

**2004**

**ANNUAL REPORT OF THE  
CLERK OF THE COURT  
TO THE  
JUDGES OF THE COURT OF APPEALS  
OF THE STATE OF NEW YORK**

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**Stuart M. Cohen  
Clerk of the Court  
Court of Appeals**



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*State of New York  
Court of Appeals*



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March 2005

After four years on the Court of Appeals, it is finally my turn to prepare the introduction to the Annual Report of the Clerk of the Court, which highlights the work and accomplishments of the Court in 2004. I welcome this opportunity to acknowledge the tireless commitment of our incomparable Chief Judge, the Hon. Judith S. Kaye, and my distinguished colleagues in striving to dispense justice in an efficient and compassionate manner. As an institution, the Court of Appeals maintains the "old" with an eye toward the future. We value highly the venerable traditions honed over decades that preserve respect for the fair and impartial resolution of cases. But at the same time, our Court recognizes the need to adapt to changing times by incorporating modern technologies and practices that enhance public access to and knowledge of the work of the Court. It is this blending of values that has kept the Court responsive to the needs of the people we serve.

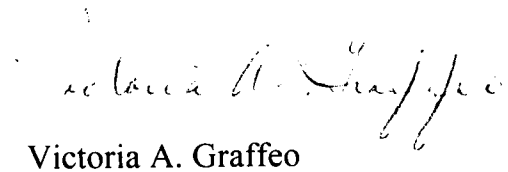
In May 2004, along with the rest of the nation, the Court celebrated the fiftieth anniversary of the U.S. Supreme Court's decision in *Brown v Board of Education*--the landmark school desegregation case that declared that the "separate but equal" doctrine violated the equal protection clause of the Fourteenth Amendment. Everyone associated with the justice system was reminded of the crucial responsibility of the courts in safeguarding the rights that are so fundamental to a vibrant and open democracy.

The year also marked the 200th anniversary of official law reporting in the State of New York. This milestone afforded the Court a wonderful opportunity to acknowledge the role of law reporting in the development and stability of the law. On April 7, 1804, the State Legislature adopted a statute designating an official reporter for the purpose of publishing court decisions. Over the course of two centuries, and due to the dedicated service of twenty-five State Reporters, the New York State Law Reporting Bureau has consistently fulfilled its mission by providing a timely and accurate record of judicial decisions. Under the innovative leadership of our current State Reporter, Gary D. Spivey, the Law Reporting Bureau has embraced 21st century technology--the internet-- to improve public access to the work product of the courts. Our Court is appreciative of the

efforts of the entire staff at the Law Reporting Bureau as it enters another century of its partnership with the Court.

With the State Senate's confirmation of Robert Sherlock Smith in January 2004, we welcomed our esteemed new colleague to the Court. He will undoubtedly make a valuable contribution to the jurisprudence of our State and I know that he will find the rewards of being part of the collaborative atmosphere of the Court beyond his expectations.

Despite the effort that has gone into the compilation of this Annual Report, the statistical analyses and case summaries simply cannot describe adequately the extraordinary dedication of the special people who work at Court of Appeals Hall --each contributes to the important role of our State's highest court and many have devoted their work lives to this institution. I know my colleagues join me in expressing our sincere gratitude for their outstanding commitment to the pursuit of justice.



Victoria A. Graffeo

2004

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\*\*\*

**Introduction**

The Court of Appeals is back home. Renovation of Court of Appeals Hall is complete. Our November 2003 return to the Courthouse reinvigorated the commitment of Judges and staff to provide all citizens the equal access to justice that is the foundation of our society. Returning to 20 Eagle Street facilitated the fulfillment, during 2004, of the Court's central role of hearing and deciding cases. I thank all members of the Court's staff for their resiliency and dedicated service as we continued to settle into our refurbished Courthouse.

The year also presented many opportunities for celebration. A new Judge, Robert S. Smith, joined the Court. The Law Day ceremony on the steps of Court of Appeals Hall commemorated the 50<sup>th</sup> Anniversary of the Supreme Court of the United States' decision in *Brown v Board of Education* and, later that day, the Court welcomed home over 150 former Judges and employees who toured the Courthouse and renewed old friendships. The New York Official Reports, Third Series, was introduced in the January 7, 2004 advance sheets. Later, in July, the Court assisted its auxiliary agency, the New York State Law Reporting Bureau, in marking the 200<sup>th</sup> anniversary of official law reporting in the State. In December, the Chief Judge joined the State and local bar associations in welcoming American Bar Association President Robert J. Grey, Jr. to their program "Celebrating Diversity in the Legal Profession," held at Court of Appeals Hall.

This Annual Report is divided into four parts. The first part -- presented in a restructured format -- offers a narrative, statistical and graphic overview of matters filed with and decided by the Court in 2004. The second part describes various functions of the Clerk's Office and summarizes the administrative accomplishments of the year. The third highlights selected decisions of 2004. The fourth part consists of appendices with detailed statistics and other information.

## I. The Work of the Court

The Court of Appeals -- New York's highest court -- is composed of its Chief Judge and six Associate Judges, each appointed by the Governor to a fourteen-year term.

Similar to the Supreme Court of the United States and other state courts of last resort, the primary role of the New York Court of Appeals is to unify, clarify and pronounce the law of its jurisdiction for the benefit of the community at large. Reflecting the Court's historical purpose, the State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right. Thus, the Court hears most appeals by its own permission, or *certiorari*, granted upon civil motion or criminal leave application. Appeals by permission typically present novel and difficult questions of law having statewide importance. Often these appeals involve issues in which the holdings of the lower courts of the State conflict. The correction of error by courts below remains a legitimate, if less frequent, basis for this Court's decision to grant review. By State Constitution and statute, the Appellate Division also can grant leave to appeal to the Court of Appeals in civil cases, and individual Justices of that court can grant leave to appeal to the Court of Appeals in most criminal cases.

In addition to appellate jurisdiction, the State Constitution vests the Court of Appeals with power to answer questions of New York law certified to it by a federal appellate court or another state's court of last resort. Also, the Court of Appeals is the exclusive forum for review of determinations by the State Commission on Judicial Conduct.

The Judges of the Court collectively decide all appeals, certified questions and motions. Individually, the Judges decide applications for leave to appeal in criminal cases and emergency show cause orders. For most appeals, the Judges receive written and oral argument, and set forth the reasons for their decisions in written opinions and memoranda.

The Court sits in Albany throughout the year, usually for two-week sessions. During these Albany sessions, the Court meets each morning in conference to discuss the appeals argued the afternoon before, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters. Afternoons are devoted to oral argument, and evenings to preparing for the following day.

Between Albany sessions, the Judges return to their home chambers throughout the State, where they continue their work of studying briefs, writing opinions and preparing for the next Albany session. During these home chambers sessions, the Judges also decide the hundreds of requests for permission to appeal in criminal cases assigned annually to each Judge, prepare reports on motions for the full Court's consideration and determination and fulfill many other judicial and professional responsibilities.



Each year, with the Appellate Division Departments, the Court of Appeals publishes a timetable for appellate review of primary election-related matters. In August of each year, the Court holds a session to consider expedited appeals and motions for leave to appeal in cases concerning the September primaries. The Court reviews primary election motions and appeals on the Appellate Division record and briefs, and hears oral argument of motions for leave to appeal. When the Court determines an appeal lies as of right or grants a motion for leave to appeal, oral argument of the appeal is usually scheduled for the same day. Primary election appeals are decided expeditiously, often the day after oral argument is heard.

In 2004, the Court and its Judges disposed of more than 4,000 matters, including 185 appeals, 1,222 motions and 2,644 criminal leave applications. A detailed analysis of the Court's work follows.

## **A. Appeals Management**

### **1. Screening Procedures**

The jurisdiction of the Court is narrowly defined by the State Constitution and applicable statutes. After the filing of a notice of appeal or receipt of an order granting leave to appeal to this Court, an appellant must file two copies of a jurisdictional statement in accordance with Rule 500.2. Pursuant to Rule 500.3, the Clerk examines all jurisdictional statements filed for issues related to subject matter jurisdiction. This review usually occurs the day a jurisdictional statement is filed. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issue identified. After the parties respond to the Clerk's inquiry, the matter is referred to the Central Legal Research Staff to prepare a preliminary report for review and disposition by the full Court.

Of the 125 notices of appeal filed in 2004, 72 were subject to Rule 500.3 inquiries. One case in which leave to appeal was granted also was the subject of a Rule 500.3 inquiry. All but nine were withdrawn, dismissed sua sponte or on motion, or transferred to the Appellate Division. Eight inquiries were pending at year's end. The Rule 500.3 sua sponte dismissal (SSD) screening process is valuable to the Court, the Bar and the parties because it identifies at the earliest possible stage of the appeal process appeals that are jurisdictionally defective and, hence, destined for dismissal or transfer by the Court.

### **2. Normal Course Appeals**

The Court determines most appeals "in the normal course," meaning after full briefing and oral argument by the parties. In these cases, copies of the briefs and record are circulated to each member of the Court well in advance of the argument date. Each Judge becomes conversant with the issues in the cases, using oral argument to address any questions or concerns prompted by the briefs. At the end of each afternoon of argument, the appeals are assigned by

random draw to one member of the Court for reporting at the next morning's conference to the full Court. When, at conference, a majority of the Court agrees with the reporting Judge's proposed disposition, the reporting Judge becomes responsible for preparing the Court's writing in the case. If the majority of the Court disagrees with the recommended disposition of the appeal, the first Judge taking the majority position who is seated to the right of the reporting Judge assumes responsibility for the proposed writing, thus maintaining randomness in the distribution of all writings for the Court. Draft writings are circulated to all Judges during the Court's subsequent home chambers session and, after further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next Albany session of the Court.

### **3. Alternative Track Appeals**

The Court also employs the alternative track of sua sponte merits (SSM) review of submissions pursuant to Rule 500.4. Through this SSM procedure, the Court decides a small number of appeals on letter submissions without oral argument, saving the litigants and the Court the time and expense of full briefing and oral argument. A case may be placed on SSM track, for example, if it involves issues decided in a recent appeal. As with normal-coursed appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes, and are conferenced and determined by the entire Court. Of the 296 appeals filed in 2004, 33 (11.1%) were initially selected to receive SSM consideration, a slight decrease from the percentage initially so selected in 2003 (12.6%). Of the 185 appeals decided in 2004, 18 (9.7%) were decided upon SSM review (14.2% were so decided in 2003).

### **4. Promptness in Deciding Appeals**

In 2004, litigants and the public continued to benefit from the prompt calendaring, hearing and disposition of appeals. The average time from argument or submission to disposition of an appeal decided in the normal course was 46 days; for all appeals, the average time from argument or submission to disposition was 39 days. The average period from filing of a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately 6.2 months, roughly the same as in previous years. The average period from readiness (all papers served and filed) to calendaring for oral argument was approximately 1.5 months, again about the same as in previous years.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release to the public of a decision in a normal-coursed appeal decided in 2004 (including SSM appeals tracked to normal course) was 284 days. For all appeals, including those decided pursuant to the SSM procedure, those dismissed pursuant to Rule 500.3 SSD inquiries, and those dismissed pursuant to Rule 500.9 for failure to perfect, the average was 196 days. Thus, by every measure, in 2004 the Court maintained its long tradition of exceptional currency in calendaring and deciding appeals.

## **B. The Court's 2004 Docket**

### **1. Filings**

Two hundred ninety-six (296) notices of appeal and orders granting leave to appeal were filed in 2004 (285 were filed in 2003). Two hundred and thirty-five (235) filings were civil matters (230 were filed in 2003), and 61 were criminal matters (compared to 55 in 2003). The Appellate Division Departments issued 32 of the orders granting leave to appeal filed in 2004 (24 were civil, eight were criminal). Of these, the First Department issued 23 (17 civil and six criminal).

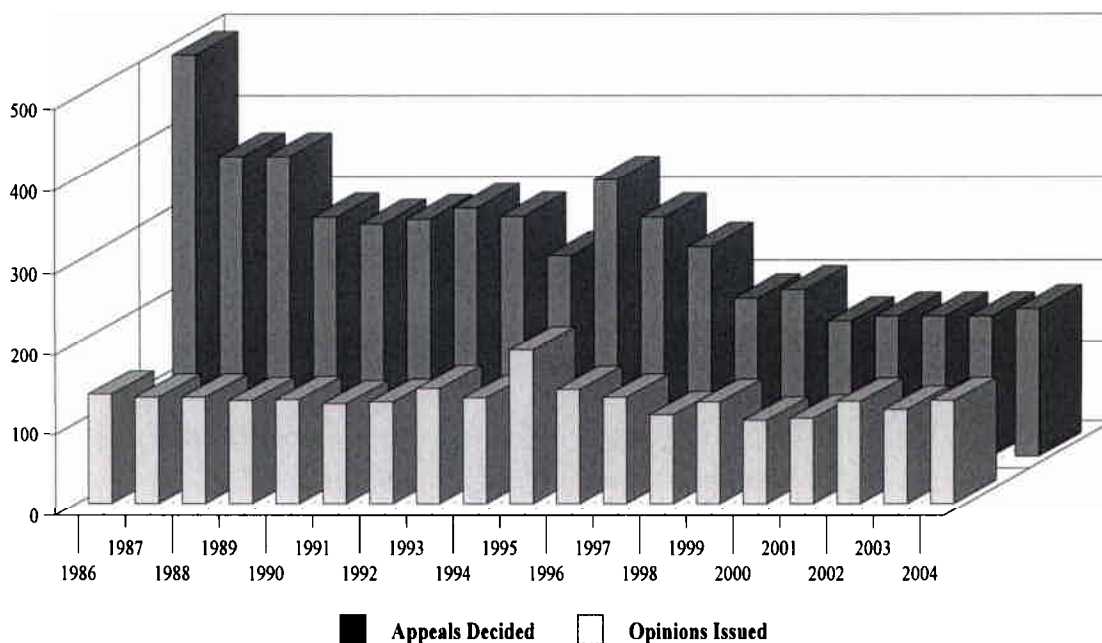
Motion filings decreased in 2004. During the year, 1,199 motions were filed, 12% fewer than the 1,363 filed in 2003. Motions for leave to appeal also decreased, by approximately 14%, from 1,053 in 2003 to 905 in 2004. Criminal leave applications were up slightly in 2004. Two thousand five hundred seventy (2,570) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 13 more than in 2003. On average, each Judge was assigned 367 such applications during the year.

### **2. Dispositions**

#### **(a) Appeals and Writings**

In 2004, the Court decided 185 appeals (136 civil and 49 criminal, compared to 130 civil and 46 criminal in 2003). Of these appeals, 141 were decided unanimously. The Court issued 125 signed opinions, three per curiam opinions, 48 memoranda and nine decision list entries. Forty-four dissenting opinions and nine concurring opinions were written. The chart on the next page tracks appeals decided and full opinions (signed and per curiam) issued since Laws of 1985, chapter 300 expanded the civil *certiorari* jurisdiction of the Court.

## Appeals Decided and Opinions Issued 1986-2004



### (b) Motions

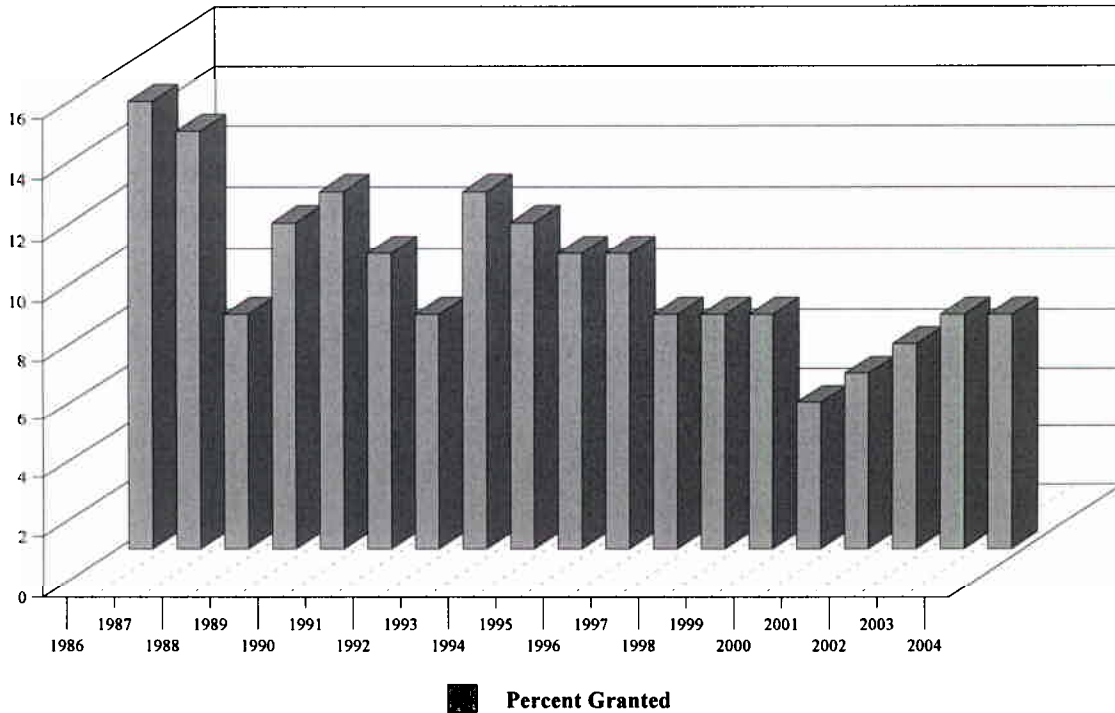
The Court decided 1,222 motions in 2004 -- 155 fewer than in 2003. Each motion was decided upon submitted papers and an individual Judge's written report, reviewed and voted upon by the full Court. The average period of time from return date to disposition for civil motions for leave to appeal was 56 days, while the average time from return date to disposition for all motions was 47 days, both figures reflecting modest improvement over the previous year.

The Court decided 901 motions for leave to appeal in civil cases during the year, 146 fewer than in 2003. Of these, the Court granted 8.3% (up from 8.2% in 2003), denied 71.5% (down from 73.9% in 2003), and dismissed for jurisdictional defects 20.2% (up from 17.3% in 2003). The chart on the following page reflects the percentage of civil motions for leave to appeal granted since the expansion of the Court's *certiorari* jurisdiction in 1985.

Seventy-five motions for leave to appeal in civil cases were granted in 2004. Once again, the Court's leave grants covered a wide range of subjects. Arbitration issues, such as determining the applicable statute of limitations and interpreting employment contract provisions concerning arbitration of grievances and disputes, generated much interest. The Court granted a number of motions involving municipalities; the issues included application of zoning law to telecommunications providers, tort liability, timely commencement of suit and employment

matters. Among other motions granted in 2004 were those concerning workers' compensation, taxation, labor law, insurance and access to public records.

**Motions for Leave to Appeal Granted by Year  
1986-2004**

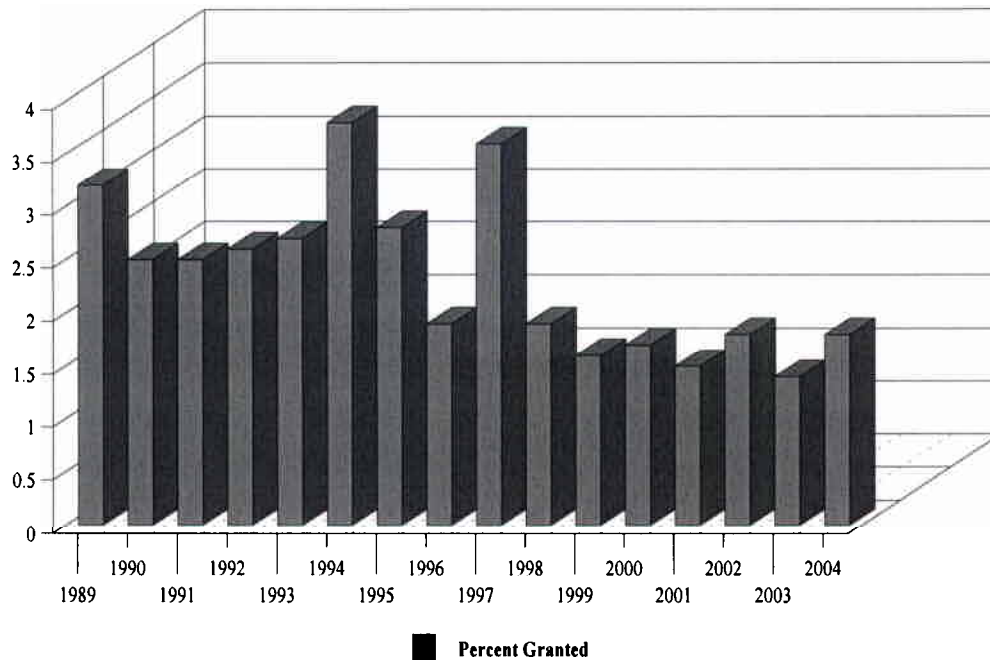


In 2004, 93 motions for amicus curiae relief were filed, 88 of which were granted. Given that this Court hears the majority of appeals by its own permission, and that the questions presented are usually novel and of statewide importance, the Court encourages appropriate requests for permission to file amicus curiae submissions.

**(c) CPL 460.20 Applications**

Individual Judges of the Court granted 46 of the 2,644 applications for leave to appeal in criminal cases decided in 2004 -- up from 37 in 2003. One hundred seventy-six applications were dismissed for lack of jurisdiction, and 15 were withdrawn. Nine of 48 applications filed by the People were granted. The chart on the next page reflects the percentage of applications for leave to appeal granted in criminal cases over the past sixteen years.

### Criminal Leave Applications Granted by Year 1989-2004



Laws of 2002, chapter 498 amended the criminal jurisdiction of the Court of Appeals to allow appeals by permission from intermediate appellate court orders granting or denying applications for writs of error coram nobis. In 2004, 201 applications for leave to appeal from such orders were assigned to Judges of the Court, down significantly from 296 in 2003. One such application was granted, as in the previous year.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court during home chambers sessions. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments. In 2004, on average, 53 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

#### (d) Review of Determinations of the State Commission on Judicial Conduct

By Constitution and statute, the Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct, and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this State with a crime punishable as a felony. In 2004, the Court reviewed two determinations of the State Commission on Judicial Conduct, accepting the

recommended sanction of removal in both cases. Pursuant to Judiciary Law § 44(8), the Court ordered the suspension of two judges, both with pay.

### **(e) Rule 500.17 Certifications**

In 1985, in the interest of promoting comity and judicial efficiency among court systems,\* New York voters passed an amendment to the State Constitution granting the New York Court of Appeals discretionary jurisdiction to review certified questions from certain federal courts and other courts of last resort (NY Const, art VI, § 3[b][9]). Thereafter, this Court promulgated 22 NYCRR 500.17, providing that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals or a court of last resort of any other state that determinative questions of New York law are involved in a cause pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court. The Annual Report for 1998 contains a detailed discussion of the history of Rule 500.17 certifications to this Court.

After a court certifies a question to this Court pursuant to Rule 500.17, the matter is referred to an individual Judge, who circulates a written report for the entire Court analyzing whether the certification should be accepted. When the Court of Appeals accepts a certified question, the matter is treated as an appeal. Although the certified question may be determined in the normal course, by full briefing and oral argument, or pursuant to the Court's alternative procedure (*see* Rule 500.4), the preferred method of handling is full briefing and oral argument on an expedited schedule. In 2004, the average period from receipt of initial certification papers to the Court's order accepting or declining review was 39 days. The average period from acceptance of a certification to disposition was eight months.

Five cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2003. In 2004, the Court answered the questions certified in all of those cases. Also in 2004, the Court accepted four cases involving questions certified by the United States Court of Appeals for the Second Circuit. Two cases were decided and two remained pending at the end of 2004.

### **(f) Capital Appeals**

The State Constitution and the death penalty statute (L 1995, ch 1) provide a direct appeal to the Court of Appeals from a judgment of conviction and capital sentence. No notices of capital appeal were filed in 2004.

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\* As an additional aid to comity and judicial economy, the Chief Judge of the New York Court of Appeals and the Chief Judge of the Court of Appeals for the Second Circuit reactivated the New York State-Federal Judicial Council to address issues of mutual concern and sponsor educational programs for the Bench and Bar. Associate Judge Albert M. Rosenblatt currently serves as the Court of Appeals representative to the Council.



In February 2004, the Court modified the judgment in *People v Angel L. Mateo*, vacated the death sentence and remitted for resentencing (*see* 2 NY3d 383; *see also* page 25 of this Report). In June 2004, the Court modified the judgment in *People v Stephen LaValle* by vacating the death sentence and remitting the matter for resentencing. The Court further declared that the death penalty could not be imposed in New York until the Legislature remedied a fatal defect in the “deadlock jury” instruction (3 NY3d 88; *see also* pages 24-25 of this Report). Thereafter, in light of the *LaValle* decision, the capital appeal in *People v Nicholson McCoy* was withdrawn in conjunction with defendant’s acceptance of a sentence of life without parole.

Two capital appeals remained pending at the close of 2004. In March 2004, the Legal Aid Society filed its 939-page opening brief in *People v Robert Shulman*. Respondent’s brief is due in March 2005 and the appeal is scheduled for argument in September 2005. Finally, record production in *People v John Taylor* continued throughout 2004. The record on appeal is due to be filed in March 2005, after which the Court will set a briefing schedule.

### **C. Court Rules**

In September 2004, the Court released for public comment a proposed revision of its Rules of Practice (22 NYCRR part 500), which govern all noncapital appeals, certified questions, motions and applications for leave to appeal in criminal cases. At year’s end, the comments received remained under consideration.



## **II. Administrative Functions and Accomplishments**

### **A. Court of Appeals Hall**

Judges and staff moved back to Court of Appeals Hall in November 2003, having taken temporary residence in a suburban office park during the renovation. Finalizing the Court's historic construction and restoration project continued to top the list of administrative matters in 2004. Under the vigilant supervision of the Court's Building Manager and Deputy Building Superintendent, construction concluded in 2004. The approximately 33,000 square feet of new space matches the building's exterior and interior design. The Courtroom, which remained open for oral argument throughout the project, is essentially unchanged. Work continues to calibrate the updated heating, ventilation and air treatment systems. In early 2005, the last of the draperies will be hung and, in 2006, several of the Court's large historic portraits will be rehung following restoration of canvases and frames. The Dormitory Authority served as Project Manager; DeWolff Partnership, of Rochester, as Project Architect; and BBL Construction Services, of Albany, as Construction Manager. The Building Manager and the Deputy Building Superintendent provided on-site supervision throughout the construction process, and they continue to oversee maintenance operations. They, along with the entire maintenance staff, are to be commended for their extraordinary efforts in connection with the renovation project.

I once again extend the thanks of the Court to our neighbors, particularly the Albany County Courthouse, Albany City Hall and St. Mary's Roman Catholic Church, for their cooperation and forbearance throughout the construction process. Finally, I express my appreciation to the members of the Bar and the public, who endured the chaos of Courthouse construction with grace and good humor.

### **B. Case Management**

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Prisoner Applications Clerk, several secretaries, court attendants and service aides perform the myriad tasks involved in appellate case management. Their responsibilities include receiving and reviewing all papers, filing and distributing to the proper recipients all materials received, scheduling and noticing oral arguments, compiling and reporting statistical information about the Court's work, assisting the Court during conference and preparing the Court's decisions for release to the public. In every case, multiple controls insure that the Court's actual determinations are accurately reported in the written decisions and orders released to the public. The Court's document reproduction unit prepares the Court's decisions for release to the public and handles most of the Court's internal document reproduction needs. Security attendants screen all mail. Court attendants deliver mail in-house and maintain the Court's records room, keeping track of and distributing all briefs, records, exhibits and original court files. During the Court's Albany sessions, the court attendants also assist the Judges in the Courtroom and in conference.

In 2004, members of the Clerk's Office staff finished a systematic review of the Court's Rules of Practice, which led to the proposed Rules discussed at page 10 of this Report. The Clerk's Office staff also continued to work with the Office of Court Administration to update the Court's case management system.

In addition, many members of the Clerk's Office staff respond -- in person, by telephone and in writing -- to inquiries and requests for information from attorneys, litigants, the public, academicians and other court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. In 2004, the Clerk's Office published a "Guide for Counsel in Cases to be Argued before the New York State Court of Appeals," available in hard copy and on the Court's web site. Members of the Clerk's Office staff also regularly participate in programs designed to educate the Bar about Court of Appeals practice.

### **C. Public Information**

The Public Information Office distributes the Court's decisions to the media upon release and answers inquiries from reporters about the work of the Court. For each session, the office prepares descriptive summaries of cases scheduled to be argued before the Court. The summaries are posted on the Court's web site and are available in print at Court of Appeals Hall. The office arranges for live television coverage of oral arguments at the Court.

The Public Information Office also provides information concerning the work and history of New York's highest court to all segments of the public -- from school children to members of the Bar. Throughout the year, the Public Information Officer and other members of the Clerk's Office staff conduct tours of the historic Courtroom for visitors. The Public Information Office maintains a list of subscribers to the Court's hard copy slip opinion service and handles requests from the public for individual slip opinions.

Under an agreement with Albany Law School's Government Law Center and Capital District public television station WMHT, the Public Information Office supervises the videotaping of all oral arguments before the Court and of special events conducted by the Chief Judge or the Court. The tapes are preserved for legal, educational and historical research in an archive at the Government Law Center and copies are available for purchase by the public. The videotapes may be ordered from the Government Law Center by telephoning (518) 445-2329.

The Court's Internet web site received nearly 400,000 hits during the year. The comprehensive web site posts information about the Court, its Judges and history, summaries of pending cases and other news, as well as more than a year's worth of Court of Appeals decisions. The latest decisions are posted within minutes after their official release. The web site provides helpful information about the Court's practice -- including its rules, civil and criminal jurisdictional outlines, session calendars, and a form for use by pro se litigants -- and provides links to other judiciary-related web sites. The text and web cast of Chief Judge Kaye's 2005 State of the Judiciary address is posted on the home page and the text of prior addresses

can be reached through the "Court News" link. Web casts of some oral arguments -- including those in all four capital appeals, the certified question from the Second Circuit Court of Appeals in *Nicholson v Scoppetta*, those involving the Executive and Legislative branches' disputes concerning the State budget in *Pataki v New York State Assembly* and *Silver v Pataki* in November 2004, and the public school financing litigation in *Campaign for Fiscal Equity v State* and *Paynter v State* -- are also available. The address of the Court of Appeals web site is: <http://www.nycourts.gov/courts/appeals>.

The Historical Society of the Courts of the State of New York was incorporated in 2002. Among its purposes are to foster scholarly understanding and public appreciation of the history of the New York State courts and to collect and preserve artifacts of the State's judicial history. The Society's web site address is <http://www.courts.state.ny.us/history/>.

#### **D. Office for Professional Matters**

The Court Attorney for Professional Matters manages the Office for Professional Matters, supported by a secretary. The office has access, via computer, to information on each attorney admitted to practice in the State. The Court's records complement the official registry of attorneys maintained by the Office of Court Administration, which answers public inquiries about the status of attorneys. The office prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship. Additionally, the Court Attorney drafts preliminary reports to the Court on matters relating to (1) attorney admission and disciplinary cases, (2) petitions for waiver of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law and the Rules for the Licensing of Legal Consultants, and (3) proposed rule changes ultimately decided by the Court. The Court did not amend any of these Rules in 2004.

The Court Attorney for Professional Matters continues to serve on the New York State Bar Association's Committee on Legal Education and Admission to the Bar.

I take special note of the retirement of Nancy Carpenter, Executive Director of the State Board of Law Examiners, after 35 years of service to this Court of Appeals auxiliary agency.

#### **E. Central Legal Research Staff**

Under the supervision of individual Judges and the Clerk of the Court, the Central Legal Research Staff prepares draft reports on motions (predominantly civil motions for leave to appeal), certified questions and selected appeals for the full Court's review and deliberation. During 2004, Central Staff completed 902 motion reports, 80 SSD reports, 30 SSM reports and four reports on certified questions. Throughout 2004, Central Staff maintained excellent currency in its work.

Staff attorneys also write and revise research materials for use by the Judges of the Court, Judges' staffs and the Clerk's staff, and perform other research tasks as requested. In 2004, under the direction of the Deputy Chief Court Attorney, Central Staff again revised and updated the civil jurisdictional outline for internal use. Also in 2004, the staff began a major project of updating all sections of the Court's substantive law research materials.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed in 2004 were graduates of Albany, Brooklyn, SUNY at Buffalo, Fordham University, St. John's University, Southern Illinois University, Syracuse University, Touro College, Western New England College, University of California at Davis and University of Miami law schools. Staff attorneys hired in 2005 will represent Albany, SUNY at Buffalo, St. John's University, Willamette University and University of California at Davis law schools.

## **F. Library**

The law library supports the legal information needs of the Court. The Chief Legal Reference Attorney provides extensive legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk's Office staff, using a full range of traditional and technologically-enhanced strategies that provide timely, accurate and efficient access to the sources of law. Crucial to this endeavor is the creation of in-house specialized full-text databases allowing desktop access to the vast collection of the Court's internal documents. The Chief Legal Reference Attorney also identifies emerging legal issues and, by anticipating the Court's future research needs, ensures that necessary resources are in place when such matters come before the Court.

Collection development in the Court of Appeals Hall library and in the home chambers libraries continued in 2004 -- newly-published works falling within the Court's collection development policy were acquired, and seldom-used and superseded materials were deaccessioned. Current Awareness Bulletins listing the contents of recent law reviews and newly-acquired titles were issued each session, and the Election Digest was updated and distributed prior to the 2004 Primary Election Session.

In 2004, the library staff continued to maintain and augment several in-house databases. In all, 21 databases are available, including a full-text reports (1996-2004) database now containing over 11,700 documents. When the Court releases a decision list, the library staff compiles the relevant reports by merging documents from several in-house databases, and the documents are then added to the reports database and transmitted electronically to the Law Reporting Bureau to facilitate the work of its legal editors. Work continued in 2004 on a project to scan the 1900-1995 reports and on the bill jacket database, which now contains 1,631 electronic images of bill jackets. The latter files are transmitted to the Law Reporting Bureau for its internal use, and transmitted to the Office of Court Administration for inclusion in its LION information system.

The Chief Legal Reference Attorney again revised and updated a three-hour program on *Constitutional, Statutory and Regulatory Intent, and Common Law Derivation*. This program and a one-hour interactive presentation on *ISYS:web Databases* have been certified under the Office of Court Administration's Continuing Legal Education (CLE) regulations, and both were offered to Judges' law clerks and staff attorneys in September 2004. The Chief Legal Reference Attorney also coordinated Lexis and Westlaw CLE training for the law clerks and staff attorneys during 2004, and remained a member of the Court's CLE Committee.

Due to renovations at the New York State Archives and at the request of its personnel, no Court materials were transferred to the Archives during 2004. At the request of the State Library, the Court continued to ship the depository copy of its records and briefs to West-CRS, which creates a digital microfiche copy of each document. This program facilitates widespread dissemination of the records and briefs and fulfills a disaster preparedness function for the Court, the State Library and the Archives. West-CRS now makes available, on Westlaw, selected briefs from this collection.

In 2004, the Chief Legal Reference Attorney continued her service to the Historical Society for the Courts of the State of New York. She is secretary of the Board of Trustees and chairs the Special Committee on the Society's web site (<http://www.courts.state.ny.us/history/>). To celebrate the Court's return to Court of Appeals Hall, the Chief Reference Attorney organized a joint Court of Appeals/Historical Society exhibit depicting the building's history since its completion in 1842, and authored guides to the Court's collections and its public spaces. In conjunction with the 40th anniversary of the founding of the American Association of Law Libraries of Upstate New York and as part of its annual conference, the Court of Appeals hosted a program at which the Clerk of the Court, the State Reporter and the Chief Legal Reference Attorney spoke. The Chief Legal Reference Attorney also served on the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System.

I express my appreciation to the State Library, the State Archives, the Albany Law School Library, the Legislative Library, the University at Albany libraries, the Albany Public Library and the Capital District Library Council, which continued to facilitate the Court's access to materials not part of its collection.

### **G. Continuing Legal Education Committee**

The Continuing Legal Education (CLE) Committee was established in 1999 to coordinate professional training for Court of Appeals and Law Reporting Bureau attorneys. The membership on the Committee varies from year to year. In 2004, Maureen Clements, Senior Legal Editor from the Law Reporting Bureau, stepped down as chair of the Committee. I thank her for her leadership. The Committee is now chaired by Lisa LeCours, Principal Law Clerk to Associate Judge Graffeo. Other members include the Chief Court Attorney, the Chief Legal Reference Attorney, a Judge's law clerk and a Senior Legal Editor from the Law Reporting Bureau. A Central Legal Research Staff secretary manages the CLE Committee schedule, notifies staff attorneys of upcoming classes and maintains CLE records. In addition to preparing

the paperwork necessary to comply with the rules of the Office of Court Administration and its CLE Board, the secretary ensures that attorneys are properly credited for their attendance by maintaining three interactive databases that track the CLE classes offered by the Court, the attorneys eligible to attend classes, and the number of credits each attorney has earned.

During 2004, the CLE Committee provided 23 programs totaling 34.5 credit hours for Court of Appeals and Law Reporting Bureau attorneys. Court of Appeals and Law Reporting Bureau attorneys also participated in classes at the New York Supreme Court, Appellate Division, Third Department, and the New York State Judicial Institute, the latter through its new simulcast program.

## **H. Management and Operations**

The Director, Court of Appeals Management and Operations, aided by a Management Analyst and two secretarial assistants, is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting, payroll document preparation, voucher processing, benefit program administration and annual budget request development.

A supplies manager is responsible for distributing supplies, comparison shopping and purchasing office supplies and equipment. Under the supervision of the Clerk and Deputy Clerk, another secretarial assistant records and tracks all employees' time and leave information.

## **I. Budget and Finance**

The Director, Court of Appeals Management and Operations, is responsible for initial preparation, administration, implementation and monitoring of the Court's annual budget. The proposed annual budget is reviewed by the Clerk and Deputy Clerk before submission to the Judges of the Court for their approval.

### **1. Expenditures**

The work of the Court and all its ancillary agencies was performed within the 2004-2005 fiscal year budget appropriation of \$13,592,634, which included all judicial and non-judicial staff salaries (personal services costs) and all other cost factors (non-personal services costs), including in-house maintenance of Court of Appeals Hall.

### **2. Budget Requests**

The total request for fiscal year 2005-2006 for the Court and its ancillary agencies is \$14,184,554, an increase of 4.3% over the current year's appropriation. The 2005-2006 personal services request of \$11,593,495 reflects an increase of \$383,825 from the current year's appropriation, which includes funding for salary increases for all eligible non-judicial employees



in accordance with collective bargaining contracts and administrative provisions, temporary services and overtime services.

The 2005-2006 non-personal services request of \$2,591,059 is \$208,095, or 8.7%, over the current year's adjusted appropriation. The non-personal services request includes adjustments in building maintenance operations (\$128,509), the bulk of which covers utility costs due to the expansion of Court of Appeals Hall, legal reference materials (\$126,997), in which a high level of inflation prevails, and court administration (-\$47,411).

Notwithstanding the necessary increases in building maintenance operations and legal reference materials, the budget request for fiscal year 2005-2006 illustrates the Court's ongoing efforts to perform its functions and those of its ancillary agencies economically and efficiently. The Court will continue to maximize opportunities for savings to limit increases in future budget requests.

### **3. Revenues**

In calendar year 2004, the Court reported filing fees of \$315 for each of 124 civil appeals, totaling \$39,060. Also, the Court reported filing fees of \$45 for each of 783 motions, totaling \$35,235. The \$74,295 realized was reported to the State Treasury, Office of the State Comptroller and Office of Court Administration pursuant to the Court Facilities Legislation (L 1987, ch 825). Additional revenues were realized through the slip opinion distribution service (\$4,924) and miscellaneous collections (\$2,607.40). For calendar year 2004, revenue collections totaled \$81,826.40.

### **J. Computer Operations**

The Information Technology (I.T.) Department oversees all aspects of the Court's computer and web operations under the direction of the Principal PC Analyst, assisted by a LAN Administrator and a PC Analyst. These operations include all software and hardware used by the Court, and a statewide network connecting six remote Judges' chambers with Court of Appeals Hall. Also included are two web sites: an intranet web site available to Court employees only and the Court's internet site located at <http://www.nycourts.gov/courts/appeals>.

The Court of Appeals web site offers immediate access to the latest decisions on cases and motions handed down by the Court, and other pertinent information of interest to the public, including the Rules of the Court and the Court's calendar. Newly designed and published by the I.T. Department in early 2004, it is user-friendly and easy to follow. Nearly 400,000 visits to the web site were recorded, averaging a little more than 1,000 visits per day, up by almost 75,000 visits from the previous year. In 2004, the I.T. Department produced eight web casts. For the first time in 2004, the I.T. Department presented live streaming web casts instead of delayed casts from tape.

The I.T. Department also arranged for simulcast presentations and teleconferences throughout the year to bring meetings and Continuing Legal Education (CLE) information from all over the State to Court employees in Albany.

In the ongoing quest to consolidate hardware management, I.T. replaced all printers with new models, bringing the total number of printer types down from eight to two. Because of the new printer warranties, approximately \$4,600 in maintenance costs has been saved. Also, because only two kinds of toner cartridges are now needed, stocking and purchasing of the expensive cartridges are more efficient.

A hands-on help desk is maintained to assist employees with hardware and software issues as they arise. Technical support on the intranet is also available. Training on software and hardware is provided as needed, either within the Courthouse or via outside agencies, depending on the situation. With the advent of the new hardware and better trained employees, maintenance calls to the help desk have fallen from an estimated 500 to 300 for the year.

The hardware and software for the case management system used to track and manage all information on motions and cases brought to the Court are maintained by the I.T. Department. Recently, under the management of the I.T. Department, an outside contractor updated all files on the system that were written in an obsolete program format to allow more flexibility in using the information already in the database.

#### **K. Security Services**

Supervised by the Chief Security Attendant, the Deputy Chief Security Attendant, three Senior Security Attendants, one Security Attendant, seven Senior Court Building Guards and one Court Building Guard perform a variety of functions, including screening all visitors, mail and packages entering Court of Appeals Hall and conducting regular patrols of the Courthouse and grounds. During 2004, staff members participated in various security training sessions, including court officer certification training, firearms requalification and CPR and first aid training. The Building Guard staff was certified in mandatory security guard training.

I acknowledge with appreciation the presence and professionalism of the State Police Investigators assigned to Court of Appeals Hall in 2004.

#### **L. Fire and Safety**

During 2004, the Fire and Safety Committee continued to monitor building safety requirements in all Court locations. Security Attendants are trained to administer first aid to ill or injured staff and visitors, and first aid equipment, including a cardiac automatic defibrillator, is maintained in Court of Appeals Hall for that purpose.



## **M. Personnel**

The following personnel changes occurred during 2004:

### **APPOINTMENTS:**

Spiewak, Keith J. - employed as PC Analyst in March 2004.

Coleman, Lillian M. - employed as Senior Custodial Aide in May 2004.

Warechak, Andrew R. - employed as Senior Custodial Aide in September 2004.

Capitini, Lori Ann - employed as Security Attendant, Court of Appeals in December 2004.

### **PROMOTIONS:**

Ignazio, Andrea R. - promoted to Principal Stenographer, Court of Appeals in January 2004.

Kong, Yongjun - promoted to Principal Custodial Aide in February 2004.

Edwards, Kevin P. - promoted to Senior Court Building Guard in March 2004.

Ravida, Tina - promoted to Principal Custodial Aide in March 2004.

Byrne, Cynthia D. - promoted to Principal Stenographer, Court of Appeals in October 2004.

Coleman, Lillian M. - promoted to Principal Custodial Aide in October 2004.

Donnelly, William E. - promoted to Assistant Building Superintendent I in October 2004.

Kearns, Ronald J. - promoted to HVAC Assistant Building Superintendent in October 2004.

Maier, Sr., Joseph J. - promoted to Assistant Building Superintendent I in October 2004.

Muller, Joseph J. - promoted to Senior Assistant Building Superintendent in October 2004.

Shufelt, Sr., Theodore J. - promoted to Senior Assistant Building Superintendent in October 2004.

Welch, Joseph H. - promoted to Clerical Assistant, Court of Appeals in October 2004.

## RESIGNATIONS:

Ragonese, Carmela - Senior Custodial Aide, retired on June 30, 2004.

MacPhee, Concetta J. - Principal Assistant Building Superintendent, retired on August 28, 2004.

Natalizio, Nicholas M. - Senior Security Attendant, Court of Appeals, resigned on October 21, 2004.

## CENTRAL LEGAL RESEARCH STAFF

### APPOINTMENTS:

Fawn A. Arnold, Veronica Benigno, Norman W. Kee, William Lawrence and Brian M. Quinn were appointed Court Attorneys in August 2004.

### PROMOTIONS:

Margery Corbin Eddy was promoted from Principal Law Clerk to Judge Graffeo to Principal Court Attorney in August 2004. Sebrina Barrett, Kevin T. Bezio, Linda M. Griggs, Thomas M. Kernan, Kristin A. Mattiske and Barbara B. Mistishen were promoted from Court Attorneys to Senior Court Attorneys in August 2004.

### COMPLETIONS OF CLERKSHIP:

Senior Court Attorney Jaime I. Roth completed her Central Staff clerkship in July 2004. Senior Court Attorneys Jonathan Bernstein and Kimberly Stock completed their clerkships in August 2004. Senior Court Attorney Stephen Sherwin completed his clerkship in August 2004 and is now Principal Law Clerk to Judge Graffeo. Senior Court Attorney Lisa Ross completed her clerkship in December 2004.

## **ACKNOWLEDGMENT**

Each year, members of the Clerk's Office staff contribute to the production of this Report by providing numerical data, narrative reports, and editing and proofreading services. I thank all of them, and mention specially Andrea Ignazio, who prepared the detailed appendices. Marjorie McCoy and Gary Spencer edited the Report. Many members of the Clerk's Office staff provided proofreading services, particularly James Costello, Susan Dautel, Hope Engel, Rosemarie Fitzpatrick and Paul McGrath. Brian Emigh and William Fitzpatrick oversaw production. A complete list of Clerk's Office, Building Maintenance and Judges' staffs appears in Appendix 11. Appearing on that list for the final time are Concetta MacPhee and Carmela Ragonese, who retired from the Court's Building Maintenance Department in 2004 with a combined total of 36 years of outstanding service.

Serving the public through the Judicial branch is a privilege and a profound responsibility. I commend the entire staff for providing the Judges of the Court, the Bar and the public exemplary service throughout the year.

### **III. 2004: Year in Review**

This section presents a snapshot of Court of Appeals decisions handed down in 2004. These decisions highlight the range of constitutional, statutory, regulatory and common-law issues reaching the Court each year.

#### **Constitutional Law**

*Pataki v New York State Assembly; Silver v Pataki* (4 NY3d 75)

In these actions, the Governor and the New York State Legislature asked the Court to declare their respective budgeting powers as established by the State Constitution. In *Silver v Pataki*, the Legislature sued the Governor for his actions in the 1998-1999 budget process and, in *Pataki v Assembly*, the Governor sued the Legislature for its actions in the 2001-2002 budget process. The suits involved the propriety of certain appropriations proposed by the Governor and the Legislature's responses to those appropriations. The Court held that the Governor acted within his powers and that the Legislature violated the Constitution by impermissibly altering the Governor's appropriations.

*Local Govt. Assistance Corp. v Sales Tax Asset Receivable Corp.* (2 NY3d 524)

To assist the City of New York in satisfying a debt of \$2.5 billion due over a five-year period, the State Legislature enacted the Municipal Assistance Corporation Refinancing Act and charged the Local Government Assistance Corporation (LGAC) with channeling 30 annual payments to the City from a portion of state sales tax revenues. The City then assigned receipt of the payments to the Sales Tax Asset Receivable Corporation (STARC), which was to use the payments to finance bonds that it would issue to retire the City's original debt. The Court of Appeals rejected LGAC's challenges to the constitutionality of the Act. Specifically, the Court held that the Act did not violate article II, section 1 of the New York Constitution because LGAC's annual payments are subject to legislative appropriation. The Court also rejected LGAC's claim that the Act violated the State Constitution's prohibition against a municipality contracting debt without pledging its "full faith and credit." The Court found the City had no legal obligation to STARC or to the STARC bondholders should LGAC fail to make the annual payments to STARC. Finally, the Court held that the Act did not impair the contracts of existing LGAC bondholders in violation of United States Constitution, article I, section 10 since LGAC bondholders would have first priority on appropriated funds and the right of STARC to receive payment would be subordinate.

#### **Family Law**

*Nicholson v Scopetta* (3 NY3d 357)

This matter arose out of a federal class action brought on behalf of mothers and their children who were separated because the mother had suffered domestic violence, to which the

children were exposed, and the children were for that reason deemed neglected. The United States Court of Appeals for the Second Circuit certified three questions to this Court concerning New York's statutory scheme for child protective proceedings. This Court held that under New York's Family Court Act, a parent cannot be responsible for neglect solely because the parent has been the victim of domestic violence and the child has been exposed to that violence -- more is required. The Court further held that emotional harm suffered by a child exposed to domestic violence might in some instances warrant removal under the Family Court Act, but only after the statutory factors are established.

*Matter of Alijah C.* (1 NY3d 375)

A deceased child may be the subject of an abuse petition under Family Court Act article 10, the Court held, citing the statutory definition of abuse that includes a parent or caretaker who causes the death of a child or creates a substantial risk of death. Detailing the interplay between relevant Family Court Act and Social Services Law sections, the Court recognized a legislative intent to create a child-protective system wherein the adjudication of a deceased child as abused may serve as the basis for terminating parental rights to surviving children. The Court concluded that siblings of a child killed by abuse are within the class of children that the Legislature sought to protect in enacting Social Services Law § 384-b, enhancing the protective purposes of article 10.

*Matter of Robert J.; Matter of Kareem R.* (2 NY3d 339)

The Court ruled Family Court may order the placement of a juvenile delinquent with the Office of Children and Family Services (OCFS) for a period that extends beyond the youth's 18th birthday. Noting that Family Court Act § 353.3 contains no age-restricting language, the Court interpreted the statute to uphold the placements of Robert J. and Kareem R. in OCFS custody after they turned 18. The Court observed that the Legislature's decision to authorize placements beyond age 18 was grounded in sound policy. The policy strengthens probation as a viable option for older juveniles by giving those on probation an incentive to adhere to court-ordered conditions and by giving judges an opportunity to order probation for youths approaching age 18 without foreclosing custodial placement as a later option if probation proves ineffective.

*Matter of Michael M.* (3 NY3d 441)

This case originated with the filing of a felony complaint against Michael M. in Criminal Court. The felony complaint contained only hearsay. After removal, Family Court found that Michael M. had committed acts which, if committed by an adult, would constitute felonies, and placed him on probation. On appeal, Michael M. for the first time challenged Family Court's jurisdiction, arguing that the removal order and its accompanying papers were facially insufficient because they contained only hearsay allegations. The Court held that the jurisdictional requirements for filing in Family Court are not met when an order of removal and the accompanying pleadings and proceedings contain only hearsay allegations, and that this deficiency is non-waivable and thus is reviewable for the first time upon appeal.

## Human Rights

*McGrath v Toys "R" Us, Inc.* (3 NY3d 421)

The United States Court of Appeals for the Second Circuit certified four questions to this Court concerning interpretation of the attorney's fee provision of the New York City Human Rights Law (Administrative Code of City of NY) § 8-502(f). The primary issue was whether the provision -- which was modeled on attorney's fee provisions in federal civil rights statutes -- should be applied consistently with federal precedent, particularly the decision of the Supreme Court of the United States in *Farrar v Hobby* (506 US 103 [1992]), in which the Court concluded that a plaintiff in a federal civil rights action who obtains only nominal damages is a "prevailing party" eligible to apply for attorney's fees, but an award in those circumstances would rarely be reasonable unless the litigation served a significant public purpose. In *McGrath*, this Court found nothing in the text or legislative history of the City fee provision warranting a departure from that policy and concluded that the *Farrar* standard applies to counsel fee awards under the City's Human Rights Law. Applying the *Farrar* standard, the Court ruled it would not be an abuse of discretion for a court to find that this litigation, involving discrimination against transsexuals in public accommodation, served a significant public purpose.

*Krohn v New York City Police Dept.* (2 NY3d 329)

In a certified question, the United States Court of Appeals for the Second Circuit asked whether a person claiming gender-based employment discrimination can recover punitive damages from the City of New York under the New York City Human Rights Law (Administrative Code of City of NY) § 8-502(a). This Court answered that the City was not liable for punitive damages because, although the code provision specifically referenced punitive damages, it did not constitute unambiguous legislative authorization to subject the City to such damages. In addition, there is no indication the provision was intended to waive the City's sovereign immunity from punitive damages.

*Forrest v Jewish Guild for Blind* (3 NY3d 295)

In a comprehensive review of the law of employment discrimination, the Court held that plaintiff failed to rebut defendant's race-neutral explanation for her termination to show the discharge occurred under circumstances giving rise to an inference of discrimination. While emphasizing the unacceptability of bias and the reprehensibility of racial epithets, the Court ruled plaintiff's evidence was insufficient to raise a triable issue of fact as to whether defendant's actions were pretextual, or whether plaintiff had been subjected to a hostile work environment.

## Death Penalty

*People v LaValle* (3 NY3d 88)

A jury found defendant guilty of first degree murder in the course of first degree rape and sentenced him to death. The Court of Appeals upheld the conviction, rejecting defendant's various challenges to the guilt phase of his trial, but vacated defendant's death sentence and remitted the matter to the trial court for resentencing. The Court held that the deadlock

instruction provided the jury, as mandated by New York's death penalty statute (CPL 400.27[10]), was unconstitutional. The statute required that the trial court instruct the jury prior to its sentencing deliberations that it must unanimously choose between the death penalty and life imprisonment without parole. The court was also required to instruct the jurors that if they failed to reach a unanimous decision, the court would sentence the defendant to life imprisonment with parole eligibility after serving a minimum of 20 to 25 years. This Court concluded the instruction violated the Due Process Clause of the State Constitution by creating an unacceptable risk that jurors favoring life without parole would be coerced into voting for the death penalty to avoid the possibility that the defendant would one day be released from prison as a result of a jury deadlock. The Court further held that the deadlock instruction was an integral part of the statute and could not be severed. Finally, the Court held the death penalty could not be imposed under the present scheme and ordered cases in which death notices had been filed to proceed as noncapital first degree murder prosecutions.

*People v Mateo* (2 NY3d 383)

The Court set aside defendant's death sentence on the ground that he was tried under an unconstitutional two-tiered penalty scheme. Defendant's conviction withstood challenges to alleged inconsistencies in the prosecution's theories of the case and to evidentiary rulings admitting defendant's confessions to other homicides.

### **Criminal Law**

*People v Payne* (3 NY3d 266)

Addressing the crime of depraved indifference murder and how it fits into the statutory scheme governing homicide, the Court explained that the crime is reserved for certain types of unintentional homicides and may not be properly charged in the overwhelming majority of homicides. The Court overturned defendant's conviction in this case, which was based on a point-blank shooting. After tracing the history of the statute, the Court pointed out that depraved indifference murder is not compatible with an intent to kill, but applies when the defendant's conduct is so reckless as to be depraved. The Court again sought to dispel the notion that the wanton disregard for life inherent in every intentional homicide amounts to depraved indifference murder. Quoting the drafters of the Penal Law, the Court stated that "depraved indifference murder is extremely dangerous and fatal conduct performed without specific homicidal intent but with a depraved kind of wantonness: for example, shooting into a crowd, placing a time bomb in a public place, or opening the door of the lion's cage in the zoo."

*People v Gonzalez* (1 NY3d 464)

In reversing defendant's depraved indifference murder conviction, the Court made clear that only a homicide committed in conscious disregard of the risk of death -- as opposed to intentional homicide -- can constitute depraved indifference murder. The Court emphasized that depraved indifference murder does not mean even an extremely heinous intentional killing.

*People v Slavin* (1 NY3d 392)

Defendant contended the trial court violated his Fifth Amendment privilege against self-incrimination by allowing the People to introduce photographs of upper body tattoos, taken over his objection, as evidence of motive for committing a hate crime. The Court concluded that defendant was not compelled to be a witness against himself within the meaning of the privilege. The tattoos were physical characteristics, not testimony forced from his mouth; however much the tattoos may have reflected defendant's inner thoughts, the People did not compel him to create them in the first place.

*People v Duggins* (3 NY3d 522)

The Court found the People adduced legally sufficient evidence that defendant committed first-degree murder by killing multiple victims during the "same criminal transaction," based on evidence that he shot two people within a 90-minute span in separate areas of a Brooklyn housing project. In affirming defendant's conviction, the Court concluded that the statutory term "criminal transaction" in Penal Law § 125.27(1)(a)(viii) should be construed as incorporating the technical definition given to this phrase in CPL 40.10(2).

*People v Mitchell* (2 NY3d 272)

The Court held that the parent of a juvenile offender can invoke the right to counsel on the child's behalf, but concluded that defendant's mother did not unequivocally do so in this case.

*People v Jones* (3 NY3d 491)

A person attacked with deadly force may respond in kind only if unable to retreat with complete safety. A statutory exception provides that someone who would otherwise be obligated to retreat need not do so if attacked at home. The question before the Court was whether the exception applies when the assailant and the defendant share the same dwelling. Drawing on a 1914 opinion by Judge Cardozo, the Court examined the "castle doctrine" (by which the home is one's castle), and concluded that a person under deadly attack at home need not retreat. It makes no difference, the Court ruled, whether the attack is mounted by an intruder or some other occupant. However, the Court affirmed defendant's conviction, determining that the trial court's failure to instruct the jury as to the "castle doctrine" did not warrant reversal in view of the overwhelming evidence of defendant's guilt.

*People v Cunningham* (2 NY3d 593)

The Court reversed the forgery conviction of a defendant who signed his own name on company checks without authority to do so. The defendant had worked for a company and came into possession of its checks, but he did not have authority to sign checks for any reason, let alone for his personal expenses. Nevertheless, the defendant was both the ostensible and actual maker of the instruments in question. Signing one's own name cannot ordinarily constitute forgery, as more than three centuries of case law have shown. The narrow exception is when the defendant has the same name as the person whose signature he forges. It therefore was improper to charge this defendant with forgery.



*People v Inserra* (4 NY3d 30)

The Court considered whether a police officer's affidavit asserting that defendant's name appeared on the signature line of a restraining order sufficed to allege the mens rea element of the crime of contempt of court. Defendant argued that because the affidavit did not expressly say he knew the terms of the order or that the signature on the order was actually his, the element of knowledge was not properly alleged. This Court held that the defendant's name on the signature line was enough for charging purposes to allege that defendant knew the terms of the order.

*People v Jones* (2 NY3d 235)

This appeal focused on whether the holding of *People v Harris* (77 NY2d 434 [1991]), that the search and seizure clause of the State Constitution generally requires suppression of incriminating statements made without counsel following a warrantless arrest of defendant in his home in violation of *Payton v New York* (445 US 573 [1980]), should be extended to require suppression of a lineup identification that followed a *Payton* violation. Finding distinctions between the benefits of counsel at a custodial interrogation and those at a lineup, the Court declined to extend the *Harris* rule to lineup identifications. Where the police arrest a defendant on probable cause, they have the right to conduct a lineup. A lineup that follows such an arrest is therefore not a product of the *Payton* violation, but of the lawful detention. Because the lineup identification here was not "fruit of the poisonous tree," the Court concluded that the purposes underlying the exclusionary rule would not be served by suppressing the identification evidence.

*People v Aponte* (2 NY3d 304)

The Court held the trial judge's supplemental instruction to a deadlocked jury was unbalanced and coercive, thereby depriving the defendant of a fair trial. The instruction was limited to the importance of returning a verdict, suggested the jurors were failing in their duty to decide the case, and failed to caution them not to surrender conscientiously held beliefs. The Court stressed that jurors have a duty to reach a verdict only if they can do so conscientiously.

*People v Stultz* (2 NY3d 277)

This appeal called upon the Court to set the standard for claimed ineffective assistance of appellate counsel. The Court concluded that the "meaningful representation" standard set by *People v Baldi* (54 NY2d 137 [1981]), which governs claims of ineffective assistance of trial counsel, should apply in the appellate context. The Court also explained the distinction between the "meaningful representation" standard and the federal standard for ineffective assistance of counsel set by *Strickland v Washington* (466 US 668 [1984]): a defendant claiming denial of "meaningful representation" need not fully satisfy the prejudice requirement of *Strickland*. In an ineffective assistance of appellate counsel claim in New York, a showing of prejudice is a significant, but not indispensable, element. Rather, the "meaningful representation" test focuses on the fairness of the proceedings as a whole.

*People v Parris; People v Hofler* (4 NY3d 41)

What remedy should be accorded a defendant on appeal where minutes of jury selection, plea allocution or other proceedings have been lost? The Court rejected an automatic reversal

rule. It said a reconstruction hearing should normally be available to a defendant appealing a trial conviction, provided he acts with "reasonable diligence" to mitigate the harm done by the loss of the minutes, as by promptly moving for a hearing. A defendant who appeals after pleading guilty is entitled to a reconstruction hearing only when he can cite an appellate issue in the untranscribed proceedings, the Court ruled, saying the higher burden is justified because a guilty plea waives most appellate issues and signals a desire to end litigation. Because neither defendant complied with the prerequisites for a reconstruction hearing, the conviction of each was affirmed.

### **Medical Malpractice and Misconduct**

*Broadnax v Gonzalez* (2 NY3d 148)

The Court revisited an issue it last considered in *Tebbutt v Virostek* (65 NY2d 931 [1985]): whether, absent a showing of independent physical harm to her, an expectant mother may recover damages for emotional harm when medical malpractice results in miscarriage or stillbirth. The Court concluded that, in treating a pregnancy, physicians owe a duty of care to the mother as well as the fetus. Accordingly, it held that medical malpractice causing a miscarriage or stillbirth is an actionable violation of a duty to the expectant mother.

*Anonymous v Bureau of Professional Med. Conduct/State Bd. for Professional Med. Conduct* (2 NY3d 663)

In *Doe v Office of Professional Med. Conduct* (81 NY2d 1050 [1993]), the Court construed Public Health Law § 280(9) to require that disciplinary proceedings against physicians "remain confidential until finally determined." Here, the Department of Health argued that all final determinations, whether favorable or unfavorable to a physician, may be released to the public and that its policy of posting on its web site the full text of disciplinary orders, including unfounded charges, complied with *Doe*. The Court held that where misconduct charges are resolved in the physician's favor, the requirement of confidentiality continues after the determination, and where proceedings lead to mixed results, the Department has discretion to redact material relating to charges that were not sustained. In this case, the Department's hearing committee had rejected serious charges of sexual misconduct and fraudulent practice against the physician, but sustained one "technical violation" for failing to keep a record of a prescription he issued to the complaining patient. The Court ruled the Department abused its discretion by releasing to the public all of the charges and their disposition.

*Mason v Central Suffolk Hosp.* (3 NY3d 343)

Plaintiff, a surgeon, sued his hospital for damages resulting from its suspension of his staff privileges. He argued that the hospital's medical staff bylaws constituted a contract with him and that the hospital had violated its bylaws. The Court held that no action for damages may be based on a violation of medical staff bylaws unless clear language in the bylaws creates a right to that relief. The Court referred to a policy consideration consistent with prior decisions in this area: "It is preferable for hospital administrators who decide whether to grant or deny staff privileges to make those decisions free from the threat of a damages action against the hospital."

The Court determined that nothing in the bylaws of plaintiff's hospital stated or implied that doctors have a vested right to hospital privileges.

### **Mental Hygiene**

#### *Matter of K.L.* (1 NY3d 362)

The Court upheld the constitutionality of "Kendra's Law," which permits psychiatric patients unlikely to survive safely in the community without supervision to avoid hospitalization by complying with court-ordered mental health treatment. The Court rejected respondent's contentions that the law violates due process because it allows for mandated treatment without requiring a showing that patients are incapable of making reasoned decisions about their own treatment, or because it permits temporary removal of persistently noncompliant patients to a hospital without prior notice and a hearing.

#### *Matter of Norman D.* (3 NY3d 150)

An insanity acquittee's track designation can only be challenged by an appeal. After accepting a plea of not responsible by reason of mental disease or defect, a hearing court assigns the acquittee to one of three tracks -- not mentally ill, mentally ill or suffering from a dangerous mental condition. Acquittes may challenge a hearing court's subsequent confinement and treatment decisions either by a de novo rehearing and review (considering the condition of the acquittee at the time of the rehearing), or by appeal of the original decision to an appellate court. This Court rejected appellant's claim that the original track status designation was subject to a de novo rehearing and review, holding that the statutory scheme fixing track status closest in time to the crime itself was the best method of determining the potential danger posed by an acquittee.

### **Land Use and Zoning**

#### *Bower Assoc. v Town of Pleasant Val.; Home Depot, U.S.A. v Dunn* (2 NY3d 617)

Developers, in separate actions, sought damages against municipalities, claiming that -- by arbitrarily withholding consent to special-use permits and thereby delaying completion of their projects -- the municipalities deprived them of civil rights protected by the United States Constitution. The Court rejected the developers' claims, holding that an arbitrary denial of a land-use permit for purposes of an article 78 proceeding was not tantamount to a constitutional due process or equal protection violation -- significantly more is required.

#### *Matter of City Council of City of Watervliet v Town Bd. of Town of Colonie* (3 NY3d 508)

This appeal turned on whether State Environmental Quality Review Act (SEQRA) review is required before a municipality may approve the annexation of real property from an adjacent municipality. The case arose when the owner of land in the Town of Colonie sought to have the parcel annexed by the City of Watervliet to facilitate future development. Watervliet supported

the annexation, but Colonie opposed it on the ground that SEQRA review was necessary to fully assess whether annexation was in the public interest. Although article 17 of the General Municipal Law does not expressly direct SEQRA review as part of the annexation procedure, this Court concluded such review was nonetheless required because SEQRA is a law of general applicability that is not inconsistent with or contrary to the procedures set forth in the General Municipal Law.

*Matter of Real Holding Corp. v Lehigh* (2 NY3d 297)

In this case, the Court was asked to decide whether Town Law § 274-b(3) authorizes a zoning board of appeals (ZBA) to grant area variances from special use permit requirements. The Town of Wappinger ZBA argued that subdivisions (3) and (5) of section 274-b clash and, at most, establish that a ZBA could grant an area variance from general zoning requirements, but not from a special use requirement unless express authorization to do so had been bestowed by a town board. Relying on the plain meaning of these provisions, the Court concluded that section 274-b(3) vests a ZBA with authority to grant an area variance from any requirements in a zoning regulation, including those for a special use permit.

### **Municipal Law**

*Matter of Felix v New York City Dept. of Citywide Admin. Servs.* (3 NY3d 498)

The Court held that a person employed by New York City, with permanent, civil service status, can be deemed to have forfeited his employment for failure to establish his city residency following notice of and an opportunity to contest a charge that he lived outside the city. The Court concluded that failure to establish residency is a violation of the city's residency requirement, which results in forfeiture of employment, not misconduct that would entitle the employee to a pre-removal hearing.

*Williams v City of New York; McCormick v City of New York* (2 NY3d 352)

These appeals arose from the deaths of three New York City police officers killed in the line of duty. Their families sought recovery under General Municipal Law § 205-e, which creates a statutory right of action where an officer's injury or death is caused by a violation of certain statutes, ordinances, rules, orders and requirements of a governmental entity. In *McCormick*, the Court concluded that a section 205-e claim may be predicated on violation of those Penal Law sections that prohibit specific acts, but not solely on violation of the justification defenses. The Court held that where no criminal charges have been brought against a section 205-e defendant, a rebuttable presumption exists that the Penal Law has not been violated. A defendant who has not been charged with a crime is entitled to summary judgment on a section 205-e claim predicated on the Penal Law where a reasonable view of the evidence supports the conclusion either that no prohibited conduct took place, or that a justification defense exists. To defeat the defendant's motion, a plaintiff must come forward with compelling evidence demonstrating a material question of fact as to whether the conduct was criminal and not justified. In *Williams*, the Court held that the "general duty clause" of the Public Employee Safety and Health Act does not cover the special risks faced by police officers because of the nature of police work.

## Torts

### *Abbatiello v Lancaster Studio Assoc.* (3 NY3d 46)

Finding no nexus between this plaintiff and defendant, the Court ruled a building owner may not be held liable under Labor Law § 240(1) for injuries sustained by a cable technician who was working on its property without its knowledge or consent. Public Service Law § 228(1) gives cable television companies the right to access private property to install or repair their equipment, and it prohibits landlords from interfering with that right. Under this mandatory access law, landlords are powerless to determine which cable company is entitled to operate and maintain the cable network on their property. Rejecting a claim that the statute imposes constructive notice on a building owner, the Court ruled an owner cannot be charged with the duty of providing safe working conditions for cable repair people of whom it is wholly unaware.

### *Carvel Corp. v Noonan* (3 NY3d 182)

The United States Court of Appeals for the Second Circuit certified to this Court questions relating to New York law on claims of tortious interference with prospective economic relations. Retail franchisees of an ice cream manufacturer claimed a supermarket sales program adopted by the franchisor interfered with their relationships with their customers. The Court held that the inducement not to buy products from the franchisees was not tortious interference because the franchisor's conduct, "which did not constitute a crime or an independent tort and was not aimed solely at harming franchisees, was also not the sort of egregious wrongdoing that might support a tortious interference claim in the absence of such an independently unlawful act or evil motive." The Court also explained that the requirement in previous cases that "more culpable" conduct be shown in such actions applied whether or not the parties were marketplace competitors, as long as the defendant is motivated by legitimate economic self-interest. The franchisees' argument that the "economic pressure" in this case was "wrongful" was also ill-founded because any such pressure was not exerted on the customers and was not extreme or unfair. The Court noted that the franchisor-franchisee relationship is complex and does not preclude all competition; the extent of permissible competition "should be determined by the contracts between the parties, not by courts or juries seeking after the fact to devise a code of conduct."

### *Collier v Zambito* (1 NY3d 444)

The Court reaffirmed the long-standing rule that a dog owner will not be held liable for damages caused by the animal's vicious propensities unless the owner knew or should have known of those propensities. As relevant to whether a dog had vicious propensities, the Court considered whether it had previously engaged in similar behavior or been menacing in the past, whether the dog was kept restrained and whether it was kept as a guard dog. The Court noted that dog owners are not entitled to "one free bite" and that vicious propensities could be present even if the dog had yet to bite anyone, but it found insufficient evidence of prior menacing behavior in this case.

## Civil Procedure

### *Brill v City of New York* (2 NY3d 648)

Plaintiffs sued the City of New York for injuries allegedly suffered in a slip and fall on a public sidewalk. More than a year after plaintiffs filed a note of issue, thereby readying the case for trial, the City -- without explanation for the delay -- moved for summary judgment. The Court strictly construed the requirement of CPLR 3212(a) that a motion for summary judgment be made no later than 120 days after the filing of a note of issue, unless good cause is shown and leave of the court obtained. Interpreting "good cause" to mean good cause for the delay, the Court rejected the City's argument that good cause could be found in the lack of underlying merit in plaintiffs' claim, and ordered the case to proceed to trial. This decision, coupled with *Kihl v Pfeffer* (94 NY2d 118 [1999]), represents an effort to assure compliance with statutory and court-ordered time frames, and end a culture of procrastination and delay in state court litigation.

### *Miceli v State Farm Mut. Auto. Ins. Co.* (3 NY3d 725)

In a continued effort to assure faithful adherence to statutory deadlines, the Court -- in a follow-up to *Brill v City of New York* (2 NY3d 648) -- denied plaintiff's summary judgment motion on the ground that the motion was made late.

## Consumer Protection

### *Blue Cross & Blue Shield of N. J., Inc. v Philip Morris USA Inc.* (3 NY3d 200)

The question, as certified by the United States Court of Appeals for the Second Circuit, was whether an insurer's claims to recover for losses resulting from the smoking-related illnesses of its subscribers were too remote to permit suit under New York's consumer protection statute, General Business Law § 349. This Court held that Empire HealthChoice lacked standing to sue because its claims were derivative of the injuries to its subscribers, since Empire was not directly injured by the tobacco companies' allegedly deceptive business practices. Empire's sole remedy was a common-law subrogation action to recover excess amounts paid on behalf of its subscribers.

## Insurance Law

### *RJC Realty Holding Corp. v Republic Franklin Ins. Co.* (2 NY3d 158)

A health spa owner sought to compel its insurers to defend and indemnify it in a lawsuit filed by a customer who claimed she was sexually molested during a massage. The insurers argued there was no coverage because the alleged assault by a spa masseur was not an "accident" under the policy; and because the policy excluded coverage for acts "expected or intended from the standpoint of the insured" and for injuries arising out of a body massage. The Court ruled the masseur's conduct was an "accident" and was not "expected or intended" from the standpoint of the spa because the masseur departed from his duties for solely personal motives, which could not be attributed to his employer. The Court also found the "body massage" exclusion would apply

to bruises or similar injuries caused by a genuine massage, but not to physical or emotional injury resulting from sexual assault by a masseur.

*Matter of Polan v State of N. Y. Ins. Dept.* (3 NY3d 54)

Insurance Law § 4224(b)(2) prohibits an insurer from limiting the coverage available to an individual on account of a physical or mental disability unless permitted by law or regulation and statistically or empirically justified. In this case, the Court was asked to decide whether a long-term disability plan open to both disabled and non-disabled employees on the same terms violates this provision by failing to afford equivalent coverage for mental and physical disabilities. Relying on the statute's text and legislative history and considering the interpretation given by federal courts to analogous federal provisions, the Court concluded that it does not.

*Matter of Levin v National Colonial Ins. Co.* (1 NY3d 350)

In this appeal, the Court considered whether Supreme Court properly exercised jurisdiction over a trust fund, established pursuant to the New York Insurance Law, to resolve competing claims to the trust remainder brought by the trustee and the insurance company, which was undergoing liquidation in Kansas. The Uniform Insurers Liquidation Act (UILA), adopted in New York in 1940, was silent on the precise question of whether competing claims to ownership of a trust remainder should be adjudicated in the domiciliary state's courts (Kansas) or in the courts of the state where the trust's ancillary receiver was appointed (New York). In light of the UILA's goal to promote orderly and equitable liquidation proceedings, the Court concluded that the domiciliary state was the proper forum in which to adjudicate the competing claims.

### **Workers' Compensation Law**

*Matter of Belmonte v Snashall* (2 NY3d 560)

The primary issue here was whether the term "board certified" in Workers' Compensation Law § 137(3) refers to certification by the Workers' Compensation Board (WCB) or a medical specialty board. While the term "board" is defined elsewhere in the Workers' Compensation Law to mean the WCB, the Court recognized that the term could have a different meaning when used on its own than when used in the phrase "board certified." Under a plain language reading of the statute, the Court determined that the phrase "board certified" was a term of art commonly understood to refer to certification by a medical specialty board.

### **Matrimonial Law**

*Holterman v Holterman* (3 NY3d 1)

The defendant in this matrimonial action contended Supreme Court erred as a matter of law in its child support calculation by failing to deduct from his income the enhanced earnings from his medical license that had been distributed to his former wife in the equitable distribution award. Although defendant argued that the failure to give him a credit for the share of enhanced earnings distributed to the wife resulted in a "double counting" of income for child support purposes, the Court adhered to the clear requirements of the Child Support Standards Act (CSSA).

The CSSA does not grant a licensed spouse the right to deduct a distributive award paid to the non-licensed spouse from income for purposes of determining child support, although it vests Supreme Court with discretion to adjust the award resulting from the child support calculation if strict adherence to the formula would be unjust or inappropriate in a particular case. Concluding that Supreme Court did not abuse its discretion as a matter of law in declining to make such an adjustment in this case, the majority upheld the child support determination.

*Frankel v Frankel* (2 NY3d 601)

Domestic Relations Law § 237(a) allows counsel to petition the trial court for its fees within a divorce action. The purpose is to secure representation for a non-monied spouse by providing an avenue for awarding attorneys' fees against the monied spouse. Here, the Court held that an attorney who was discharged without cause by the wife maintained this right to seek fees from the husband. In doing so, the Court recognized that precluding such fee applications by discharged attorneys would discourage lawyers from representing non-monied litigants.

*Covington v Walker* (3 NY3d 287)

The Court determined that the plaintiff's cause of action for divorce on the ground of imprisonment pursuant to Domestic Relations Law § 170(3), brought 16 years after her husband's prison term began, was not barred by the five-year statute of limitations in Domestic Relations Law § 210. Applying the continuous wrong doctrine for the first time in a matrimonial action, the Court held that -- although the imprisonment ground for divorce arises originally at the conclusion of the third consecutive year of a defendant's incarceration -- it continues to arise anew each day thereafter until the defendant is released from prison. The Court declined to establish a rule that an action for divorce based on confinement arises only once.

## Contracts

*Louis Dreyfus Energy Corp. v MG Ref. & Mktg., Inc.* (2 NY3d 495)

The parties disputed whether a continuing guaranty containing an expiration date requires the guarantor to pay obligations that were contractually binding, but not yet due and payable, at the time the guaranty expired. Employing principles of contract interpretation, the Court found the parties' intention was not clear on the face of the guaranty and so looked to other evidence of their intent. The Court considered the parties' course of dealing and determined that, as is normally true of guarantees, the purpose of entering into the continuing guaranty was to enable the parties to be secure in the knowledge that whatever debts become due under the contract would be protected by the guaranty. Thus the obligations under the contract that were entered into before the expiration date of the guaranty and became due and payable after the expiration date were protected by the guaranty.

*Sheehy v Clifford Chance Rogers & Wells, LLP* (3 NY3d 554)

In this breach of contract action, plaintiff was a former partner at defendant's predecessor law firm. Plaintiff alleged that he was denied certain retirement benefits promised to him in exchange for his agreement to take early retirement. The Court held the statute of frauds barred the claim because, under the terms of the alleged agreement, the firm would make payments to



plaintiff beginning in the fifth year following his retirement. Since the agreement could not be performed within one year of its making, it had to be in writing in order to be enforceable.

### **Landlord/Tenant**

#### *Matter of ATM One v Landaverde (2 NY3d 472)*

Under the Division of Housing and Community Renewal's Emergency Tenant Protection Regulations, a tenant in rent-stabilized housing must be given ten days' written notice to cure a lease violation before a landlord may commence an eviction proceeding. The issue here was whether the tenant must actually be able to take advantage of the full ten-day period to cure or whether the regulation merely obligates the landlord to mail the notice ten days before commencing the proceeding. Noting that the purpose of the regulation is to make certain that tenants have a meaningful opportunity to cure violations, the Court ruled that a landlord who elects to serve the notice by mail must add five days to the ten-day regulatory period to make sure the tenant will receive the notice in time to have the benefit of the full ten-day period to cure the deficiency. Where a landlord accounts for the five-day mailing period when computing the cure period and files an affidavit establishing timely service on the tenant, the landlord is entitled to the presumption that proper notice to cure was given.

#### *Wolinsky v Kee Yip Realty Corp. (2 NY3d 487)*

The tenants of six illegally-converted SoHo apartments brought this action against their landlord for a judgment declaring they were covered by the Emergency Tenant Protection Act (ETPA). The Court ruled against them after examining the interplay between the ETPA (McKinney's Uncons Laws of NY § 8622) and the Loft Law (Multiple Dwelling Law § 280), both of which were enacted to address housing emergencies in New York City. The Loft Law, enacted in 1982, provided a framework for the legalization of dwellings in areas zoned for manufacturing use that had been illegally converted to residential apartments, thereby bringing tenants in those dwellings under the umbrella of the ETPA. But the law included an eligibility window that closed almost two decades before the tenants in this case converted their loft spaces, indicating that the Loft Law was not intended to foster future illegal conversions or undermine legitimate municipal zoning prerogatives. Because the dwellings were not covered under the Loft Law, the Court concluded they could not be legalized absent further legislative action and the tenants were therefore not entitled to the protections of the ETPA.

### **Tax Law**

#### *Matter of Legion of Christ v Town of Mount Pleasant (1 NY3d 406)*

This appeal by a not-for-profit religious corporation required the Court to interpret the "good faith" requirement of RPTL 420-a(3)(a), which provides that a not-for-profit institution shall receive a tax exemption for its unimproved land where it demonstrates that the construction of buildings or improvements are "in good faith contemplated." The Court construed the phrase to mean that an applicant for an exemption must have "concrete and definite plans for utilizing the property for exempt purposes within the reasonably foreseeable future." Reasoning that with

each taxable year the boundaries of good faith take on new dimensions, the Court held that an application for a special use permit may well be a factor in determining good faith. However, the Court rejected the proposition that a special use permit is a condition precedent to a real property tax exemption under the statute. A zoning authority may look to other criteria to determine if an improvement actually is contemplated and is the subject of definite plans.

### **Not-for-Profit Corporations**

*64th Assoc., L.L.C. v Manhattan Eye, Ear & Throat Hosp.* (2 NY3d 585)

Manhattan Eye, Ear & Throat Hospital, a not-for-profit hospital, decided in 1999 to sell its buildings and cease operation due to financial difficulties. It agreed to sell one building to Memorial Sloan Kettering Cancer Center for medical purposes and two others to 64th Associates for apartments. Because the Not-for-Profit Corporation Law required judicial approval for the sale, the contract called for the hospital to reimburse the developer for out-of-pocket expenses of up to \$800,000 if the hospital could not obtain approval. Supreme Court ultimately disapproved the sale. When the developer sued the hospital for reimbursement, the lower courts concluded that judicial disapproval of the sale rendered the entire contract inoperative, including the provision for reimbursement. The Court of Appeals, however, held that when a court disapproves a sale transaction of this type, it must also address any reimbursement provisions to determine whether they are fair, reasonable and in furtherance of the not-for-profit's purpose.

## **IV. Appendices**

## **APPENDICES**

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**APPENDIX 1**

**JUDGES OF THE COURT OF APPEALS**

**Hon. Judith S. Kaye**  
**Chief Judge of the Court of Appeals**

**Hon. George Bundy Smith**  
**Senior Associate Judge of the Court of Appeals**

**Hon. Carmen Beauchamp Ciparick**  
**Associate Judge of the Court of Appeals**

**Hon. Albert M. Rosenblatt**  
**Associate Judge of the Court of Appeals**

**Hon. Victoria A. Graffeo**  
**Associate Judge of the Court of Appeals**

**Hon. Susan Phillips Read**  
**Associate Judge of the Court of Appeals**

**Hon. Robert S. Smith**  
**Associate Judge of the Court of Appeals**

**APPENDIX 2**

**PERTINENT CLERK'S OFFICE TELEPHONE NUMBERS**

**Court of Appeals Switchboard: (518) 455-7700**

**Questions Concerning Motions:  
Suzanne Aiardo, Esq. (518) 455-7705**

**Questions Concerning Criminal Leave Applications:  
Cynthia D. Byrne (518) 455-7784**

**Questions Concerning Civil and Criminal Appeals:  
James A. Costello, Esq. (518) 455-7702  
Susan S. Dautel, Esq. (518) 455-7701**

**Questions Concerning Attorney Admission and Discipline:  
Hope B. Engel, Esq. (518) 455-7758**

**General Information and Courthouse Tours:  
Gary Spencer, Public Information Officer  
(518) 455-7711**

**Court of Appeals Internet web site  
<http://www.nycourts.gov/courts/appeals>**

**SUMMARY OF TOTAL APPEALS DECIDED IN 2004 BY JURISDICTIONAL PREDICATE**  
**January 1, 2004 through December 31, 2004**

**BASIS OF JURISDICTION: ALL APPEALS**

	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Dissents in Appellate Division	22	9	0	0	0	31
Permission of Court of Appeals or Judge thereof	62	34	4	2	0	102
Permission of Appellate Division or Justice thereof	19	8	0	0	0	27
Constitutional Question	5	0	1	0	0	6
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	0	1	2 <sup>1</sup>	1	15	19 <sup>2</sup>
<b>Totals</b>	<b>108</b>	<b>52</b>	<b>7</b>	<b>3</b>	<b>15</b>	<b>185</b>

**BASIS OF JURISDICTION: CIVIL APPEALS**

	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Dissents in Appellate Division	22	9	0	0	0	31
Permission of Court of Appeals	34	31	4	1	0	70
Permission of Appellate Division	9	4	0	0	0	13
Constitutional Question	5	0	1	0	0	6
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	0	1	0	0	15	16 <sup>2</sup>
<b>Totals</b>	<b>70</b>	<b>45</b>	<b>5</b>	<b>1</b>	<b>15</b>	<b>136</b>

**BASIS OF JURISDICTION: CRIMINAL APPEALS**

	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Permission of Court of Appeals Judge	28	3	0	1	0	32
Permission of Appellate Division Justice	10	4	0	0	0	14
Other	0	0	2 <sup>1</sup>	1	0	3 <sup>1</sup>
<b>Totals</b>	<b>38</b>	<b>7</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>49</b>

<sup>1</sup> Includes People v Mateo and People v LaValle, capital appeals

<sup>2</sup> Includes anomalies which did not result in an affirmance, reversal, modification or dismissal (e.g. judicial suspensions, acceptance of a case for review pursuant to Rule 500.17).

**APPENDIX 4**

**COMPARATIVE STATISTICAL ANALYSIS FOR APPEALS DECIDED IN 2004**

**ALL APPEALS - % CIVIL AND CRIMINAL**

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Civil	60% (102 of 170)	76% (134 of 176)	62% (109 of 176)	74% (130 of 176)	74% (136 of 185)
Criminal	40% (68 of 170)	24% (42 of 176)	38% (67 of 176)	26% (46 of 176)	26% (49 of 185)

**CIVIL APPEALS - TYPE OF DISPOSITION**

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Affirmed	49%	40%	40%	42%	51%
Reversed	30%	37%	37%	32%	33%
Modified	7%	7%	8%	8%	4%
Dismissed after Argument	--	1%	2%	--	1%
Other (e.g. judicial suspension; Rule 500.17 certified question)	14%	15%	13%	18%	11%

**CRIMINAL APPEALS - TYPE OF DISPOSITION**

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Affirmed	69%	69%	69%	67%	76%
Reversed	20%	29%	28%	20%	14%
Modified	7%	2%	1.5%	9%	4%
Dismissed	4%	--	1.5%	4%	6%



**CIVIL APPEALS DECIDED - JURISDICTIONAL PREDICATES**

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
<b>Appellate Division Dissents</b>	9% (9 of 102)	11% (14 of 134)	16.5% (18 of 109)	16% (20 of 130)	22.75% (31 of 136)
<b>Court of Appeals Leave Grants</b>	56% (57 of 102)	47% (63 of 134)	55% (60 of 109)	50% (65 of 130)	51.5% (70 of 136)
<b>Appellate Division Leave Grants</b>	12% (13 of 102)	19% (26 of 134)	8.25% (9 of 109)	7% (9 of 130)	9.5% (13 of 136)
<b>Constitutional Question</b>	9% (9 of 102)	6% (8 of 134)	4.5% (5 of 109)	6% (8 of 130)	4.5% (6 of 136)
<b>Stipulation for Judgment Absolute</b>	--	--	--	--	--
<b>CPLR 5601(d)</b>	--	2% (3 of 134)	3% (3 of 109)	2% (3 of 130)	.75% (1 of 136)
<b>Supreme Court Remand</b>	--	--	--	--	--
<b>Judiciary Law § 44</b>	5% <sup>1</sup> (5 of 102)	4% <sup>1</sup> (5 of 134)	8.25% <sup>1</sup> (9 of 109)	6% <sup>1</sup> (8 of 130)	3% <sup>1</sup> (4 of 136)
<b>Certified Question from Federal Court (Rule 500.17)</b>	9% <sup>2</sup> (9 of 102)	11% <sup>2</sup> (15 of 134)	4.5% <sup>2</sup> (5 of 109)	12% <sup>2</sup> (16 of 130)	8% <sup>2</sup> (11 of 136)
<b>Other</b>	--	--	--	1% <sup>3</sup> (1 of 130)	--

<sup>1</sup> Includes judicial suspension matters

<sup>2</sup> Includes decisions accepting/declining certification

<sup>3</sup> Ulster Home Care v Yacco (enforcement of Court's remittitur)

APPENDIX 6

CRIMINAL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
<b>Permission of Court of Appeals Judge</b>	81% (55 of 68)	74% (31 of 42)	73.1% (49 of 67)	90% (41 of 46)	65% (32 of 49)
<b>Permission of Appellate Division Justice</b>	18% (12 of 68)	26% (11 of 42)	25.4% (17 of 67)	8% (4 of 46)	29% (14 of 49)
<b>Other</b>	1% (1 of 68)		1.5% (1 of 67)	2% (1 of 46)	6% <sup>1</sup> (3 of 49)

<sup>1</sup> Includes People v Angel Mateo and People v Stephen LaValle, capital appeals

**MOTION STATISTICS (2000 - 2004)**

Motions Undecided as of January 1, 2004 - 148  
 Motion Numbers Used in 2004 - 1199  
 Motions Undecided as of December 31, 2004 - 118  
 Motion Dispositions During 2004 - 1222

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Motion Numbers Used for Calendar Year	1461	1439	1381	1363	1199
Motions Decided for Calendar Year	1393	1474	1352	1377	1222
Motions for leave to appeal	1088*	1115*	1013*	1053*	905*
granted	54	72	71	86	75
denied	809	824	724	774	644
dismissed	223	215	213	187	182
withdrawn	2	4	5	6	4
Motions to dismiss appeals	4	5	10	13	6
granted	2	3	2	7	3
denied	2	2	8	6	2
dismissed	0	0	0	0	0
withdrawn	0	0	0	0	1
Sua Sponte and Court's own motion dismissals	107	102	100	89	98
<b>TOTAL DISMISSAL OF APPEALS</b>	<b>109</b>	<b>105</b>	<b>102</b>	<b>96</b>	<b>101</b>
Motions for reargument of appeal	8	20	11	7	14
granted	0	0	0	0	0
Motions for reargument of motion	56	64	52	59	44
granted	0	1	3	0	1
Motions for extension of time to move for reargument	0	0	0	0	0
granted	0	0	0	0	0
Motions for assignment of counsel	37	48	40	38	43
granted	37	45	37	24	41
Legal Aid	13	17	10	12	8
denied	0	3	2	2	2
dismissed	0	0	1	0	0

APPENDIX 7 (continued)

	2000	2001	2002	2003	2004
Motions to waive rule compliance granted	3 2	4 2	2 1	0 0	1 0
Motions for poor person status granted denied dismissed	71 1 0 70	64 1 0 63	53 0 0 53	82 0 0 82	122 0 0 122
Motions to vacate dismissal/preclusion granted	5 2	1 1	1 0	1 0	1 0
Motions for calendar preference granted	6 0	4 1	3 1	1 0	0 0
Motions for amicus curiae status granted	59 50	110 94	112 91	105 93	93 88
Motions for Executive Law § 71 Order (AG)	5	1	3	4	1
Motions for leave to intervene granted	0 0	1 1	1 0	4 1	2 0
Motions to stay/vacate stay granted denied dismissed withdrawn	26 1 3 22 0	23 2 2 19 0	21 1 4 16 0	26 2 3 21 0	14 5 0 9 0
Motions for CPLR 460.30 extension granted	38 28	32 26	37 34	37 27	26 24
Motions to strike appendix or brief granted	5 0	0 0	8 2	5 1	10 2
Motions to amend remittitur granted	1 0	2 0	0 0	0 0	0 0
Motions for miscellaneous relief granted denied dismissed withdrawn	25 5 14 4 2	20 2 14 3 1	14 1 9 3 1	15 2 8 5 0	14 4 6 4 0
Withdrawals/substitution of counsel granted denied	1 1 0	1 1 0	0 0 0	3 3 0	1 1 0

\* Because more than one relief request may be decided under a single motion number, the total of decisions by relief requests is greater than the total of motions decided.

**CRIMINAL LEAVE APPLICATIONS ENTERTAINED  
BY COURT OF APPEALS JUDGES**

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
<b>TOTAL APPLICATIONS ASSIGNED:</b>	2920	2827	2605	2557	2570
<b>TOTAL APPLICATIONS DECIDED:</b>	2863 <sup>1</sup>	2840 <sup>1</sup>	2724	2601	2644
<b>TOTAL APPLICATIONS GRANTED:</b>	51	43	46	37	46
<b>TOTAL APPLICATIONS DENIED:</b>	2579	2604	2493	2365	2407
<b>TOTAL APPLICATIONS DISMISSED:</b>	221	187	179	191	176
<b>TOTAL APPLICATIONS WITHDRAWN:</b>	12	6	6	8	15
<b>TOTAL PEOPLE'S APPLICATIONS:</b>	68	62	59	44	48
<b>(a) GRANTED:</b>	7	10	9	4	9
<b>(b) DENIED:</b>	54	49	45	36	33
<b>(c) DISMISSED:</b>	3	1	4	1	1
<b>(d) WITHDRAWN:</b>	4	2	1	3	5
<b>AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE</b>	448 <sup>2</sup>	404	388 <sup>3</sup>	397 <sup>4</sup>	367
<b>AVERAGE NUMBER OF GRANTS FOR EACH JUDGE</b>	8	6	7	5	7

<sup>1</sup> Includes some applications assigned in previous year.

<sup>2</sup> This average was calculated by dividing the total number of applications assigned during six months of the year by seven and dividing the total number assigned during six months of the year by six, because for half of the year only six Judges were being assigned applications.

<sup>3</sup> This average was calculated by dividing the total number of applications assigned during nine and a half months of the year by seven and dividing the total number assigned during two and half months of the year by six, because only six Judges were being assigned for the last two and one half months.

<sup>4</sup> This average was calculated by dividing the total number of applications assigned during five months of the year by seven and dividing the total number assigned during seven months of the year by six, because only six Judges were being assigned for the last seven months.

**APPENDIX 9**

2004

**THRESHOLD REVIEW OF SUBJECT MATTER  
JURISDICTION BY THE COURT OF APPEALS**

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
	SSD (sua sponte dismissal) - Rule 500.3				
Total Number of Inquiry Letters Sent	108	91	94	76	73
Appeals Withdrawn or Discontinued on Stipulation	5	5	3	2	4
Dismissed by Court sua sponte	65	64	55	42	53
Transferred sua sponte to Appellate Division	4	2	3	2	1
Appeals allowed to proceed in normal course (A final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	7	6	9	3	5
Jurisdiction Retained - appeals decided (or withdrawn)	0	2	0	4	2
Inquiries Pending	22	9	13	14	8

**OFFICE FOR PROFESSIONAL MATTERS STATISTICS**

<u>TOPIC</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
<b>Attorneys Admitted (OCA)<sup>1</sup></b>	7194	7440	8006	8247	8415
<b>Certificates of Admission</b>	164	150	82	118	128
<b>Clerkship Certificates</b>	12	4	10	6	10
<b>Petitions for Waiver</b>	149	144	170 <sup>2</sup>	149 <sup>3</sup>	171 <sup>3</sup>
<b>Written Inquiries</b>	116	150	132	93	98
<b>Disciplinary Orders/Name Changes</b>	842 <sup>4</sup>	954	1636	796 <sup>4</sup>	1469 <sup>4</sup>

<sup>1</sup> The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (see Judiciary Law § 468-a).

<sup>2</sup> Includes correspondence to eight law schools reviewing their LL.M. programs under Rule 520.6.

<sup>3</sup> Includes correspondence to three law schools reviewing their LL.M. programs under Rule 520.6.

<sup>4</sup> Includes orders involving multiple attorneys' violation of the registration requirements (Judiciary Law § 468-a).

**APPENDIX 11**

**NONJUDICIAL STAFF**

**Acri, Gabriel - Principal Law Clerk to Judge Ciparick**  
**Aiardo, Suzanne - Chief Motion Clerk**  
**Alexander, Jr., Carroll B. - Senior Court Building Guard**  
**Ali, Vivian - Principal Stenographer, Court of Appeals**  
**Andrews, Barbara J. - Secretary to Judge G. B. Smith**  
**Arnold, Fawn A. - Court Attorney, Court of Appeals**  
**Asiello, John P. - Assistant Consultation Clerk, Court of Appeals**  
**Barrett, Sebrina - Senior Court Attorney, Court of Appeals**  
**Beard, Dorothy - Secretary to Chief Judge Kaye (resigned 5/9/04)**  
**Benett, Megan Wolfe - Law Clerk to Chief Judge Kaye**  
**Benigno, Veronica Ann O. - Court Attorney, Court of Appeals**  
**Bernstein, Jonathan M. - Senior Court Attorney, Court of Appeals (resigned 8/12/04)**  
**Betha, Laury A. - Law Clerk to Judge G. B. Smith**  
**Bezio, Kevin T. - Senior Court Attorney, Court of Appeals**  
**Bohannon, Lisa Herriman - Principal Stenographer, Court of Appeals**  
**Bowler, Anne Marie - Senior Law Clerk to Chief Judge Kaye**  
**Branch, Jr., Clifton R. - Law Clerk to Judge G. B. Smith**  
**Brousseau, Cara Johnson - Senior Law Clerk to Judge Read**  
**Byrne, Cynthia D. - Principal Stenographer, Court of Appeals**



**Appendix 11 (Continued)**

**Calacone, Stephen F. - Clerical Research Aide**  
**Capitini, Lori Ann - Security Attendant, Court of Appeals**  
**Carro, Christine - Secretary to Judge Ciparick**  
**Cleary, Lisa M. - Principal Stenographer, Court of Appeals**  
**Cohen, Stuart M. - Clerk of the Court of Appeals**  
**Conklin, Elmer - Clerical Assistant, Court of Appeals**  
**Conley, Paul F. - Senior Clerical Assistant, Court of Appeals**  
**Costello, James A. - Assistant Deputy Clerk, Court of Appeals**  
**Curley, Maria E. - Senior Law Clerk to Judge Read**  
**Dautel, Susan S. - Assistant Deputy Clerk, Court of Appeals**  
**Davis, Heather - Principal Court Attorney, Court of Appeals**  
**DellAquila, Lisa - Senior Law Clerk to Judge Rosenblatt (resigned 8/14/04)**  
**DiLeva, Terry J. - Prisoner Applications Clerk**  
**Donnelly, William E. - Assistant Building Superintendent I**  
**Dragonette, John M. - Senior Court Building Guard**  
**Duncan, Priscilla - Secretary to Judge Read**  
**Dunn, Matthew R. - Principal Law Clerk to Judge Graffeo**  
**Eddy, Margery Corbin - Principal Law Clerk to Judge Graffeo; Principal Court Attorney, Court of Appeals**  
**Edwards, Kevin P. - Senior Court Building Guard**

Appendix 11 (Continued)

**Emigh, Brian J. - Building Manager**  
**Engel, Hope B. - Deputy Chief Court Attorney, Court of Appeals; Court Attorney for Professional Matters**  
**Farrell, Laurence - Deputy Chief Security Attendant, Court of Appeals**  
**Faulkner, Cedric K. - Court Attendant, Court of Appeals**  
**Fillion, Gail - Secretary to Chief Judge Kaye**  
**Fitzpatrick, J. Brian - Director, Court of Appeals Management and Operations**  
**Fitzpatrick, Rosemarie - Assistant Secretary to Chief Judge Kaye**  
**Fitzpatrick, William J. - Assistant Printer, Court of Appeals**  
**Fix-Mossman, Lori E. - Principal Stenographer, Court of Appeals**  
**Fludd, Christopher - Senior Court Building Guard**  
**Fry, James D. - Law Clerk to Chief Judge Kaye (resigned 8/2/04)**  
**Gerber, Matthew L. - Senior Security Attendant, Court of Appeals**  
**Gilbert, Marianne - Principal Stenographer, Court of Appeals**  
**Goldstein, Scott A. - Senior Security Attendant, Court of Appeals**  
**Green, Kevin A. - Senior Law Clerk to Judge G. B. Smith (resigned 9/11/04)**  
**Griggs, Linda M. - Senior Court Attorney, Court of Appeals**  
**Groff, Janice L. - Principal Stenographer, Court of Appeals**  
**Haas, Tammy L. - Principal Assistant Building Superintendent**  
**Heffron, Elaine J. - Secretary to Judge Graffeo**  
**Herrington, June A. - Principal Stenographer, Court of Appeals**  
**Hurd, Cindy, J. - Senior Court Building Guard**

**Appendix 11 (Continued)**

**Ignazio, Andrea R. - Principal Stenographer, Court of Appeals**  
**Jacobson, Joshua D. - Law Clerk to Judge R. S. Smith**  
**James, Yvette - Secretary to Chief Judge Kaye (resigned 8/30/04)**  
**Joyce, Jean - Principal Law Clerk to Chief Judge Kaye**  
**Kearns, Ronald J. - HVAC Assistant Building Superintendent**  
**Kee, Norman W. - Court Attorney, Court of Appeals**  
**Kehn, Patricia Ann - Principal Stenographer, Court of Appeals**  
**Kernan, Thomas M. - Senior Court Attorney, Court of Appeals**  
**Kleemann, Sarah W. - Principal PC Analyst**  
**Klein, Andrew W. - Consultation Clerk, Court of Appeals**  
**Kong, Yongjun - Principal Custodial Aide**  
**Lawrence, Bryan D. - Local Area Network Administrator**  
**Lawrence, William A. - Court Attorney, Court of Appeals**  
**LeCours, Lisa A. - Principal Law Clerk to Judge Graffeo**  
**Lenart, Margaret S. - Principal Stenographer, Court of Appeals**  
**Long, Justin R. - Law Clerk to Judge Rosenblatt**  
**MacPhee, Concetta J. - Principal Assistant Building Superintendent (retired 8/28/04)**  
**Maier, Sr., Joseph J. - Assistant Building Superintendent I**  
**Mandelbaum, Robert M. - Senior Law Clerk to Chief Judge Kaye**  
**Mattiske, Kristin A. - Senior Court Attorney, Court of Appeals**  
**Mayo, Michael J. - Deputy Building Superintendent**

**Appendix 11 (Continued)**

**McCormick, Cynthia A. - Management Analyst, Court of Appeals**  
**McCoy, Marjorie S. - Deputy Clerk of the Court of Appeals**  
**McGrath, Paul J. - Chief Court Attorney, Court of Appeals**  
**McMillen, Donna J. - Secretary to the Clerk, Court of Appeals**  
**Mistishen, Barbara B. - Senior Court Attorney, Court of Appeals**  
**Moore, Travis R. - Senior Security Attendant, Court of Appeals**  
**Morales, Emily - Principal Law Clerk to Judge Ciparick**  
**Muller, Joseph J. - Senior Assistant Building Superintendent**  
**Murray, Elizabeth F. - Chief Legal Reference Attorney, Court of Appeals**  
**Natalizio, Nicholas M. - Senior Security Attendant, Court of Appeals (resigned 10/21/04)**  
**O’Friel, Jennifer A. - Principal Law Clerk to Judge Ciparick**  
**Paglia, Paul J. - Senior Court Building Guard**  
**Paisley, Daniel J. - Senior Law Clerk to Judge Rosenblatt**  
**Pepper, Francis W. - Principal Custodial Aide**  
**Quinn, Brian M. - Court Attorney, Court of Appeals**  
**Ragonese, Carmela - Senior Custodial Aide (retired 6/30/04)**  
**Rajan, Deepa - Senior Law Clerk to Judge R. S. Smith**  
**Ravida, Tina - Principal Custodial Aide**  
**Reyes, Michael - Principal Law Clerk to Judge G. B. Smith (resigned 8/14/04)**  
**Ross, Lisa J. - Senior Court Attorney, Court of Appeals (resigned 12/31/04)**  
**Roth, Jaime I. - Senior Court Attorney, Court of Appeals (resigned 7/1/04)**

**Appendix 11 (Continued)**

**Rubinstein, Jason C. - Senior Law Clerk to Judge Rosenblatt**  
**Seeliger, Bruce - Principal Law Clerk to Judge Read**  
**Sherwin, Stephen P. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Graffeo**  
**Shufelt, Sr., Theodore J. - Senior Assistant Building Superintendent**  
**Somerville, Robert - Senior Court Building Guard**  
**Spencer, Gary H. - Public Information Officer, Court of Appeals**  
**Spiewak, Keith J. - PC Analyst**  
**Steward, Priscilla I. - Law Clerk to Judge G. B. Smith**  
**Stock, Kimberly A. - Senior Court Attorney, Court of Appeals (resigned 8/12/04)**  
**Tierney, Inez M. - Secretary to Judge Rosenblatt**  
**Warechak, Andrew R. - Senior Custodial Aide**  
**Wasielewski, John P. - Chief Security Attendant, Court of Appeals**  
**Welch, Joseph H. - Senior Court Building Guard; Clerical Assistant, Court of Appeals**  
**Widulski, Peter - Law Clerk to Judge R. S. Smith (resigned 7/3/04)**  
**Wodzinski, Esther T. - Secretary to Judge R. S. Smith**  
**Yotam, Avshalom - Law Clerk to Judge R. S. Smith**