

**2003**

**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  
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This year we celebrate where we are and what surrounds us. After having spent a year and a half at our Washington Avenue Extension offices, we're back in the newly renovated Court of Appeals Hall. In a sense we never left. Regularly, we heard afternoon oral argument, the Judges walking over planks and sawdust, brushing wallboard powder off one another's robes before entering a courtroom which, save for the boxed-away portraits of our predecessors, remained almost entirely intact, a peaceful sanctuary amid the sights and sounds of a bustling construction site. Even the pneumatic drills observed a respectful silence during courtroom sessions.

Of course, our exile and total re-emergence would not have worked out as smoothly as it did without the monumental efforts of our staff—a family that cheerfully carried on, organizing, planning, shuttling, law reporting, computerizing, wiring, improvising, calendaring, furnituring, rewiring, packaging. And, yes, researching and Shepardizing all the while. Surely, no one examining 100 NY2d would suspect that it was generated under less than optimum conditions. We recognize and deeply appreciate what surrounds us: a newly restored building, conceived in the 19th century, equipped and eager to take on the 21st.

We are poised for 1 NY 3d. New volumes will not carry the names of our esteemed Judges Richard C. Wesley, who now serves on the United States Court of Appeals for the Second Circuit; and Howard A. Levine, who, at the top of his game, entered mandatory retirement and has begun a new career in law and teaching. In their place, we have welcomed the illustrious Judges Susan Phillips Read, who joined us in January 2003, and Robert Sherlock Smith, in January 2004.

To contemplate where we are, we have to understand where we've been and how we got here. Looking back from 2004, the hundred-year anniversaries are fascinating in relation to our Court. In 1604, Henry Hudson was a navigator and mariner who could not

have known that five years later he would captain the Halve Maen part way up the river that bears his name. He sailed as far as Albany, as if to say, this is a good place to stop, a place of last resort. He might have disembarked and taken a short walk to what is now 20 Eagle Street. (True, he was looking for China, but it shows that judges aren't the only ones who can't always tell where the path leads, or ends.) A century later, on October 28, 1704, John Locke breathed his last, but not before he gave us Enlightenment concepts that resonate today -- ideas like religious tolerance and the separation of powers.

For our Court, 1804 was another remarkable year. James Kent was the Chief Justice of New York's Supreme Court, 42 years before the New York Court of Appeals was created. When Kent came to the bench in 1798, written opinions were novel, and there was no systematic provision for their publication. Kent was instrumental in formulating law reporting in 1804 to serve as a permanent, accessible body of precedent. The Court began 1904 by deciding *People v. Lochner* (177 NY 145), holding that, in the name of public health, the government could constitutionally limit the work day and work week. For the rest of the 20th century, the Court went on to decide cases associated with an extraordinary period of social and economic change.

There is a confluence in all of this. Over the last decade we've had more than a dozen cases involving the Hudson River. John Locke's name appears only rarely in our freedom of religion or separation of powers decisions, but we surely are aware of our debts. And how could anyone find those decisions or the thousands of others, were it not for James Kent's vision? As for *Lochner*, scholars associate the name of the case with an era in American law.

Lastly, we are happy to know that unlike our former Chief Judge Alton B. Parker, who in 1904 ran for President and was defeated by Theodore Roosevelt, Chief Judge Judith Kaye has no plans to seek the Presidency. She will stay with us, continuing to lead the Court in what may be the best era of all.

Albert M. Rosenblatt

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**Introduction**

At the 1917 ceremony dedicating Court of Appeals Hall, Governor Charles S. Whitman observed:

From now on and judging from the splendid character of the building itself, we trust for centuries it is to be devoted to a purpose, the noblest purpose to which a building or a life can be devoted, the administration of justice.

In November 2003, after a seventeen-month absence, the Judges and staff of the Court of Appeals happily returned to a virtually completed renovation of Court of Appeals Hall. Governor Whitman's description of our home was as apt in 2003 as it was in 1917.

Despite the long dislocation, the work of the Court continued, and the Judges heard oral argument in the Courtroom throughout the year. Upon completion, the restoration and renovation project had refurbished approximately 60,000 square feet of Courthouse interior, and added approximately 33,000 square feet of space matching the building's interior and exterior design. The picture on the cover of this Report depicts the northwest corner of Court of Appeals Hall, illustrating the seamless blending of the old and new portions of the Courthouse. An exceptional building melding exquisite classical design with twenty-first century technology and infrastructure, Court of Appeals Hall is once again fully open to serve the citizens of the State of New York. We are proud of, and grateful for, our refurbished facility, and pleased to show the Court -- its architecture as well as its operations -- to the public.

Early in 2003, Susan Phillips Read was invested as an Associate Judge of the Court, replacing Associate Judge Howard A. Levine, who had retired in December 2002. In June 2003, Associate Judge Richard C. Wesley resigned to join the bench of the United States Court of Appeals for the Second Circuit. Robert S. Smith was nominated as an Associate Judge of the Court in late 2003, and began sitting in 2004 after the Senate confirmed the nomination. The Court and its staff will long remember the vigor, wisdom, compassion and scholarship of Judges Levine and Wesley, whom we sorely miss.

Also in 2003, the Clerk's Office returned to its full complement when Susan Dautel joined James Costello as new Assistant Deputy Clerks. Together with the rest of the Clerk's Office staff, they continue the Court's proud tradition of outstanding service to the Bench, Bar and public.

The 2003 Annual Report is divided into four parts. The first part offers a narrative, statistical and graphic overview of matters filed with and decided by the Court in 2003. The second describes various functions of the Clerk's Office and summarizes the administrative accomplishments of the year. The third part highlights selected decisions of 2003. The fourth 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.

The jurisdiction of the Court of Appeals is almost exclusively appellate. 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, open 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. Nonetheless, the correction of error by courts below remains a legitimate, if less frequent, justification 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, in conjunction 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 special Election Session to consider expedited motions for leave to appeal and appeals 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. Election appeals are decided expeditiously, usually the day after oral argument is heard.

In 2003, the Court and its Judges disposed of more than 4,000 matters, including 176 appeals, 1,377 motions and 2,601 criminal leave applications. A detailed analysis of the Court's work follows.

## **A. Capital Case Matters**

### **1. Capital Appeals Pending**

The State Constitution and the death penalty statute provide a direct appeal to the Court of Appeals from a judgment of conviction and capital sentence. The first notice of appeal in a capital case under the 1995 statute was filed in August 1998 in the Kings County case of People v Darrel K. Harris. Since then, notices of appeal were filed in the following cases: in 1999, in



People v Angel L. Mateo (Monroe County), People v Robert Shulman (Suffolk County), People v Stephen LaValle (Suffolk County) and People v James F. Cahill, III (Onondaga County); in 2000, in People v Nicholson McCoy (Suffolk County); in 2003, in People v John Taylor (Queens County). No notices of capital appeal were filed in either 2001 or 2002.

In the five years since the first notice of capital appeal in People v Darrel K. Harris, the Judges and the Clerk's Office staff have handled a variety of novel and complex procedural and case management issues raised by parties to the capital appeals, by trial court clerks charged with insuring the accuracy and completeness of the records of the capital proceedings and by members of the public.

For each capital appeal, the Court issues an Initial Capital Appeal Management Order (see 22 NYCRR 510.8[a]), assigning counsel and setting dates for (1) transcription of all proceedings in the case, (2) furnishing to assigned counsel a copy of the record of proceedings, (3) settlement of the record by stipulation or the filing of a motion to settle the record, (4) filing and serving the settled record on appeal and (5) appellant's periodic progress reports on the production of the record on appeal. Thereafter, the Court issues a Final Capital Appeal Management Order (see 22 NYCRR 510.8[b]), which sets a briefing schedule for the parties and potential amici curiae and requires the filing of periodic reports on the progress of the appeal. To date, all Final Capital Appeal Management Orders in pending appeals have ordered the parties and amici not to brief issues regarding the proportionality or excessiveness of the sentence (CPL 470.30[3][b]) until so directed by the Court.

The Court heard oral argument of the appeal in People v Darrel K. Harris on May 6, 2002. The Court handed down its decision affirming the conviction and vacating the sentence on July 9, 2002 (see People v Darrel K. Harris, 98 NY2d 452).

Counsel presented oral argument to the Court in People v James F. Cahill, III on September 22, 2003. On November 25, 2003, the Court rendered its decision modifying the judgment by reducing appellant's conviction of two counts of murder in the first degree to one count of murder in the second degree, and remitting the matter to the trial court for resentencing (see People v James F. Cahill, III, \_\_ NY3d \_\_; 2003 NY Slip Op 18881; see also page 26 of this Report).

Oral argument of the appeal in People v Angel L. Mateo was heard on January 14, 2004. On February 24, 2004 the Court modified the judgment by vacating the death sentence (\_\_ NY3d \_\_; 2004 NY Slip Op 01143). The appeal in People v Stephen LaValle is scheduled for oral argument on April 26, 2004.

In 2003, an Initial Capital Appeal Management Order was issued in People v John Taylor, and a Final Capital Appeal Management Order was issued in People v Nicholson McCoy.

## **2. Administrative and Rulemaking Responsibilities**

The 1995 death penalty statute created significant responsibilities for the Court of Appeals, requiring substantial judicial and staff time and other resources in order to meet these obligations. A comprehensive list of tasks completed since 1995 in compliance with the statute, or to effectuate this Court's review of capital appeals, can be found in the Clerk's 2001 Annual Report.

In 2003, the Court amended various sections of its Rules of the Court of Appeals in Capital Cases (22 NYCRR part 510) and the Uniform Rules for the Trial Courts in Capital Cases (22 NYCRR part 218). The amendments improve the Court's ability to monitor and manage the appeal perfection process by requiring appellant's counsel to file periodic progress reports concerning the production of the record on appeal (Rule 510.8[a]) and counsel for both parties to file progress reports concerning the production of briefs (Rule 510.8[b]). The amendments also speed the record production process by requiring court reporters to keep electronic minutes of all capital proceedings occurring in the superior court (Rules 510.10[b] and 218.1[b]), and preserve privacy by mandating the parties to file separately, in clearly identified volumes, documents and transcripts ordered sealed by the courts below (Rule 510.11[c][1]). Rules 510.18[c] and 218.7[c] govern changes to capital case data reports to reflect a subsequent reversal or modification of the sentence imposed.

## **3. Counsel in Capital Matters**

The death penalty statute recognizes various resources for the assignment of counsel to indigent capital defendants, including the Capital Defender Office (CDO), institutional providers with which that agency contracts, and rosters of private ("35-b") attorneys (see Judiciary Law § 35-b[2]). To date, the Court has assigned the CDO to all pending capital appeals except that of People v Robert Shulman, to which The Legal Aid Society/Criminal Appeals Bureau was assigned.

The Standards for Appellate Counsel in Capital Cases (22 NYCRR 515.1) govern the qualification of private attorneys to serve as assigned capital appellate counsel. A private attorney may seek appointment as lead or associate counsel on a capital appeal by submitting to the CDO an application, on the form approved by the Administrative Board of the Courts and available from the CDO, with the required documentation and attachments. The CDO reviews each application and delivers all completed applications to the appropriate Appellate Division Departmental Screening Panel, together with a statement concerning the attorney's completion of the requisite training and the CDO's recommendation whether the attorney is qualified for appointment. Each Screening Panel designates those attorneys deemed qualified for appointment as capital appellate counsel and reports these designations to the Court of Appeals. The Court incorporates the names of the attorneys so designated into a roster of capital appellate attorneys and, thereafter, in its discretion, may assign attorneys from this roster to capital appeals.

Through 2003, Screening Panels had designated eighteen attorneys as qualified to serve as capital appellate or State post-conviction counsel.

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

The Court determines most appeals "in the normal course," meaning after oral argument and full briefing 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 fully 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, each appeal is assigned by random draw to an individual Judge 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 Judge taking the majority position who is seated immediately to the right of the reporting Judge assumes responsibility for the proposed writing, thus maintaining randomness in the distribution of 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.

The Court also employs the alternative track of sua sponte merits (SSM) review of submissions pursuant to 22 NYCRR 500.4. Through its SSM procedure, the Court decides a small number of appeals on written 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 fully conferenced and determined by the entire Court.

### **1. Calendar and Currency**

In 2003, litigants and the public continued to benefit from the prompt calendaring, hearing and disposition of appeals. The average period from filing of a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately 6.5 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 1.4 months, again about the same as in previous years. The average time from argument or submission to disposition of an appeal decided in the normal course was 36 days; for all appeals, the average time from argument or submission to disposition was 31 days.

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 2003

(including SSM appeals tracked to normal course) was 259 days. For all appeals, including those decided pursuant to the SSM procedure, those dismissed pursuant to Rule 500.3 sua sponte subject matter jurisdictional inquiries (SSD), and those dismissed pursuant to Rule 500.9 for failure to perfect, the average was 170 days. Thus, by every measure, the Court maintained exceptional currency in calendaring and deciding appeals in 2003.

## **2. Filings**

Two hundred eighty-five (285) notices of appeal and orders granting leave to appeal were filed in 2003 (290 were filed in 2002). Two hundred and thirty (230) filings were civil matters (the same number as in 2002), and 55 were criminal matters (compared to 60 in 2002). The Appellate Division Departments issued 28 of the orders granting leave to appeal filed in 2003 (11 were civil, 17 were criminal). Of these, the First Department issued 12 (6 civil and 6 criminal).

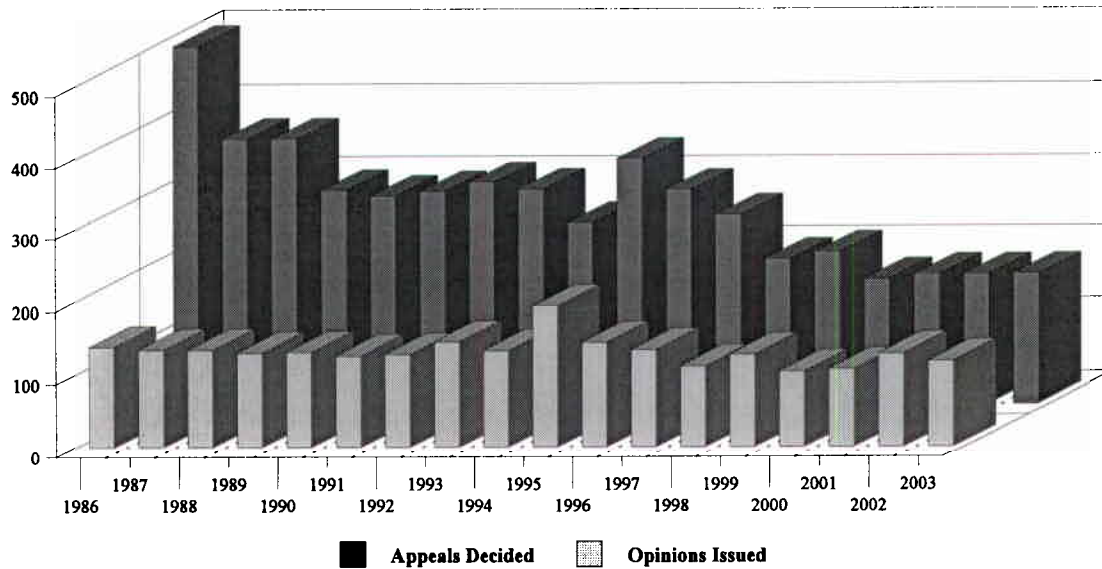
Motion filings decreased in 2003. During the year, 1,363 motions were filed, a decrease of 1.3% from the 1,381 motions filed in 2002. Motions for leave to appeal increased by approximately 4% in 2003, however, from 1,013 in 2002 to 1,053 in 2003. Criminal leave applications also declined in 2003. Two thousand five hundred and fifty-seven (2,557) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 48 fewer than in 2002. On average, the Judges were each assigned 397 such applications during the year.

## **3. Dispositions**

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

As in 2002, the Court decided 176 appeals in 2003 (130 civil and 46 criminal, compared to 109 civil and 67 criminal in 2002). Of these appeals, 156 were decided unanimously. The Court issued 110 full opinions, seven per curiam opinions, 43 memoranda and 16 decision list entries. Fifteen dissenting opinions and eight concurring opinions were written. The chart on the next page tracks appeals decided and full opinions issued since Laws of 1985, chapter 300 expanded the civil *certiorari* jurisdiction of the Court.

## Appeals Decided and Opinions Issued 1986-2003

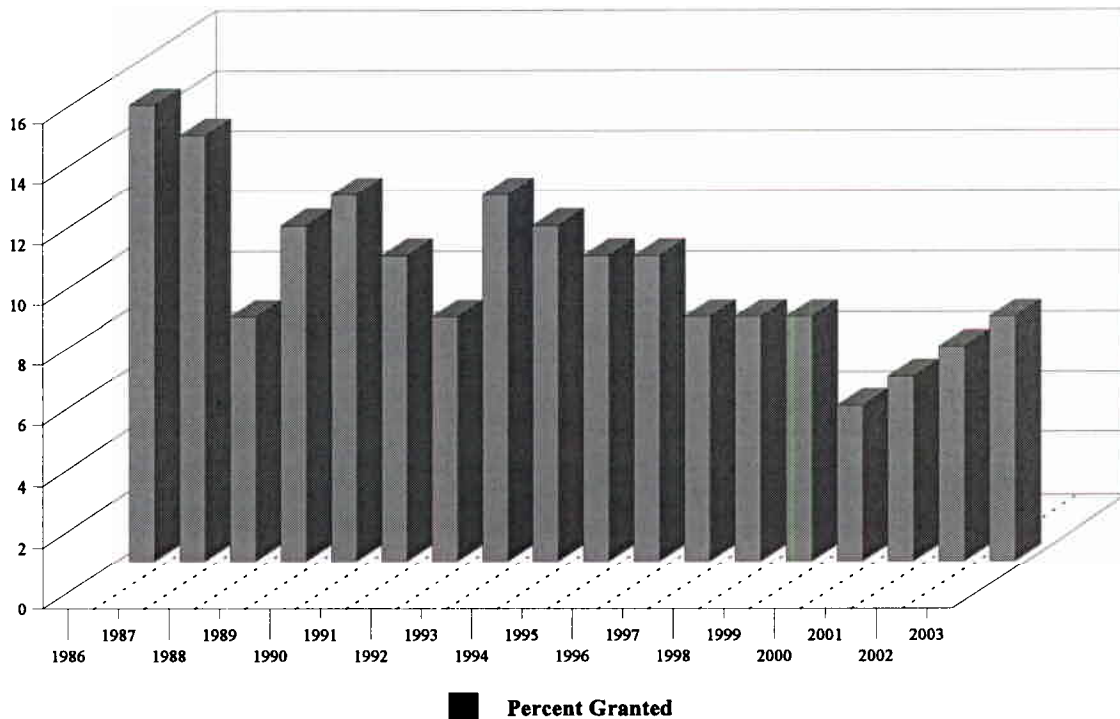


### (b) Motions

The Court decided 1,377 motions in 2003 -- 25 more than in 2002. 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 58 days, while the average time from return date to disposition for all motions was 50 days. The Court decided 1,047 motions for leave to appeal in civil cases during the year, 38 more than in 2002. Of these, the Court granted 8.2% (up from 7.1% in 2002), denied 74% (up from 71.8 % in 2002), and dismissed for jurisdictional defects 17.8% (down from 21.1% in 2002). 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.

Eighty-six civil motions for leave to appeal were granted in 2003. The Court's leave grants covered a broad range of subjects. Most prominent were issues addressing municipalities, and parent and child matters. The Court granted leave in cases involving lead paint, the Pothole Law, municipal tort liability and the defense of municipal employees, as well as issues concerning General Municipal Law § 207-c benefits. Movants raising parent and child issues such as grandparents' right to visitation, termination of parental rights and the Federal Parental Kidnapping Prevention Act were granted *certiorari*. Other issues on motions for leave to appeal frequently granted concerned zoning, prisoners and workers' compensation matters.

**Motions for Leave to Appeal Granted by Year  
1986-2003**

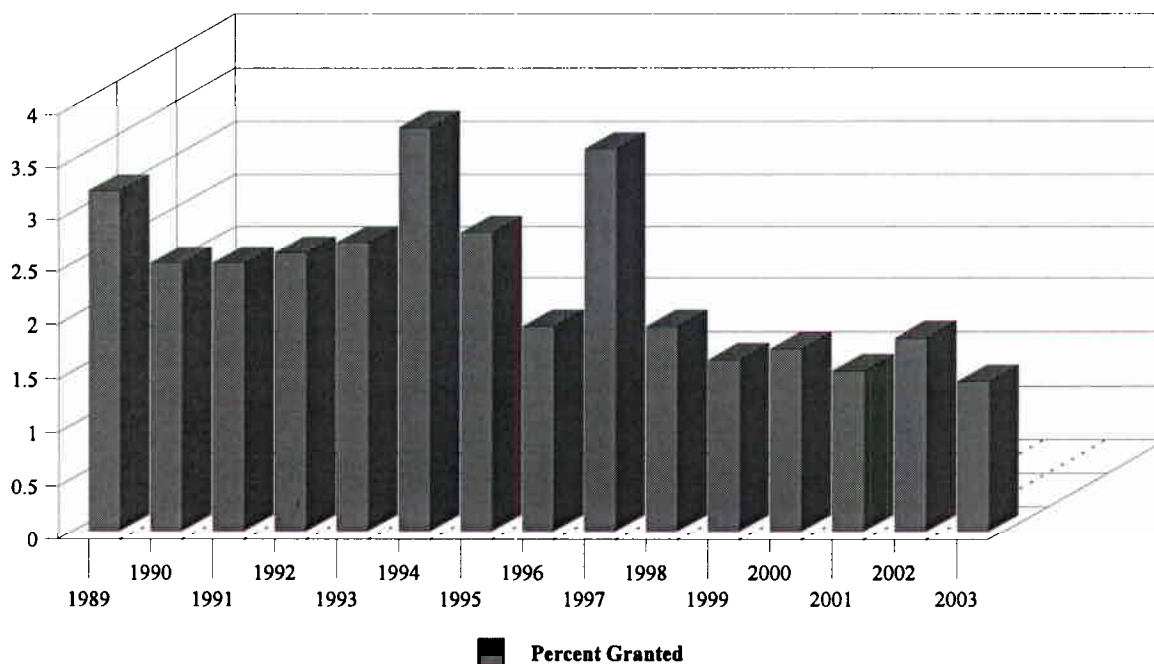


The 2000 Annual Report noted the Court's concern regarding the then- substantial decline in motions pursuant to Rule 500.11(e) for amicus curiae relief. That trend has been soundly reversed. In 2003, 105 motions for amicus curiae relief were filed, 93 of which were granted. Typically, motions for amicus curiae relief are denied where the movant has litigation of a similar nature pending in another New York State court. 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 37 of the 2,601 applications for leave to appeal in criminal cases decided in 2003 -- down from 46 such grants in 2002. One hundred and ninety-one applications were dismissed for lack of jurisdiction, and eight were withdrawn. Four of 44 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 fifteen years.

### **Criminal Leave Applications Granted by Year 1989-2003**



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 2003, 296 applications for leave to appeal from such orders were assigned to Judges of the Court. One such application was granted. Although the coram nobis legislation has generated many inquiries and applications for leave to appeal, its long-term effect on the Court's criminal docket cannot yet be predicted.

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. In 2003, on average, 67 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments.

#### **(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 (see generally NY Const, art VI, § 22; Judiciary Law § 44). In 2003, the Court reviewed six determinations of the State Commission on Judicial Conduct, accepting the recommended sanction of removal in four cases and the recommended sanction of censure in one case. The Court rejected the recommended sanction of removal in one case and imposed the sanction of censure. Pursuant to Judiciary Law § 44(8), the Court ordered the suspension of two judges, one without pay and one 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 SSM procedure (see Rule 500.4), the preferred method of handling is full briefing and oral argument on an expedited schedule. In 2003, the average period from receipt of initial certification papers to the Court's order accepting or declining review was 31 days. The average period from acceptance of a certification to disposition was eight months.

Three cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2002. In 2003, the Court answered the questions certified in two of the cases. After the United States Court of Appeals for the Second Circuit withdrew its certification, the certified question in the third case was marked withdrawn. Also in 2003, the Court accepted eight cases involving questions certified by that court, and one case

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\* In recent years, 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. Now chaired by Judge George B. Daniels of the United States District Court for the Southern District of New York, the Council addresses issues of mutual concern, and has sponsored a number of educational programs for the Bench and Bar. Associate Judge Albert M. Rosenblatt currently serves as the Court of Appeals representative to the Council.



involving a question certified by the United States Court of Appeals for the Third Circuit. One case was withdrawn, three were decided and five remained pending at the end of 2003.

### **C. Sua Sponte Monitoring of Subject Matter Jurisdiction and Merits Evaluation of Appeals (Rule 500.3 and Rule 500.4)**

#### **1. Rule 500.3 (Jurisdiction)**

The jurisdiction of the Court is narrowly defined by the State Constitution and applicable statutes. Following 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 identified jurisdictional issue. After the parties respond to the Clerk's inquiry, the matter is referred to the Central Legal Research Staff for preparation of a preliminary report prior to disposition by the full Court.

Reflecting the complexity of this Court's jurisdiction, in 2003, 76 appeals were subject to Rule 500.3 inquiry, of which all but seven were withdrawn, dismissed sua sponte or on motion, or transferred to the Appellate Division (14 inquiries were pending at year's end). The 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 whether an appeal is jurisdictionally defective and, hence, destined for dismissal or transfer by the Court.

#### **2. Rule 500.4 (Merits)**

Through the SSM procedure, the Court decides appeals expeditiously on written submissions without oral argument. Of the 285 appeals filed in 2003, 36 (12.6%) were initially selected to receive sua sponte merits consideration, a substantial increase from the number initially so selected in 2002 (7.6%). Of the 176 appeals decided in 2003, 25 (14.2%) were decided upon SSM review (10.2% were so decided in 2002).

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the external disposition of an SSM decided in 2003 was 116 days, much shorter than the average of 259 days for appeals heard in the normal course.

Eight of the 38 appeals selected in 2003 for SSM consideration were pending administratively at the end of the year. Two were administratively normal-coursed. The remaining 28 were submitted to the Court for SSM review. In addition to these 28 appeals, four appeals, initially selected in 2002 for SSM consideration, were assigned to the Court in 2003. Twenty-two (68.8%) of the 32 appeals assigned as SSMs in 2003 were decided on an SSM basis. Five (15.6%) were directed to full briefing and oral argument, and five (15.6%) SSMs remained pending on December 31, 2003.

In addition to the 22 appeals decided on SSM track in 2003 that had been submitted for review in 2003, three appeals assigned to the Court as SSMs in 2002 were decided in 2003. Of the 25 appeals decided on SSM submissions in 2003, 18 were civil appeals and seven were criminal appeals. Two were decided by signed opinion, 21 were decided in memoranda and two were decided in decision list entries. There was a dissent in one appeal. The other 24 decisions were unanimous. There were 14 affirmances, six reversals, two modifications and three dismissals.

#### **D. Court Rules**

Effective July 16, 2003, the Court of Appeals amended Rule 500.14 of its Rules of Practice (22 NYCRR part 500) regarding court fees. The revision was necessary to reflect amendments to CPLR 8022, which increased the filing fee for civil appeals to \$315 and instituted a filing fee of \$45 for civil motions.

Effective February 5, 2003, the Court amended various sections of its Rules of the Court of Appeals in Capital Cases (22 NYCRR part 510) and the Uniform Rules for the Trial Courts in Capital Cases (22 NYCRR part 218). See page 5 of this Report for a description of the amendments.

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

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

The Court's historic renovation and construction project continued to top the list of administrative matters in 2003. Under the vigilant supervision of the Court's Building Manager and Deputy Building Superintendent, construction began in earnest in 2002, and is expected to conclude in 2004. The Judges and staff moved back to Court of Appeals Hall in November 2003, having taken temporary residence in a suburban office park. The project has renovated approximately 60,000 square feet of the Courthouse interior, updating its electrical, plumbing, ventilation, heating and cooling systems. 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 2003, is essentially unchanged. The Dormitory Authority is serving 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 of the construction while maintaining a full range of services at the Court's temporary location. They, along with the entire Maintenance staff, are to be commended for their extraordinary efforts.

I am grateful that, throughout the construction project, the New York State Bar Association made its facility available to counsel preparing to present oral argument at the Courthouse. The Association also hosted spectators for simulcasts of several of the Court's high profile cases. I once again extend the thanks of the Court to our other 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 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 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. Members of the Clerk's Office staff also regularly participate in programs designed to educate the Bar about the Court's practice. In 2003, members of the Clerk's Office staff began a systematic review of the Court's Rules of Practice and of its case management system.

## **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 videotaping 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 schoolchildren 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 comprehensive Internet web site posts information about the Court, its Judges, 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 webcast of Chief Judge Kaye's 2003 and 2004 State of the Judiciary addresses are posted on the home page and the text of prior addresses can be reached through the "Court News" link. Webcasts of some oral arguments, including capital appeals in People v Darrel K. Harris, People v James F. Cahill, III (see the appeal summary on page 26) and People v Angel L. Mateo and school financing litigation in Campaign for Fiscal Equity v State and Paynter v State (see the appeal summaries on page 24), are also available. The address of the Court of Appeals web site is: <http://www.courts.state.ny.us/ctapps>.

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 2003.

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. Additionally, the Court Attorney for Professional Matters served on the State Bar's Special Committee on Multi-jurisdictional Practice and participated as a panel member on the Committee's program on Multi-jurisdictional Practice at the Annual Meeting of the New York State Bar Association.

### **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), selected appeals and certified questions for the full Court's review and deliberation. During 2003, Central Staff completed 1,026 motion reports, 54 SSD reports, 23 SSM reports and seven reports on certified questions. Throughout 2003, Central Staff maintained excellent currency in its work.

Staff attorneys also prepare research materials for use by the Judges' Chambers and the Clerk's Office and perform other research tasks as requested. In 2003, under the direction of the Chief Court Attorney and Deputy Chief Court Attorney, Central Staff revised the civil jurisdictional outline for external and internal use. The external version of the outline is posted on the Court of Appeals web site.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. In 2003, staff attorneys were graduates of Albany, Brooklyn, SUNY at Buffalo, Cornell University, CUNY at Queens, Pace University, Southern Illinois University, Syracuse University, Touro College, University of Miami and Western New England College law schools. Staff attorneys hired for 2004 will represent Albany, SUNY at Buffalo, Fordham University, St. John's University and the University of California at Davis law schools.

### **F. Library**

The law library fulfills 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 sources of law. Crucial to this endeavor is an in-house specialized full-text database 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 the necessary resources are in place when such matters come before the Court.

Collection development in the Courthouse library and in the Home Chambers libraries continued in 2003 -- 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 August 2003 Election Session.

In Fall 2003, the library collection moved from the Court's temporary location during construction to its new home on the third floor of the renovated Court of Appeals Hall. A series of interconnecting rooms, each named for a former Chief Judge of the Court of Appeals, constitutes the new library's space. Lit by large windows and furnished with shelving preserved during the renovation process, the new library was designed to provide optimal working space for research in the Court's constitutional, statutory and common law collections -- vital materials not available online. Additional rooms are devoted to the Court's treatise collection and its law review collection. The Conference Room collection on the second floor now consists of primary State and Federal materials.

In 2003, the library staff continued to maintain and augment several in-house databases. In all, 21 databases on *ISYS:web* are available to the Judges and staff, with others at the planning stage, including one of recent Court of Appeals records and briefs in digitized format. By December 2003, the full-text internal reports (1996-2004) database contained over 10,500 documents. As each Decision List is released, the library staff compiles internal reports by merging documents from several in-house databases, and the documents are then added to the *ISYS* reports database and transmitted electronically to the Law Reporting Bureau to facilitate the work of the Law Reporting Bureau legal editors. Since 2002, the library staff has been working to scan the 1900-1995 reports and, to date, over 7,869 have been processed. Work also continued on the Bill Jackets database, which contains electronic images of the Court's Bill Jackets files. These files, now numbering 1,511, are added to *ISYS:web*, transmitted to the Law Reporting Bureau for its internal use, and transmitted to the Office of Court Administration for inclusion in the LION information system.

In 2003, the Chief Legal Reference Attorney revised and updated a three-hour Corel Presentation program on *Constitutional, Statutory and Regulatory Intent, and Common Law Derivation*. This program and a one-hour interactive presentation on *ISYS:web* 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 2003.

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 2003. At the request of the State Library, the Court continued to ship the depository copy of records and briefs to West-CRS, Inc., which creates a digital microfiche copy of each document. This program facilitates widespread dissemination of the Court's 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.

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 continued to facilitate the Court's access to materials not part of its collection.

In 2003, the Chief Legal Reference Attorney remained a trustee of the Historical Society for the Courts of the State of New York. She is secretary of the Board of Trustees and chair of the Historical Society's Special Committee which developed the Society's web site ([www.courts.state.ny.us/history/](http://www.courts.state.ny.us/history/)). The Chief Legal Reference Attorney also served on the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System and was a member of the Court's Continuing Legal Education Committee.

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

In April 1999, the Court created a Continuing Legal Education (CLE) Committee to coordinate professional training, under the auspices of the Office of Court Administration, for Court of Appeals and Law Reporting Bureau attorneys. The membership of the Committee changes through the years as the terms of Court attorneys expire. The current Committee is chaired by a Senior Legal Editor from the Law Reporting Bureau. Other members include Judges' law clerks, the Chief Court Attorney, and the Chief Legal Reference Attorney. A Central Legal Research Staff secretary manages the Committee's CLE schedule and notifies the staff of upcoming classes. The secretary also prepares the paperwork necessary to comply with the rules of the Office of Court Administration and its CLE Board, and to properly credit attorneys for their attendance. To that end, the secretary maintains three interactive databases tracking the CLE classes offered by the Court, the Court attorneys eligible to attend classes, and the number of CLE credits each attorney has earned.

During 2003, the CLE Committee provided both live and videotape programs for Court of Appeals and Law Reporting Bureau attorneys, covering 38 credit hours (9 in ethics, 13 in skills and 16 in practice management/professional practice). Many of these attorneys taught accredited CLE classes for their colleagues. CLE topics in 2003 included ethics, legal research, capital appeals, criminal law and procedure, civil practice, employment law and subjects specially geared toward the work of Court attorneys.

### **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 distribution of 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 2003-2004 fiscal year budget appropriation of \$13,251,535. This figure included all judicial and nonjudicial staff salaries (personal services costs) and all other cost factors (non-personal services costs), including in-house maintenance of Court of Appeals Hall and of the Court's temporary offices during construction.

### **2. Budget Requests**

The total request for fiscal year 2004-2005 for the Court and its ancillary agencies is \$13,256,293, an increase of less than one percent over the current year's appropriation. The 2004-2005 personal services request of \$10,873,329 reflects a decrease of \$26,259 from the current year's appropriation. This request includes funding for all judicial and nonjudicial positions, as well as funding for salary increases for all eligible nonjudicial employees in accordance with collective bargaining contracts and administrative provisions, temporary services and overtime services.

The 2004-2005 non-personal services request of \$2,382,964 reflects an increase of \$31,017 over the current year's adjusted appropriation. The requested nonpersonal services appropriation of \$2,382,964 includes adjustments in court administration (\$35,694), and building maintenance operations (\$42,941) and decreases in legal reference (-\$40,452) and in the Law Reporting Bureau's requested appropriation (-\$7,166).

The modest increase in the budget request for fiscal year 2004-2005 illustrates the Court's diligent attempt 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 2003, the Court reported filing fees of \$250 for each of 63 civil appeals and of \$315 for each of 44 civil appeals, totaling \$29,610. Also, the Court reported filing fees



of \$45 for each of 383 motions, totaling \$17,235. The \$46,845 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 (\$4,804) and miscellaneous collections (\$2,679.67). For calendar year 2003, revenue collections totaled \$54,328.67.

## **J. Computer Operations**

The two-person Information Technology (I.T.) Department, which consists of a Principal PC Analyst and a LAN Administrator, oversees all aspects of the Court's computer operations, including a network connecting seven remote Chambers locations and a local network within Court of Appeals Hall.

The I.T. Department installs and supports -- and, in some cases, creates -- databases used by Judges and staff. Such databases include *ISYS:web*, a searchable database containing internal Court documents, available through the Intranet to all Court of Appeals employees in all locations; the AS/400 Case Management System; and several individual databases using Microsoft Access. I.T. also maintains a Help Desk for computer hardware and software technical support. Approximately 500 calls are answered and resolved each year. I.T. provides training in new software and hardware, now conducted in the Courthouse's new computer training room. Additional technical support is available to employees via the Court's Intranet.

The Court's move back from its temporary quarters provided the opportunity to replace obsolete hardware for all users. Old desktops and monitors were replaced and installation was completed by the end of the year. All equipment was inventoried, and obsolete equipment was surplused to the Unified Court System and other State agencies. The I.T. Department was instrumental in setting up the camera and card security systems in the renovated Courthouse, and will continue to maintain those systems for the Court. Electronic communication among the seven remote Judges Chambers throughout the State and Court of Appeals Hall was improved by a new fiberoptic network installed during construction.

The Department maintains the Court of Appeals Internet web site which offers immediate access to the latest decisions handed down by the Court, and other pertinent information of interest to the public (<http://www.courts.state.ny.us/ctapps>). In 2003, nearly 325,000 visits to the Court's website were recorded, averaging approximately 900 per day.

In cooperation with the Office of Court Administration's Department of Technology staff, I. T. produced three successful Internet webcasts during the year: Chief Judge Kaye's 2003 State of the Judiciary address, webcast on January 13, 2003, which received 390 requests to view; oral argument on May 8, 2003 in the school-finance appeals Campaign for Fiscal Equity v State (1389 requests) and Paynter v State (563 requests); and oral argument on September 22, 2003 in the capital appeal People v James F. Cahill, III (417 requests). The web site has been re-designed and will be published in its new format in early 2004.

## **K. Security Services**

Supervised by the Chief Security Attendant, five Security Attendants 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 its immediate surroundings. During 2003, Security Unit members participated in various security training sessions, including Court Officer Recertification Training and firearms requalification. The Building Guard staff was retrained and certified in mandatory security guard training.

I acknowledge and appreciate the presence and professionalism of the State Police Investigators assigned to Court of Appeals Hall in 2003.

## **L. Fire and Safety**

During 2003, the Fire and Safety Committee continued to monitor building safety requirements in all Court locations. Security Attendants maintain first aid equipment and a cardiac automatic defibrillator for the protection of staff and visitors, and are trained to administer first aid to ill or injured staff or visitors.

## **M. Personnel**

The following personnel changes occurred during 2003:

### **APPOINTMENTS:**

Cindy J. Hurd was employed as Court Building Guard in April 2003.

Yongjun Kong was employed as Senior Custodial Aide in August 2003.

Kevin P. Edwards was employed as Court Building Guard in September 2003.

### **PROMOTIONS:**

Scott A. Goldstein was promoted to Senior Security Attendant, Court of Appeals in January 2003.

Joseph H. Welch was promoted to Senior Court Building Guard in January 2003.

Carroll B. Alexander, Jr. was promoted to Senior Court Building Guard in January 2003.

Cynthia A. McCormick was promoted to Management Analyst in January 2003.

Cindy J. Hurd was promoted to Senior Court Building Guard in October 2003.

Cynthia D. Byrne was promoted to Senior Stenographer, Court of Appeals in October 2003.

Tammy L. Haas was promoted to Principal Assistant Building Superintendent in November 2003.

**RESIGNATIONS:**

Shannon D. Marshall, Court Building Guard, resigned on March 6, 2003.

Randy A. Bohannon, Senior Court Building Guard, resigned on August 21, 2003.

**CENTRAL LEGAL RESEARCH STAFF:**

**Appointments:**

Sebrina A. Barrett, Kevin T. Bezio, Linda M. Griggs, Thomas M. Kernan, Kristin A. Mattiske and Barbara B. Mistishen were appointed Court Attorneys in August 2003.

**Promotions:**

Heather A. Davis was promoted from Senior Court Attorney to Principal Court Attorney in August 2003. Jonathan M. Bernstein, Lisa J. Ross, Jaime Irene Roth, Stephen P. Sherwin and Kimberly A. Stock were promoted from Court Attorneys to Senior Court Attorneys in August 2003.

**Completion of Clerkship:**

Senior Court Attorney Molly Graver completed her Central Staff clerkship in April 2003. Principal Court Attorney Elizabeth Brace Cambria and Senior Court Attorneys Terrence J. Cortelli, Beth A. Diebel, Emily Morales and Sean D. Ronan completed their clerkships in August 2003. Ms. Morales is now a law clerk to Judge Ciparick.

## **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, and the many members of the Clerk's Office staff -- particularly James Costello, Susan Dautel, Hope Engel, Rosemarie Fitzpatrick and Paul McGrath -- who provided proofreading services. Marjorie McCoy's editorial work was invaluable. Brian Emigh and William Fitzpatrick oversaw production. A complete list of Clerk's Office, Building Maintenance and Judges' staffs appears in Appendix 11.

Notwithstanding challenging -- and often competing -- demands during the year 2003, the Judges and staff of the Court of Appeals strove to assure the fair and efficient administration of appellate justice. I commend the entire staff for providing the Judges of the Court, the Bar and the public both stability and exemplary service throughout the year.

### **III. 2003: Year in Review**

This section presents a snapshot of Court of Appeals decisions handed down in 2003. These decisions highlight the range of constitutional, statutory, regulatory and common law issues reaching the Court each year.

#### **Education**

##### Campaign for Fiscal Equity v State of New York (100 NY2d 893)

At issue in this landmark education case was whether the New York City public school system violated the State Constitution's guarantee of a sound basic education. The Court of Appeals held that the Constitution requires that schools provide an opportunity for students to receive a meaningful high school education, and agreed with the trial court that the New York City schools failed to meet this standard. The Court ordered the State, by July 30, 2004, to determine the cost of providing a sound basic education in New York City and enact appropriate reforms.

##### Paynter v State of New York (100 NY2d 434)

In a companion case to Campaign for Fiscal Equity (CFE), decided the same day, fifteen African-American schoolchildren in the Rochester School District claimed that the State's demographic practices and policies resulted in high concentrations of racial minorities and poverty in the school district, rendering the schools inadequate. In the absence of evidence that the school district's provision of inadequate resources caused the poor academic results (evidence that was proffered in CFE), the allegations were insufficient under the Education Article of the New York State Constitution, and the Court of Appeals affirmed an order dismissing the complaint.

#### **Judicial Conduct**

##### Matter of Watson (100 NY2d 290)

In this proceeding seeking review of a determination of the Commission on Judicial Conduct, the Court of Appeals rejected First Amendment challenges to the validity of New York's Code of Judicial Conduct. The Commission had recommended that a City Court judge be removed from office based on statements the judge made while a candidate for judicial office. The Court concluded that the judge's comments, in which he repeatedly promised voters that he would "work with" and "assist" police and other law enforcement personnel if elected to judicial office, violated the provision precluding judicial candidates from making pledges or promises of conduct in office that compromise the faithful and impartial performance of judicial duties. The Court reasoned that the pledges or promises rule does not violate the First Amendment because it is narrowly tailored to serve New York's compelling interests in preserving impartiality and openmindedness, and the appearance of impartiality and

openmindedness, in the State judiciary. Although the Court sustained the determination that the pledges or promises rule had been violated, the Court rejected the recommended sanction of removal, holding that censure was the appropriate sanction.

Matter of Raab (100 NY2d 305)

In this case, the Commission on Judicial Conduct determined that a Supreme Court justice engaged in improper political activity in the course of two campaigns for judicial office by actively campaigning for a legislative candidate, assisting party officials in screening other judicial and nonjudicial candidates and paying a substantial sum to a political party without verifying that the payment was used to cover only his own campaign expenditures. New York's Code of Judicial Conduct allows a judicial candidate to engage in conduct integral to the candidate's own campaign, but limits the extent to which a candidate may campaign on behalf of other candidates or general party objectives. The Court of Appeals rejected Justice Raab's First Amendment challenge to the validity of these rules, determining they are narrowly tailored to serve the State's compelling interest in preventing political bias and corruption, and the appearance of political bias and corruption, in the State judiciary. By engaging in conduct that went beyond that necessary or integral to his own campaign, Justice Raab violated the Code of Judicial Conduct and his conduct merited censure.

Matter of Washington (100 NY2d 873)

The Court of Appeals determined that petitioner's conduct in failing to render decisions in a timely manner, filing false quarterly reports and continuing this course of conduct despite the repeated efforts of her Administrative Judge to assist her, warranted the sanction of removal. Here, where the Commission granted petitioner's motion for reconsideration and adhered to its original determination, the Court also held that the evidence submitted in support of petitioner's motion to reconsider became part of the record of the proceedings before the Commission which the Court could consider when reviewing the imposed sanction.

## **Death Penalty**

People v Hansen (99 NY2d 339)

Defendant was charged with multiple crimes, including murder in the first degree, in connection with armed robberies of City of Albany taxi cab drivers. After the People withdrew their notice of intention to seek the death penalty, the jury convicted defendant of murder in the first degree (Penal Law § 125.27 [1] [a] [vii]) and robbery in the first degree (Penal Law § 160.15 [2]). Defendant argued at sentencing that CPL 400.27, as it pertains to sentencing in a noncapital case, deprives a defendant of due process of law in that it does not provide a separate sentencing hearing at which a noncapital offender may submit evidence of mitigating factors. County Court rejected defendant's argument and sentenced defendant to life without parole for the murder and 12½ to 25 years for the robbery. The Court of Appeals affirmed, holding that the due process guarantees of the New York and United States Constitutions do not require that a defendant convicted of noncapital first degree murder be afforded a mitigation hearing before sentencing even though a defendant convicted of capital murder would receive such a hearing. Emphasizing

that "death is different," the Court observed that defendant was not denied due process because the trial court sentenced defendant based on reliable and accurate information, and defense counsel was afforded notice and an opportunity to contest the facts upon which the sentencing court relied. The Court added that defendant's equal protection argument -- that he was entitled to a separate sentencing jury, which defendants subject to a death sentence would be afforded -- was unpreserved for its review.

People v Cahill ( \_\_ NY3d \_\_, 2003 NY Slip Op 18881)

Defendant was convicted of capital murder for poisoning his wife while she was in the hospital recovering from an assault he had inflicted on her several months earlier. After a separate sentencing hearing, the jury imposed the death penalty. The Court of Appeals determined that the proof at trial established an intentional murder, but one which did not qualify as a capital offense. The Court held that the prosecution's witness elimination theory was against the weight of the evidence. The Court also concluded that the prosecution's other basis for first degree murder -- a murder committed in furtherance of a burglary -- was not proved, because the burglary did not have an intent independent of the murder. The majority explained that "[d]efendant's trespass on the hospital premises was merely a prerequisite to his committing the murder -- an enabling measure that had no purpose or substance other than to serve his only goal, to kill his victim."

### **Family Law**

Silber v Silber (99 NY2d 395)

Decedent husband, on different occasions, designated both his current wife and his ex-wife beneficiaries of certain death benefits. His ex-wife had agreed to forfeit certain death benefits in a contractual agreement ultimately incorporated into a Qualified Domestic Relations Order (QDRO). Decedent did not properly alter the beneficiary designation as specifically required by his retirement plan, however. At issue on appeal was the validity of the ex-wife's waiver. The Court of Appeals held that the agreement incorporated into the QDRO sufficed to waive the benefits. In reaching its conclusion, the Court held that a QDRO is specifically excepted from ERISA preemption and, accordingly, under these facts, the waiver was effective.

Matter of Marino S. (100 NY2d 361)

Mindful of the Legislature's intent that the health and safety of children be paramount, and of the importance of permanency planning for children in foster care, the Court of Appeals gave retroactive effect to the new Federal Adoption and Safe Families Act (ASFA). The Court interpreted the relevant statutes to excuse diligent efforts to reunite families when a child has been severely abused by parents. In addition, for the first time, the Court recognized Family Court's authority to make derivative findings of severe abuse with respect to the siblings of a severely abused child (in this case, an eight-year-old raped by her mother's boyfriend).

Vernon v Vernon (100 NY2d 960)

This case involved a protracted and bitter custody dispute between a father who resided in New York and a mother who had relocated to Wyoming with the parties' minor child.

Pursuant to a settlement agreement incorporated into a New York divorce judgment, the mother had sole legal custody while the father had visitation rights. About nine years after the divorce, a New York court granted sole custody to the father after finding the mother in contempt for violating the father's visitation rights. The mother argued that New York had no jurisdiction under the Parental Kidnaping Prevention Act (PKPA). The mother also argued that under New York law, Domestic Relations Law § 75-(1)(b), the child had significant connections to Wyoming, not New York. The Court of Appeals held that under the PKPA, New York had jurisdiction because the father resided in New York and New York law authorized the exercise of jurisdiction. The Court held that the child's connection to New York was also significant. The Court upheld the change of custody as being in the child's best interest.

### **Constitutional Law**

#### Matter of Moran Towing Corp. v Urbach (99 NY2d 443)

Intervenors challenged portions of sections 301 and 301-a of the Tax Law as facially unconstitutional under the Commerce Clause. These sections impose a tax, for the privilege of doing business in New York, upon fuel imported for use by a vessel while engaged in interstate commerce within this State. The Court of Appeals rejected the facial challenge because a set of circumstances existed under which a substantial nexus between New York and the activity being taxed would exist.

#### Kennedy v Mossafa (100 NY2d 1)

In this case the purchaser of foreclosed property commenced an action against the property's former owner to quiet title. The former owner, in turn, commenced an action against the county arguing that its notice of tax delinquency did not comport with due process. The Court of Appeals held that due process was satisfied, even though the former owner did not learn of the proceedings because the county's notice was returned as undeliverable. Although the county must conduct a reasonable search of its public record, it is not required to search the Internet, which is where the purchaser's attorney had found the former owner. Here, a reasonable search of the public record would not have revealed the former owner's valid address. The former owner had not notified the county of her change of address and continued responding to tax invoices sent to the prior address.

#### Matter of Zelinsky v Tax Appeals Trib. of the State of New York (1 NY3d 85)

The Court of Appeals upheld the application of the "convenience of the employer" test -- whereby New York State taxes the income of nonresident New York employees who work out of State for their own convenience -- to a law professor who performed some of his ancillary duties at home in Connecticut. The Court determined that the tax did not violate the Commerce Clause or Due Process Clause of the United States Constitution.

#### Twin Lakes Dev. Corp. v Town of Monroe (1 NY3d 98)

The Town of Monroe had passed a local law requiring applicants for subdivision permits to pay certain fees in lieu of dedicating a portion of their property for recreational use and to



reimburse the Town for consulting fees incurred in processing the subdivision application. In this case, the developer of a 22-lot residential subdivision paid recreational fees and consulting costs under protest and then commenced a declaratory judgment action seeking to invalidate the two fees as unconstitutional. On appeal, the Court of Appeals held that the developer did not meet its burden to show that the per-lot recreation fee constituted an unconstitutional taking or violated procedural due process. In adopting its local law, the Town had made explicit findings that the demand for recreational facilities exceeded existing resources and that land values for suitable parkland had risen dramatically, thereby demonstrating a sufficient nexus between the purpose of the land-use condition and the fee. In addition, the developer failed to substantiate its claim that the fee was not proportional to the impact of its planned development on the recreational needs of the Town. With respect to the consulting fees, the Court rejected the developer's due process challenge, noting that the developer neither requested an audit of the consultant's expenses nor alleged that the fees were in fact unreasonable.

County of Nassau v Canavan (1 NY3d 134)

In a challenge to Nassau County's civil forfeiture provision, the Court of Appeals addressed the constitutionality of the forfeiture of defendant's car upon her arrest for drunk driving. Although concluding that the forfeiture did not constitute an excessive fine, the Court struck down the ordinance as violative of due process because it failed to afford a prompt post-seizure hearing in all cases.

## **Employment**

Horn v New York Times (100 NY2d 85)

At issue in this appeal was whether the at-will employment doctrine encompasses a physician employed by a nonmedical employer. The physician alleged that her position was eliminated because she refused to share employee health information with her employer without the employee's consent and in violation of patient confidentiality standards. The Court of Appeals declined to expand the narrow exception to the at-will employment doctrine adopted in Wieder v Skala (80 NY2d 628 [1992]) to cover the physician, whose medical work was undertaken in the service of her corporate employer. Unlike this physician-employee, the lawyer-employee in Wieder, who alleged that he had been fired after he tried to convince his law firm to report a colleague's disciplinary violations, was bound to his law firm-employer in a common professional enterprise.

Matter of Allen (Commissioner of Labor) (100 NY2d 282)

This appeal called upon the Court of Appeals to decide whether an employee who routinely worked from her residence in Florida via electronic linkup to her employer's workplace in New York was entitled to receive unemployment insurance benefits from New York when her employer terminated this "telecommuting" arrangement. Because the employee was physically present in Florida when she worked for her employer, her service was held to be "localized" in Florida within the meaning of the Labor Law. Thus, the employee was ineligible for unemployment benefits from New York.

## **Insurance Law**

### Belt Painting Corp. v TIG Ins. Co. (100 NY2d 377)

Ever since the early 1970's and environmental disasters such as Love Canal, the "pollution exclusion" -- a clause excluding coverage for pollution-related claims -- has been common in commercial insurance policies. Here, the question before the Court of Appeals was whether the clause excluded insurance coverage for personal injuries resulting from the inhalation of ordinary paint fumes. The insured prevailed, the Court having concluded that the pollution exclusion clause did not unambiguously apply to the inhalation injury.

## **Human Rights**

### Matter of Freudenthal v County of Nassau (99 NY2d 285)

In this declaratory judgment action, the Court of Appeals was asked whether the filing of a notice of claim is a condition precedent to administrative review of a Human Rights Law complaint. After termination of her employment by the Nassau County Department of Health, petitioner filed an administrative complaint with the New York State Division of Human Rights alleging that her employer had engaged in unlawful discriminatory practices. Despite a finding by the Division that probable cause existed to believe the employer had discriminated against petitioner, the Division notified her that it intended to dismiss her complaint because she failed to file a notice of claim with the County pursuant to County Law § 52(1). The Court determined that, in adopting article 15 of the Executive Law -- New York's Human Rights Law -- the Legislature created a unique forum for the adjudication of unlawful discrimination claims. The procedure for the filing of a complaint and the investigatory and administrative procedures conducted thereafter are prescribed in Executive Law § 297. When an aggrieved party opts to use the Division's administrative procedures, the complainant is precluded from seeking judicial relief while the claim is pending before the Division. Because the statutory prescriptions do not require the filing of a notice of claim as a condition precedent to seeking administrative relief, the Court concluded that dismissing petitioner's claim for failure to file a notice of claim was inappropriate.

## **Criminal Law**

### People v Barney (99 NY2d 367)

A building burglarized by defendant retained its character as a dwelling within the meaning of the Penal Law even though its sole occupant had passed away three days prior to the break-in. The Court of Appeals determined that several factors were relevant to whether a structure was "usually occupied by a person lodging therein at night," including the nature of the structure, whether it was fit for human habitation, the owner's intent to return, its immediate past use and whether it had been abandoned.

People v West (100 NY2d 23)

In this case, defendant was convicted, sentenced, informed of his right to appeal and, more specifically, how to apply for poor person relief. When he finally did seek permission to prosecute his appeal as a poor person more than fourteen years after his conviction and sentencing, the Appellate Division dismissed his appeal. The Court of Appeals affirmed the Appellate Division, holding that defendant abandoned his right to appeal when he failed to perfect for more than fourteen years. In so ruling, the Court rejected defendant's argument that an application for poor person relief is a critical stage of the criminal proceeding to which his Sixth Amendment and due process rights to counsel attached. The Court held defendant was provided all the process he was due and that the trial court had no obligation to appoint counsel for defendant to assist him in preparing his application for permission to appeal as a poor person.

People v Stuart (100 NY2d 412)

In this appeal, the Court of Appeals upheld Penal Law § 120.45, the anti-stalking statute, against a defendant's claim that the statute was unconstitutionally vague both on its face and as applied, and therefore void. In rejecting defendant's as-applied challenge, the Court reasoned that a "common understanding" of the statute's provisions gave defendant sufficient notice that his month-long pursuit of the complainant was unlawful, especially after she told him to desist. Continuing, the Court held that because the statute was constitutional as applied to defendant, it was also constitutional on its face.

People v Mendez (1 NY3d 15)

CPL 730.10 (1) specifies that defendants are incompetent to stand trial when they lack "capacity to understand the proceedings" against them or to assist in their own defense. This appeal raised the question whether a defendant with dissociative personality disorder, which caused her to manifest multiple personalities, could be deemed competent to stand trial. The Court of Appeals said yes, relying on the findings of the courts below which reflected the unanimous and uncontroverted testimony of three expert psychiatrists.

People v McDonald (1 NY3d 109)

This appeal raised the question whether, under certain circumstances, a defense counsel's incorrect advice as to deportation consequences may constitute ineffective assistance of counsel under the Federal Constitution. The Court of Appeals answered in the affirmative, applying the rule as articulated by the Federal circuits that the defendant must show that counsel made affirmative misstatements, and that such statements prejudiced the defendant. However, the Court concluded that in this case -- where defendant failed to make the requisite showing of prejudice arising from counsel's incorrect advice -- defendant was not deprived of the effective assistance of counsel.

People v Johnson (1 NY3d 252)

Defendant sought to suppress a loaded handgun the police found in the glove compartment of his car after he was stopped and placed under arrest for driving with a suspended license. The People argued that the gun was discovered pursuant to a proper inventory search. Reversing the Appellate Division, the Court of Appeals held that the People failed to offer sufficient evidence establishing that the officer conducted a proper inventory search. Among

other things, there was no evidence that the officer followed an established departmental policy, and he did not fill out an inventory list.

People v Mills (1 NY3d 269)

In March 2000, defendant was indicted for murder in the second degree for his role in the 1978 death of a 12-year-old drowning victim. Although the alleged crime occurred more than 20 years earlier, no statute of limitations exists for murder in the second degree. Before trial commenced and at the charge conference, defendant requested that lesser included offenses, such as criminally negligent homicide, be submitted to the jury. The trial court therefore instructed the jury to consider criminally negligent homicide as a lesser included offense of second degree murder. The jury acquitted defendant of murder but convicted him of the lesser offense. On appeal to this Court, defendant contended that he was entitled to have the verdict vacated and the indictment dismissed because he was overcharged by the grand jury, and a five-year statute of limitations barred his conviction for criminally negligent homicide. The Court of Appeals determined that where an indictment is based on legally sufficient evidence, a defendant waives or forfeits any statute of limitations defense in connection with a lesser crime by requesting that the court charge appropriate lesser included offenses to the jury. After concluding that the evidence presented to the grand jury was sufficient to sustain the depraved indifference murder charge, the Court upheld the conviction on the lesser offense.

### **Environmental Law**

Matter of Gordon v Rush (100 NY2d 236)

The Court of Appeals determined that the action of the Town of Southampton Coastal Erosion Board of Review, a positive declaration requiring the preparation and submission of a Draft Environmental Impact Statement, was ripe for review. Here, where the Department of Environmental Conservation (DEC) had previously issued a negative declaration, the Board's determination imposed an obligation inflicting an actual injury upon petitioners. The Court also determined that the Board was bound by the DEC's prior negative declaration because the DEC conducted an appropriate, coordinated review as lead agency and its decision was not arbitrary and capricious or irrational.

Matter of New York City Coalition to End Lead Poisoning v Vallone  
(100 NY2d 337)

Public interest, tenant and environmental organizations commenced litigation to compel the City of New York to enforce a local lead paint abatement law adopted in 1982. Instead, faced with growing public concern over the health risks caused by the removal of intact lead-based paint, the City Council drafted new abatement legislation aimed at the removal of peeling lead-based paint in dwelling units where a child under six years of age resides. Public hearings were conducted and eventually, in 1999, the City Council passed new legislation -- Local Law 138 -- together with a resolution declaring the legislation would have no significant impact on the environment. In this case, the Court of Appeals was asked whether the City Council complied with the State Environmental Quality Review Act (SEQRA) in enacting Local Law 138. The Court concluded that the City Council did not comply with SEQRA when it

issued the negative declaration on environmental impact, and Local Law 138 was therefore invalid. The Court explained that strict compliance with SEQRA required the designated governmental lead agency to consider relevant areas of environmental concern, evaluate whether the proposed legislation would have a significant adverse impact and issue a reasoned explanation underlying the determination.

Matter of Zaccaro v Cahill (100 NY2d 884)

The principal issue in this appeal was whether due process requires actual notice before the Department of Environmental Conservation (DEC) designates a landowner's property a wetland and places it on a freshwater wetlands map. Here, DEC followed the statutory notice provisions (written notice to owners of record as shown on the latest completed tax assessment rolls and to affected municipalities, as well as publication). The landowner did not receive written notice, however, because DEC used tax maps to relate its wetlands mapping to tax assessment rolls that did not show the landowner's parcel in the proper location. The Court of Appeals held that actual notice was not required because the statutory notice provisions are reasonably calculated to inform affected landowners that their property is located in a protected wetland.

### **Municipal Law**

Matter of Theroux v Reilly; Matter of Wagman v Kapica;  
Matter of James v County of Yates Sheriff's Dept. (1 NY3d 232)

These appeals addressed whether eligibility for benefits under General Municipal Law § 207-c is contingent upon the municipal employee's demonstrating an injury sustained in the performance of special work related to the heightened risks and duties inherent in law enforcement. The Court of Appeals held that section 207-c does not require such a "heightened risk" standard. Rather, to be eligible for these benefits, a covered municipal employee need only prove a direct causal relationship between performance of a job duty and the resulting injury or illness.

### **Torts**

Sprung v MTR Ravensburg, Inc. (99 NY2d 468)

Plaintiff sought compensation for injuries sustained when a retractable floor custom-built by defendant came out of its enclosure and fell on him while he was working underneath. Under general rules of strict liability, a manufacturer may be liable for injuries to any user of its product caused by a defect, regardless whether the manufacturer actually knows of the defect. The issue here was whether custom fabricators such as defendant are exempt from this rule because they only engage in one-time fabrication to suit a customer's specific needs. The injured plaintiff prevailed. As long as the product was built for market sale in the regular course of the manufacturer's business, the Court of Appeals held, strict liability can apply.

Giuffrida v Citibank Corp. (100 NY2d 72)

General Municipal Law § 205-a allows a firefighter to sue a party who, having violated an applicable statute or regulation, caused injury to the firefighter in the line of duty. The Court of Appeals held that plaintiff firefighter's case could proceed because a triable issue of fact existed whether defendant's violation directly or indirectly caused the injury. The Court also reaffirmed the proposition that comparative fault principles do not apply to actions brought under this statute.

Peralta v Henriquez (100 NY2d 139)

This appeal enabled the Court of Appeals to explore the extent to which property owners must illuminate their property to discharge their duty to provide safe premises. The plaintiff injured her eye on a rainy night when she quickly exited her parked car and ran through defendants' unpaved lot toward the rear entrance of the apartment building where she and her family were staying. During her attempt to maneuver around parked vehicles in the dark lot, plaintiff ran into a bent antenna on a third party's car. Plaintiff sued the owners of the parking lot where she parked her vehicle, contending that the owners had a general duty to illuminate the unpaved lot, the breach of which created a dangerous condition that caused her injury. The trial judge modified the prevailing Pattern Jury Instruction charge (PJI 2:91), which was based on Basso v Miller (40 NY2d 233), by deleting the reference that requires property owners have prior notice of a defective condition before they could be held liable. The Court disagreed, holding that landowners possess no general duty to illuminate their property during all hours of darkness. Rather, the scope of property owners' duty is measured by whether the property owners know or should know that existing lighting is inadequate given the use and design of the property. The Court reasoned that, in allegedly failing to adequately illuminate the lot, defendants did not create a dangerous condition relieving the plaintiff of having to prove that defendants knew or should have known that the existing lighting was inadequate in these circumstances.

Germantown Cent. School Dist. v Clark, Clark, Millis & Gilson (100 NY2d 202)

In 1985, the Germantown School District contracted with an architectural firm for oversight of an asbestos abatement project at one of its schools. The architectural firm, in turn, hired an engineering firm to provide consultant services. The following year, both firms certified that all asbestos removal work was completed and that no asbestos remained in the areas of the building covered by the contract. About thirteen years later, while engaged in a school renovation project, the district was advised that asbestos had been discovered in areas of the building previously declared asbestos-free. The district brought a malpractice action against the architectural and engineering firms. The question presented to the Court of Appeals was whether the district's claim accrued at the time of the alleged malpractice or upon discovery of the asbestos during the renovation project. The district asserted that its lawsuit was not barred by the three-year statute of limitations for malpractice actions set forth in CPLR 214(6) because its claim fell under CPLR 214-c, the three-year date of discovery statute of limitations for toxic torts. After reviewing the legislative history, the Court determined that section 214-c did not apply to plaintiff's claim because no damage to any person or to the school building had occurred since the asbestos was originally installed and, thus, no injury resulted from the latent effects of exposure to asbestos.

McNulty v City of New York (100 NY2d 227)

Plaintiff contracted meningitis from a friend whom she had taken to the hospital. Plaintiff allegedly asked defendant doctors treating her friend whether plaintiff needed treatment, and they allegedly responded that she did not. In granting summary judgment to the doctors, the Court of Appeals held that the doctors did not owe a duty to plaintiff because her injury did not arise from the doctors' treatment of her friend. In declining to extend their duty to cover plaintiff, the Court considered that plaintiff had approached the doctors, who had not met her until that time.

Blake v Neighborhood Hous. Servs. of N.Y. City (1 NY3d 280)

Labor Law § 240(1) imposes liability on building owners when workers engaged in certain enumerated, elevation-related risks suffer injuries due to the lack of appropriate safety precautions. The Court of Appeals held that the mere occurrence of an accident on a ladder or scaffold does not entitle a worker to recover under section 240(1). The Court stated that the judicially-imposed concept of absolute liability under the statute does not mean automatic liability but, rather, that once a violation and proximate cause are shown, a defendant may not be absolved in whole or part merely because the worker was also negligent. The Court further held that a nonprofit financing organization was not liable as an agent of the owner or contractor under the statute.

### **Civil Procedure**

Desiderio v Ochs (100 NY2d 159)

Plaintiff, through his mother, sued defendant hospital and a number of its doctors for medical malpractice. Plaintiff had suffered severe brain damage and defendants' liability was not at issue on this appeal. Instead, defendants challenged the proper application of the CPLR's structured judgments provision -- CPLR article 50-A. Ultimately, in accord with its previous interpretations of the statute, and in deference to the Legislature, the Court of Appeals applied article 50-A literally and upheld the jury's award.

### **Evidence**

States v Lourdes Hosp. (100 NY2d 208)

Applying the doctrine of *res ipsa loquitur* in the medical malpractice context, the Court of Appeals held that expert testimony is permitted to educate the jury on issues concerning the likelihood of a similar occurrence absent negligence. Expert testimony may not be used, however, as a means of alleviating plaintiff's burden of proving the requisite elements of *res ipsa*. In allowing expert testimony for this limited purpose, the Court aligned itself with the majority of jurisdictions that have already decided this issue.

## Trusts and Estates

### Eredics v Chase Manhattan Bank (100 NY2d 106)

A Totten trust -- dating back to the 1904 Court of Appeals decision Matter of Totten (179 NY 112) -- is a bank account with a named beneficiary who automatically receives the account proceeds upon the death of the depositor, much like a bequest. The relevant statute sets out precise standards for revocation by the depositor but is silent regarding waiver by the beneficiary. Guided by the legislative purpose behind the statutory scheme, as well as the goal of effectuating the clear intent of the parties, the Court of Appeals held that a beneficiary can waive the right to a Totten trust if the waiver is explicit, voluntary and in good faith.

## Administrative Law

### Matter of Medical Socy. of the State of New York v Serio (100 NY2d 854)

The Court of Appeals upheld regulations reducing the time frames in which to file notice and proof of claim for no-fault automobile insurance benefits. In rejecting petitioners' constitutional and statutory challenges, the Court held that the regulations did not violate separation of powers or improperly delegate rulemaking authority to private insurers, and were adopted in compliance with the State Administrative Procedure Act.

### N.Y.A.A.D., Inc. v State of New York (1 NY3d 245)

Dismantlers and recyclers in the business of selling salvaged airbags commenced a declaratory judgment action challenging the validity of the Airbag Safety and Anti-Theft Act. The Act made the offering for sale of salvaged air bags contingent on the Commissioner of Motor Vehicle's approval of certification procedures. Because no such procedures had been established, the Commissioner concluded that only new air bags could be used. NYAAD argued that the Commissioner's failure to promulgate regulations concerning certification standards for salvaged air bags rendered the Act null. The Court of Appeals concluded that the purpose of the Act was to "permit the sale of salvaged air bags only if enumerated conditions are met. If the conditions are not met, only new air bags are permitted."

### Bankers Trust Corp. v New York City Dept. of Fin. ( \_\_ NY3d \_\_, 2003 NY Slip Op 18876)

Bankers Trust sought a tax refund. In assessing its claim, the Court of Appeals clarified the distinction between the judicially-created "exhaustion of remedies" doctrine and a statutory "exclusive remedy" provision. Exhaustion of remedies is subject to several exceptions not applicable to an exclusive remedy provision. To bypass administrative remedies in the case of a statute with an exclusive remedy provision, a party must argue that the statute is either unconstitutional or wholly inapplicable. The Court held that an exclusive remedy provision applied here that Bankers Trust failed to utilize, and dismissed the complaint.



## **Workers' Compensation**

Matter of Losurdo v Asbestos Free; Matter of Machado v Pleasantville Ford  
(1 NY3d 258)

At issue in these appeals was whether the Workers' Compensation Law authorizes the Workers' Compensation Board to disqualify a claimant from receiving wage replacement benefits where the forfeited compensation is not "directly attributable" to a false statement or representation. The Court of Appeals held that the statute allows for penalties to be imposed where a compensable injury exists. This discretionary penalty is in addition to the mandatory penalty provided under the statute for compensation directly attributable to false statements or representations.

## **Landlord/Tenant**

40 W. 67th St. v Pullman (100 NY2d 147)

The Court of Appeals held that a residential cooperative corporation could evict a shareholder-tenant whose behavior was inordinately objectionable. The Court relied on the business judgment rule, as articulated in Levandusky v One Fifth Ave Corp. (75 NY2d 530), as the proper standard of review in the corporate governance context under RPAPL 711 (1). Here, the terms of the lease agreement allowed termination due to a tenant's "objectionable conduct," based on a two-thirds vote of the shareholders. The Court cautioned that such terminations must fall within the scope of the cooperative's authority, legitimately further corporate purposes and be made in good faith.

Domen Holding Co. v Aranovich (1 NY3d 117)

In this action for ejectment based on common law nuisance, the Court of Appeals held that the notice of termination at issue constituted a proper predicate for this ejectment proceeding pursuant to the Rent Stabilization Code. However, the Court concluded an issue of fact existed whether tenant's presence in the building resulted in a continuity of objectionable conduct for purposes of establishing nuisance.

Fullan v 142 East 27th Street Assoc. (1 NY3d 211)

The Court of Appeals held that, in distinction to rent overcharge cases in which current owners are liable for all overcharges, a current owner's liability for excess rent as determined by a fair market rent appeal (FMRA) is limited to situations where the current owner had an opportunity to participate in the FMRA proceeding. Here, where the current owner did not charge excess rent and had no chance to participate in the FMRA, and given no evidence of fraud, the current owner could not be held liable for the excess rent charged by previous owners.

## **IV. Appendices**

## **APPENDICES**

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  - Civil Appeals - Type of Disposition**
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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:  
Terry DiLeva (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.courts.state.ny.us/ctapps>**

**SUMMARY OF TOTAL APPEALS DECIDED IN 2003 BY JURISDICTIONAL PREDICATE**  
**January 1, 2003 through December 31, 2003**

**BASIS OF JURISDICTION: ALL APPEALS**

	TYPE OF DISPOSITION				Total
	Affirmance	Reversal	Modification	Dismissal	
Dissents in Appellate Division	14	3	3	0	20
Permission of Court of Appeals or Judge thereof	61	36	8	1	106
Permission of Appellate Division or Justice thereof	3	8	1	1	13
Constitutional Question	6	0	2	0	8
Stipulation for Judgment Absolute	0	0	0	0	0
Other	1	2	2 <sup>1</sup>	0	29 <sup>2</sup>
<b>Totals</b>	<b>85</b>	<b>49</b>	<b>16</b>	<b>2</b>	<b>176</b>

**BASIS OF JURISDICTION: CIVIL APPEALS**

	TYPE OF DISPOSITION				Total
	Affirmance	Reversal	Modification	Dismissal	
Dissents in Appellate Division	14	3	3	0	20
Permission of Court of Appeals	33	27	5	0	65
Permission of Appellate Division	0	8	1	0	9
Constitutional Question	6	2	0	0	8
Stipulation for Judgment Absolute	0	0	0	0	0
Other	1	2	1	0	28 <sup>2</sup>
<b>Totals</b>	<b>54</b>	<b>42</b>	<b>10</b>	<b>0</b>	<b>130</b>

**BASIS OF JURISDICTION: CRIMINAL APPEALS**

	TYPE OF DISPOSITION				Total
	Affirmance	Reversal	Modification	Dismissal	
Permission of Court of Appeals Judge	28	9	3	1	41
Permission of Appellate Division Justice	3	0	0	1	4
Other	0	0	1 <sup>1</sup>	0	1 <sup>1</sup>
<b>Totals</b>	<b>31</b>	<b>9</b>	<b>4</b>	<b>2</b>	<b>46</b>

<sup>1</sup> Includes People v Cahill, capital appeal

<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 2003

ALL APPEALS - % CIVIL AND CRIMINAL

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Civil	70% (146 of 208)	60% (102 of 170)	76% (134 of 176)	62% (109 of 176)	74% (130 of 176)
Criminal	30% (62 of 208)	40% (68 of 170)	24% (42 of 176)	38% (67 of 176)	26% (46 of 176)

CIVIL APPEALS - TYPE OF DISPOSITION

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Affirmed	45%	49%	40%	40%	42%
Reversed	37%	30%	37%	37%	32%
Modified	9%	7%	7%	8%	8%
Dismissed after Argument	1%	--	1%	2%	--
Other (e.g. judicial suspension; Rule 500.17 certified question)	8%	14%	15%	13%	18%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Affirmed	76%	69%	69%	69%	67%
Reversed	15%	20%	29%	28%	20%
Modified	8%	7%	2%	1.5%	9%
Dismissed	1%	4%	--	1.5%	4%

**CIVIL APPEALS DECIDED - JURISDICTIONAL PREDICATES**

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<b>Appellate Division Dissents</b>	9% (13 of 146)	9% (9 of 102)	11% (14 of 134)	16.5% (18 of 109)	16% (20 of 130)
<b>Court of Appeals Leave Grants</b>	63% (93 of 146)	56% (57 of 102)	47% (63 of 134)	55% (60 of 109)	50% (65 of 130)
<b>Appellate Division Leave Grants</b>	13% (19 of 146)	12% (13 of 102)	19% (26 of 134)	8.25% (9 of 109)	7% (9 of 130)
<b>Constitutional Question</b>	4% (6 of 146)	9% (9 of 102)	6% (8 of 134)	4.5% (5 of 109)	6% (8 of 130)
<b>Stipulation for Judgment Absolute</b>	1% (1 of 146)	--	--	--	--
<b>CPLR 5601(d)</b>	2% (3 of 146)	--	2% (3 of 134)	3% (3 of 109)	2% (3 of 130)
<b>Supreme Court Remand</b>	--	--	--	--	--
<b>Judiciary Law § 44</b>	3% <sup>1</sup> (4 of 146)	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)
<b>Certified Question from Federal Court (Rule 500.17)</b>	5% <sup>2</sup> (7 of 146)	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)
<b>Other</b>	--	--	--	--	1% (1 of 130) <sup>3</sup>

<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>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<b>Permission of Court of Appeals Judge</b>	76% (47 of 62)	81% (55 of 68)	74% (31 of 42)	73.1% (49 of 67)	90% (41 of 46)
<b>Permission of Appellate Division Justice</b>	24% (15 of 62)	18% (12 of 68)	26% (11 of 42)	25.4% (17 of 67)	8% (4 of 46)
<b>Other</b>		1% (1 of 68)		1.5% (1 of 67)	2% (1 of 46) <sup>1</sup>

<sup>1</sup> People v James Cahill, capital appeal

**MOTION STATISTICS (1999 - 2003)**

Motions Undecided as of January 1, 2003 - 109

Motion Numbers Used in 2003 - 1363

Motions Undecided as of December 31, 2003 - 71

Motion Dispositions During 2003 - 1377

	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<b>Motion Numbers Used for Calendar Year</b>	1505	1461	1439	1381	1363
<b>Motions Decided for Calendar Year</b>	1522	1393	1474	1352	1377
<b>Motions for leave to appeal</b>	1209*	1088*	1115*	1013*	1053*
granted	94	54	72	71	86
denied	822	809	824	724	774
dismissed	288	223	215	213	187
withdrawn	5	2	4	5	6
<b>Motions to dismiss appeals</b>	15	4	5	10	13
granted	10	2	3	2	7
denied	5	2	2	8	6
dismissed	0	0	0	0	0
withdrawn	0	0	0	0	0
<b>Sua Sponte and Court's own motion dismissals</b>	110	107	102	100	89
<b>TOTAL DISMISSAL OF APPEALS</b>	120	109	105	102	96
<b>Motions for reargument of appeal</b>	9	8	20	11	7
granted	0	0	0	0	0
<b>Motions for reargument of motion</b>	71	56	64	52	59
granted	0	0	1	3	0
<b>Motions for extension of time to move for reargument</b>	1	0	0	0	0
granted	1	0	0	0	0
<b>Motions for assignment of counsel</b>	40	37	48	40	38
granted	40	37	45	37	24
Legal Aid	13	13	17	10	12
denied	0	0	3	2	2
dismissed	0	0	0	1	0

APPENDIX 7 (continued)

	1999	2000	2001	2002	2003
Motions to waive rule compliance granted	2 1	3 2	4 2	2 1	0 0
Motions for poor person status granted	80 1	71 1	64 1	53 0	82 0
Motions for poor person status denied	0	0	0	0	0
Motions for poor person status dismissed	79	70	63	53	82
Motions to vacate dismissal/preclusion granted	0 0	5 2	1 1	1 0	1 0
Motions for calendar preference granted	6 2	6 0	4 1	3 1	1 0
Motions for amicus curiae status granted	87 69	59 50	110 94	112 91	105 93
Motions for Executive Law § 71 Order (AG)	0	5	1	3	4
Motions for leave to intervene granted	3 2	0 0	1 1	1 0	4 1
Motions to stay/vacate stay granted	29 0	26 1	23 2	21 1	26 2
Motions to stay/vacate stay denied	0	3	2	4	3
Motions to stay/vacate stay dismissed	29	22	19	16	21
Motions to stay/vacate stay withdrawn	0	0	0	0	0
Motions for CPLR 460.30 extension granted	33 27	38 28	32 26	37 34	37 27
Motions to strike appendix or brief granted	3 2	5 0	0 0	8 2	5 1
Motions to amend remittitur granted	2 0	1 0	2 0	0 0	0 0
Motions for miscellaneous relief granted	18 3	25 5	20 2	14 1	15 2
Motions for miscellaneous relief denied	12	14	14	9	8
Motions for miscellaneous relief dismissed	3	4	3	3	5
Motions for miscellaneous relief withdrawn	0	2	1	1	0
Withdrawals/substitution of counsel granted	0 0	1 1	1 1	0 0	3 3
Withdrawals/substitution of counsel denied	0	0	0	0	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>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<b>TOTAL APPLICATIONS ASSIGNED:</b>	2815	2920	2827	2605	2557
<b>TOTAL APPLICATIONS DECIDED:</b>	2799 <sup>1</sup>	2863 <sup>1</sup>	2840 <sup>1</sup>	2724 <sup>1</sup>	2601 <sup>1</sup>
<b>TOTAL APPLICATIONS GRANTED:</b>	44	51	43	46	37
<b>TOTAL APPLICATIONS DENIED:</b>	2512	2579	2604	2493	2365
<b>TOTAL APPLICATIONS DISMISSED:</b>	229	221	187	179	191
<b>TOTAL APPLICATIONS WITHDRAWN:</b>	14	12	6	6	8
<b>TOTAL PEOPLE'S APPLICATIONS:</b>	54	68	62	59	44
<b>(a) GRANTED:</b>	5	7	10	9	4
<b>(b) DENIED:</b>	42	54	49	45	36
<b>(c) DISMISSED:</b>	1	3	1	4	1
<b>(d) WITHDRAWN:</b>	6	4	2	1	3
<b>AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE</b>	402	448 <sup>2</sup>	404	388 <sup>3</sup>	397 <sup>4</sup>
<b>AVERAGE NUMBER OF GRANTS FOR EACH JUDGE</b>	6	8	6	7	5

<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 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

2003

THRESHOLD REVIEW OF SUBJECT MATTER  
JURISDICTION BY THE COURT OF APPEALS

	SSD (sua sponte dismissal) - Rule 500.3				
	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Total Number of Inquiry Letters Sent	106	108	91	94	76
Appeals Dismissed on Motion	12	3	3	11	9
Appeals Dismissed on Consent	1	2	2	0	0
Appeals Withdrawn or Discontinued on Stipulation	4	5	5	3	2
Dismissed by Court sua sponte	57	65	64	55	42
Transferred sua sponte to Appellate Division	3	4	2	3	2
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)	10	7	6	9	3
Jurisdiction Retained - appeals decided (or withdrawn)	4	0	2	0	4
Inquiries Pending	15	22	9	13	14

**OFFICE FOR PROFESSIONAL MATTERS STATISTICS**

<u>TOPIC</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<b>Attorneys Admitted (OCA)<sup>1</sup></b>	7725	7194	7440	8006	8247
<b>Certificates of Admission</b>	171	164	150	82	118
<b>Clerkship Certificates</b>	7	12	4	10	6
<b>Petitions for Waiver</b>	163	149	144	170 <sup>2</sup>	149 <sup>3</sup>
<b>Written Inquiries</b>	193	116	150	132	93
<b>Disciplinary Orders/Name Changes</b>	966 <sup>4</sup>	842 <sup>4</sup>	954	1636	796 <sup>4</sup>

<sup>1</sup>The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (see Judiciary Law § 68-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**  
**Asiello, John P. - Assistant Consultation Clerk, Court of Appeals**  
**Barrett, Sebrina - Court Attorney, Court of Appeals**  
**Beachel, Sue E. - Secretary to Judge Wesley (resigned 12/3/03)**  
**Beard, Dorothy - Secretary to Chief Judge Kaye**  
**Bernstein, Jonathan M. - Senior Court Attorney, Court of Appeals**  
**Bezio, Kevin T. - Court Attorney, Court of Appeals**  
**Bohannon, Lisa - Principal Stenographer, Court of Appeals**  
**Bohannon, Randy A. - Senior Court Building Guard (resigned 8/21/03)**  
**Bowler, Anne Marie - Law Clerk to Chief Judge Kaye**  
**Byrne, Cynthia D. - Senior Stenographer, Court of Appeals**  
**Calacone, Stephen F. - Clerical Research Aide**  
**Call, Gregory A. - Senior Law Clerk to Chief Judge Kaye (resigned 9/22/03)**  
**Cambria, Elizabeth Brace - Principal Court Attorney, Court of Appeals (resigned 8/14/03)**  
**Cannataro, Anthony - Principal Law Clerk to Judge Ciparick (resigned 9/8/03)**

**Appendix 11 (Continued)**

**Carney-Cole, Kathryn M. - Law Clerk to Judge Wesley (resigned 6/27/03)**  
**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**  
**Cortelli, Terrence James - Senior Court Attorney, Court of Appeals (resigned 8/14/03)**  
**Costello, James A. - Assistant Deputy Clerk, Court of Appeals**  
**Curley, Maria E. - 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**  
**Diebel, Beth A. - Senior Court Attorney, Court of Appeals (resigned 8/14/03)**  
**DiLeva, Terry J. - Prisoner Applications Clerk**  
**Dimino, Michael R. - Senior Law Clerk to Judge Rosenblatt (resigned 8/9/03)**  
**Donnelly, William E. - Principal Custodial Aide**  
**Dragonette, John M. - Senior Court Building Guard**  
**Duncan, Priscilla - Secretary to Judge Read**  
**Dunn, Matthew R. - Principal Law Clerk to Judge Graffeo**  
**Edwards, Kevin P. - Court Building Guard**



Appendix 11 (Continued)

Eddy, Margery Corbin - Principal Law Clerk to Judge Graffeo  
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  
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  
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  
Graver, Molly - Senior Court Attorney, Court of Appeals (resigned 4/16/03)  
Green, Kevin A. - Senior Law Clerk to Judge G. B. Smith  
Griggs, Linda M. - 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

**Appendix 11 (Continued)**

**Hurd, Cindy, J. - Senior Court Building Guard**

**Ignazio, Andrea R. - Senior Stenographer, Court of Appeals**

**Jackson, Deidre - Principal Law Clerk to Judge G. B. Smith (resigned 4/23/03)**

**Johnson, Cara E. - Law Clerk to Judge Read**

**Joyce, Jean - Principal Law Clerk to Chief Judge Kaye**

**Kearns, Ronald J. - First Assistant Building Superintendent**

**Kehn, Patricia Ann - Principal Stenographer, Court of Appeals**

**Kernan, Thomas M. - Court Attorney, Court of Appeals**

**Kleemann, Sarah W. - Principal PC Analyst**

**Klein, Andrew W. - Consultation Clerk, Court of Appeals**

**Kong, Yongjun - Senior Custodial Aide**

**Lawrence, Bryan D. - Local Area Network Administrator**

**LeCours, Lisa A. - Principal Law Clerk to Judge Graffeo**

**Lenart, Margaret S. - Principal Stenographer, Court of Appeals**

**MacPhee, Concetta J. - Principal Assistant Building Superintendent**

**Maier, Sr., Joseph J. - Principal Custodial Aide**

**Mandelbaum, Robert M. - Law Clerk to Chief Judge Kaye**

**Marshall, Shannon D. - Court Building Guard (resigned 3/6/03)**

**Martinez, Cristina Baiata - Principal Law Clerk to Judge Ciparick (resigned 3/31/03)**

**Mattiske, Kristin A. - Court Attorney, Court of Appeals**

**Mayo, Michael J. - Deputy Building Superintendent**

Appendix 11 (Continued)

**McAllister, Ryan T. - Law Clerk to Judge Wesley (resigned 6/20/03)**

**McClymonds, James T. - Principal Law Clerk to Judge Read (resigned 3/8/03)**

**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. - Court Attorney, Court of Appeals**

**Moore, Travis R. - Senior Security Attendant, Court of Appeals**

**Morales, Emily - Principal Law Clerk to Judge Ciparick; Senior Court Attorney, Court of Appeals**

**Morris, Matthew J. - Senior Law Clerk to Chief Judge Kaye (resigned 6/27/03)**

**Muller, Joseph J. - Assistant Building Superintendent I**

**Murray, Elizabeth F. - Chief Legal Reference Attorney, Court of Appeals**

**Natalizio, Nicholas M. - Senior Security Attendant, Court of Appeals**

**O’Friel, Jennifer A. - Senior Law Clerk to Judge Ciparick**

**Paglia, Paul J. - Senior Court Building Guard**

**Paisley, Daniel J. - Law Clerk to Judge Rosenblatt**

**Pepper, Francis W. - Principal Custodial Aide**

**Ragonese, Carmela - Senior Custodial Aide**

**Ravida, Tina - Senior Custodial Aide**

**Reyes, Michael - Senior Law Clerk to Judge G. B. Smith**

**Ronan, Sean D. - Senior Court Attorney, Court of Appeals (resigned 8/14/03)**

Appendix 11 (Continued)

**Ross, Lisa J. - Senior Court Attorney, Court of Appeals**  
**Roth, Jaime I. - Senior Court Attorney, Court of Appeals**  
**Rubinstein, Jason C. - Law Clerk to Judge Rosenblatt**  
**Schwitzer, Lisa M. - Senior Law Clerk to Chief Judge Kaye (resigned 4/26/03)**  
**Seeliger, Bruce - Principal Law Clerk to Judge Read**  
**Sherwin, Stephen P. - Senior Court Attorney, Court of Appeals**  
**Shufelt, Sr., Theodore J. - Assistant Building Superintendent I**  
**Somerville, Robert - Senior Court Building Guard**  
**Spencer, Gary H. - Public Information Officer**  
**Steward, Priscilla I. - Law Clerk to Judge G. B. Smith**  
**Stock, Kimberly A. - Senior Court Attorney, Court of Appeals**  
**Taylor, William K. - Senior Law Clerk to Judge Wesley (resigned 6/20/03)**  
**Tierney, Inez M. - Secretary to Judge Rosenblatt**  
**Torres, Gabriel - Senior Law Clerk to Judge Rosenblatt (resigned 8/9/03)**  
**Wasielewski, John P. - Chief Security Attendant, Court of Appeals**  
**Welch, Joseph H. - Senior Court Building Guard**