. The defendant objects under Rule 403, arguing that he had nothing to do with the giving of the drugs to schoolchildren and that he is not charged with that act in this case — therefore the evidence of use by schoolchildren is not probative and unduly prejudicial.

If the prosecution is allowed to prove not only that the defendant is guilty but also that a guilty verdict is morally reasonable, is not the evidence of use by schoolchildren admissible?

The answer, according to Professor Pettys, really depends on the subjective views of the jurors. To our first juror, the testimony might carry little moral weight because his focus is more on racism and selective prosecution, while Juror Two might regard the testimony as morally significant because it feeds into his views on the harmful effect of drugs. In the language of *Old Chief*, the evidence might provide Juror Two with "concrete and particular" details that "give life to the moral underpinnings of the law's claims." Thus, the problem with holding that evidence is relevant when offered to prove that a guilty verdict would be "morally reasonable" is that it results in an inherently subjective enquiry that varies with every juror.

Professor Pettys rightly concludes: "If the Enhanced Relevance Model requires agreement upon a general

tage of that principle by introducing evidence to show that a guilty verdict would be morally unreasonable. That is, if *Old Chief* means what it appears to say, the defendant should be able to bring in evidence that the jury can use to nullify the verdict. In our example, it would mean that the defendant could bring in evidence that drug laws are applied more harshly against African-Americans than against whites. It would also follow that the defendant would have a right to contend in his closing argument that the government's evidence fails to show that it would be morally reasonable to convict — in other words, to argue specifically that the jury should disregard the judge's instructions and nullify a guilty verdict.

Obviously, defining evidence as relevant when addressed to a juror's moral underpinnings, rather than the disputed facts in the case, is a recipe for disaster. One hopes that the Court will reject the implication in *Old Chief* and refuse to adopt an expansive, "moral reasonableness" view of relevance. The Enhanced Relevance model leads to an indeterminate system of evidence; and it will result in a less-accurate determination of the facts that are really in dispute between the parties.

.....
(1) See, e.g., *United States v. Hall*, 152 F.3d 381 (5th Cir. 1998) (gory victim photos were admissible to prove the victim's identity and the cause of her death; defendant's offer to stipulate was properly rejected because "the government must be given the opportunity to present to the jury a picture of the events relied upon. To substitute for

noting that *Old Chief* distinguished between stipulations to the status elements of a crime, which can be forced upon the prosecution, and stipulations to other elements of the crime, which the prosecution should remain free to reject."); *United States v. Campos*, 221 F.3d 1143 (10th Cir. 2000) (in a child pornography case, jury was properly permitted to view two pictures that the defendant allegedly transported, even though he offered to stipulate that they were pornographic: "*Old Chief*'s holding is thus based on peculiarities of the element of felony-convict status and/or admissions and the like when used to prove it. * * * In contrast to the defendant in *Old Chief*, Mr. Campos's offer to stipulate did not involve his legal status but rather the gist of the government's current case against him—the two pornographic images that he allegedly transported via computer. Mr. Campos's offer thus sought to deprive the prosecution of the very opportunity that should be protected: the opportunity to present the concrete events of later criminal behavior charged against a defendant.").

(2) Todd Pettys, "Evidentiary Relevance, Morally Reasonable Verdicts, and Jury Nullification," 86 Iowa L.Rev. 467 (2001).

Emergency Law

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ing limitations or time for the filing or service of any legal action, notice or other process or proceeding that the courts lack authority to extend through the exercise of discretion, where any limitation of time concludes during the period commencing from the date that the disaster emergency was declared [Sept. 11] ... until further notice."

The Governor's counsel, James M. McGuire, and Mr. McGuire's assistant, Richard Rifkin, worked with the Department of Law over the last three days to formulate the executive order. Section §29-a allows the Governor to "temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster."

Additionally, Attorney General Elliot Spitzer was planning to make a formal request to the courts to extend deadlines in cases where the judiciary has that authority. For matters where the judiciary lacks authority to extend a deadline, it is expected that the Governor's executive order will alleviate any difficulties.

A United Front

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attempt to destroy our most sacred ideals and threaten the peace of our State and Nation will be found and brought to justice," the resolution declared and was passed after brief but moving speeches were delivered by Governor Pataki and the leaders of the Legislature, Senate Majority Leader Kenneth L. Bruno, House Speaker

14,000 Lawyers Are Displaced

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headquarters at 25 Beaver St, near the southern tip of Manhattan. Judge Lippman said he has been operating out of his chambers in Westchester, and that other key administrative judges have been working out of locations in Brooklyn and White Plains.

Today, the courts will remain closed in Manhattan except for the handling of arraignments and the stationing of two judges at the Appellate Division, First Department, to handle applications for emergency relief. In addition, Family Court Administrative Judge Joseph M. Lauria will be available in Brooklyn to handle applications for protective orders and other emergency relief in domestic cases.

Courts in New York City, other than in Manhattan, will continue to handle all scheduled matters, except for jury trials, as they did yesterday.

Judge Lippman said that operations yesterday in the four boroughs where the courts were re-opened were "not fully normal, but coming back to full life."

Given the large number of lawyers excluded from their offices in lower Manhattan, he said, a surge in emergency relief cases is expected.

since the courts reopened Wednesday.

Initially, the delays in Manhattan were close to 40 hours, though that number is now closer to the 24-hour deadline set by court ruling, they reported.

The backlog occurred because no arraignments were conducted on Tuesday, but a day and night session have been conducted since then, said Acting Justice Judy Kluger, the court's administrative judge. Arraignments will also be conducted over the weekend, she added.

Over the last two days there have been problems in getting defendants' criminal histories, Judge Kluger said, because of the difficulties in transmitting data back and forth from Albany. By yesterday afternoon those problems had abated. However, she said problems in getting police officers to complete paper work in connection with arrests continue because of the extreme demands on the force.

Michele Maxian, the head of the Legal Aid Society's Criminal Defense Division, said that, despite being displaced from its main office on Duane Street, Legal Aid has remained in touch with its lawyers and lower state court judges.