

The Survey of New York Practice Table of Contents

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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION*

In this first issue of Volume 61, *The Survey* examines various

* The following abbreviations will be used uniformly through *The Survey*:

New York Civil Practice Law and Rules (McKinney)	CPLR
New York Civil Practice Act	CPA
New York Criminal Procedure Law (McKinney)	CPL
New York Code of Criminal Procedure	CCP
Real Property Actions and Proceedings Law (McKinney)	RPAPL
Domestic Relations Law (McKinney)	DRL
Estates, Powers and Trusts Law (McKinney)	EPTL
General Municipal Law (McKinney)	GML
General Obligations Law (McKinney)	GOL
D. Siegel, <i>New York Practice</i> (1978)	SEIGEL
Weinstein, Korn & Miller, <i>New York Civil Practice</i> (1982)	WK&M
<i>The Biannual Survey of New York Practice</i>	<i>The Biannual Survey</i>
<i>The Quarterly Survey of New York Practice</i>	<i>The Quarterly Survey</i>
<i>The Survey of New York Practice</i>	<i>The Survey</i>

Extremely valuable in understanding the CPLR are the five reports of the Advisory

developments in New York law, including two recent Court of Appeals decisions. In *People v. P.J. Video*, the court held that the seizure of purportedly obscene materials, authorized by search warrants that were issued solely on the basis of affidavits, lacked the requisite finding of probable cause under the New York Constitution. The court ruled that the state constitution exacted a higher standard of evaluation in warrant applications for obscene materials than that required by the federal Constitution.

In *Morgenthau v. Citisource, Inc.*, a unanimous Court of Appeals, construing article 13-A of the CPLR, held that upon commencement of a forfeiture action, a claiming authority may attach the personal assets of an indicted defendant pending resolution of the criminal charges. Moreover, the *Citisource* court stated that this furthered the legislative purpose of the statute yet did not facially violate the defendant's right to counsel nor procedural due process.

Finally, in *CPC International, Inc. v. McKesson Corp.*, the Appellate Division, First Department, held that section 352-c of the GBL, which provides for criminal sanctions in fraudulent securities sales, does not create an implied private cause of action. Notwithstanding prior decisions, the *CPC International* court reasoned that the clear intent of the legislature was to enlarge the attorney general's enforcement powers and that a private right of action was not contemplated.

The members of Volume 61 hope that the analysis of the topics contained in *The Survey* will be of value to the New York bench and bar.

Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows:

1957 N.Y. Leg. Doc. No. 6(b)	FIRST REP.
1958 N.Y. Leg. Doc. No. 13	SECOND REP.
1959 N.Y. Leg. Doc. No. 17	THIRD REP.
1960 N.Y. Leg. Doc. No. 120	FOURTH REP.
1961 Final Report of the Advisory Committee on Practice and Procedure	FINAL REP.

Also valuable are the two joint reports of the Senate Finance Assembly Ways and Means Committee:

1961 N.Y. Leg. Doc. No. 15	FIFTH REP.
1962 N.Y. Leg. Doc. No. 8	SIXTH REP.