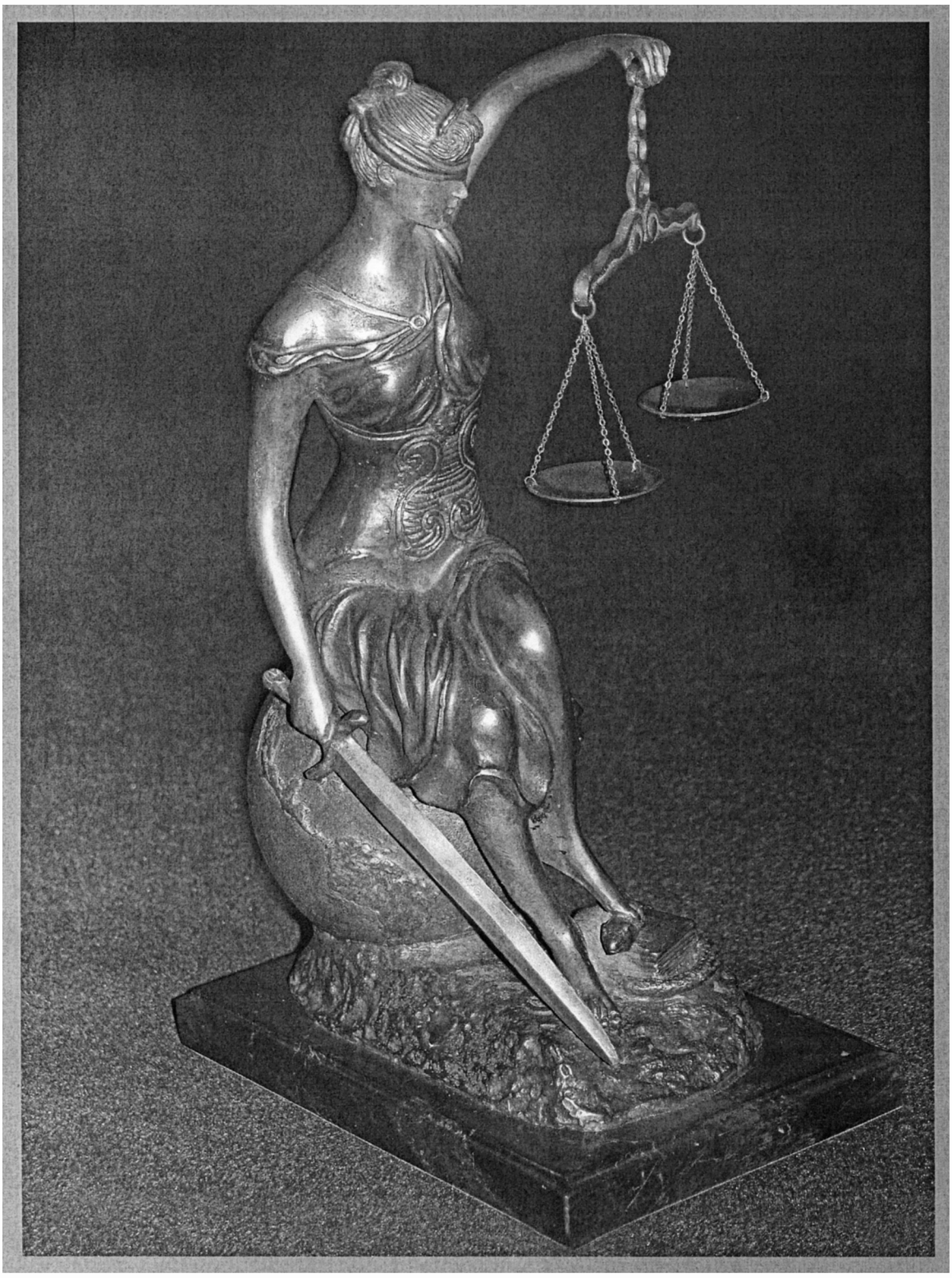

Annual Report
of the
Clerk of the Court
2007

2007

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

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Stuart M. Cohen
Clerk of the Court
Court of Appeals

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State of New York,
Court of Appeals,

Court of Appeals Hall
Albany, New York 12207

Judith S. Kaye
Chief Judge

March 2008

When Stuart Cohen asked if I wanted this year--my last as Chief Judge--to write the Foreword to the Annual Report, I declined. After writing the Foreword in 1993--my first year as Chief Judge--I decided to pass the privilege around the Conference Table, and this year it falls to Judge Pigott. As I told Stuart, I suspect I will have many other opportunities before December 31 to say farewell.

But then I changed my mind, and took the pen from Judge Pigott. Reading the Report reminded me of the very reason I decided to share authorship of the Foreword with my Colleagues: there is no better backdrop than this full-year snapshot to convey the life we enjoy on the Court of Appeals. We all feel pride in the institution, and this is a great way to express it, as I know Judges Pigott and Jones will in years ahead.

Just the other day, I ran into a noted lawyer who recently made her first appearance in our Court. She was overflowing with enthusiasm about two aspects of her experience. The first was the argument itself. She was exuberant about the striking beauty of our courtroom, the high level of exchange between counsel and the Court (invariably consummately prepared on every case), and the extraordinary professionalism of Court personnel. Second, she was pleased and surprised, only weeks after the argument, to receive a full opinion deciding her case.

In fact, I know no other courtroom as beautiful as ours; and I know no other court with our "remarkable tradition of prompt calendaring, hearing and disposition of appeals" (Annual Report, p 5). Thirty-five days, on average, from argument to disposition of the case! That has been the tradition all my years with the Court. The times have been rare indeed, even before our change to "cert" jurisdiction, when a case has been held over more than one Session, evidencing enormous diligence on the part of the Court, and a great service to the litigants, to the law and to the public.

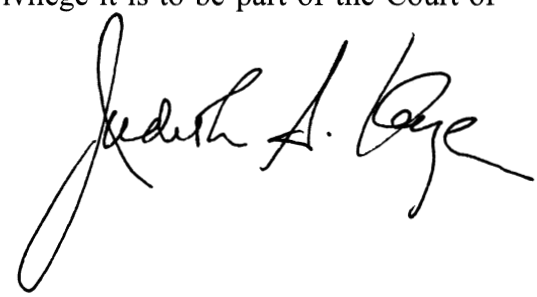
What my new friend did not know, but the Report lays out in detail, is how comprehensive our docket is--whether the issue is civil or criminal; constitutional, statutory, regulatory or common law--reaching into every aspect of life. In 2007, just under 200 appeals were decided, overwhelmingly unanimous, which is about average over the past decade.

Studying the sample of cases (Annual Report, pp 21-40) brought back memories of the year's docket--from Administrative Law and drivers' licenses for applicants without Social Security numbers, to Commercial Law and a definition of "securities" under the Uniform Commercial Code, to the Death Penalty full argument day, to Family Law and grandparent visitation, to Labor Law and collective bargaining, to the Religious Corporation Law and judicial intrusion into matters of religious doctrine, to Torts and a fall on subway stairs, to the exclusivity provisions of the Workers' Compensation Law--and everything in between. There is hardly a subject of law that we do not encounter in our cases. And I have not even touched on the boundless variety of the thousands of motions, criminal leave applications and other matters described in the Report, each handled with care and respect, as they so fully deserve.

This is indeed "Lawyer Heaven" for those of us serving here, but even more this is a tribunal of immense significance to the daily lives of our citizenry.

Central as the effective disposition of matters before us is, in studying the Report I lingered longest over the personnel parts (pp 18-19 and Appendix 11), where we are most fortunate of all to work with, and among, people of phenomenal ability and dedication. Over the past 24-plus years, we have shared the heights and depths of personal and professional pleasures and challenges. Whether in maintenance of the building, or the docket, or innumerable other projects, activities and initiatives, our lives are so intertwined. Impossible as it will be to replace the substance of our work in my "next life," leaving the people at Court of Appeals Hall will be hardest of all.

No, there will not be another opportunity like this one to say, with the Annual Report as the ultimate demonstrative evidence, what a privilege it is to be part of the Court of Appeals of the State of New York.



2007

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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Introduction

Twenty-four years ago, the newly appointed Clerk of the Court, Donald M. Sheraw, presented his first Annual Report to the Court of Appeals. Page three of that report noted simply that "[t]he appointment of Associate Judge Judith S. Kaye on September 12, 1983 returned the Court to full complement." Ten years later, as the Court's new Chief Judge, Judith Kaye penned the preface to Mr. Sheraw's 1993 Annual Report, observing that "[i]n a time of public cynicism and discontent about government, it seems to me that the Court does an effective job of discharging its important societal function of settling and declaring the law with care, integrity and efficiency."

Today, another 14 years later, following reappointment by the Governor in March 2007, Judith Kaye remains the Chief Judge. Sadly, due to a State constitutional age limitation on service by Court of Appeals Judges, this is the last time an Annual Report will be submitted to a Court Judith Kaye leads.

Much has changed in the 24 years Judith Kaye has served on the Court of Appeals. The Legislature amended the Court's civil jurisdiction in 1985, and the Court quickly became a primarily "certiorari court." The number of appeals as of right dropped drastically, the numbers of civil motions for leave to appeal and criminal leave applications climbed, and a significant number of questions have been certified to the Court by the federal courts. With the Chief Judge's express encouragement, the cohort of amici curiae appearing before the Court has more than doubled. The Court sat outside of Albany three times, something it had not done for decades.

There have been physical changes, as well, during the Kaye tenure. Court of Appeals Hall was gutted completely and rebuilt. A lecture series was commenced to bring the

public into the building and into the work of the Court. An historic building across the street from the Courthouse is currently being rehabilitated to house Court-related offices and a law museum.

Most significant have been the personnel changes. Judge Kaye served under Chief Judges Lawrence H. Cooke and Sol Wachtler, and has sat with 18 Associate Judges of the Court: Matthew Jasen, Hugh R. Jones, Bernard S. Meyer, Richard D. Simons, Fritz W. Alexander II, Vito Titone, Stewart F. Hancock, Jr., Joseph W. Bellacosa, George Bundy Smith, Howard A. Levine, Carmen Beauchamp Ciparick, Richard C. Wesley, Albert M. Rosenblatt, Victoria A. Graffeo, Susan Phillips Read, Robert S. Smith, Eugene F. Pigott, Jr. and Theodore T. Jones, Jr. Three Clerks and five Deputy Clerks have served the Court of Appeals during her tenure.

As I review the work of the Court and its staff during the past year, Judith Kaye's words in the 1993 Annual Report are particularly germane. Under her extraordinary leadership, and notwithstanding "public cynicism and discontent about government," throughout 2007 the Court of Appeals continued to discharge its essential constitutional role of "settling and declaring the law with care, integrity and efficiency."

The 2007 Annual Report is divided into four parts. The first section is a narrative, statistical and graphic overview of matters filed with and decided by the Court during the year. The second describes various functions of the Clerk's Office and summarizes administrative accomplishments in 2007. The third section highlights selected decisions of 2007. The fourth part consists of appendices with detailed statistics and other information.

I. The Work of the Court

The Court of Appeals is composed of its Chief Judge and six Associate Judges, each appointed by the Governor to a 14-year term. In addition to the Chief Judge's reappointment to the Court in March 2007, Theodore T. Jones, Jr. was sworn in as an Associate Judge of the Court in February 2007. Senior Associate Judge Carmen Beauchamp Ciparick was nominated by the Governor to a second term in December 2007.

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

this Court's decision to grant review. By State Constitution and statute, the Appellate Division also can grant leave to appeal to the Court of Appeals in civil cases, and individual Justices of that court can grant leave to appeal to the Court of Appeals in most criminal cases.

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

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

The Court sits in Albany throughout the year, usually for two-week sessions. During these Albany sessions, the Court meets each morning in conference to discuss the appeals argued the afternoon before, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters. Afternoons are devoted to hearing 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, each Judge annually decides hundreds of requests for permission to appeal in criminal cases, prepares reports on motions for the full Court's consideration and determination, and fulfills many other judicial and professional responsibilities.

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

In 2007, the Court and its Judges disposed of almost 4,000 matters, including 185 appeals, 1,440 motions and 2,371 criminal leave applications. A detailed analysis of the Court's work follows.

A. Appeals Management

1. Screening Procedures

The jurisdiction of the Court is narrowly defined by the State Constitution and applicable statutes. After filing a notice of appeal or receiving an order granting leave to appeal to this Court, an appellant must file an original and one copy of a preliminary appeal statement in accordance with Rule 500.9. Pursuant to Rule 500.10, the Clerk examines all preliminary appeal statements filed for issues related to subject matter jurisdiction. This review usually occurs the day a preliminary appeal statement is filed. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issue identified. After the parties respond to the Clerk's inquiry, the matter is referred to the Central Legal Research Staff to prepare a report on jurisdiction for review and disposition by the full Court.

Of the 161 notices of appeal filed in 2007, 75 were subject to Rule 500.10 inquiries. Of those, all but 11 were dismissed sua sponte or on motion, withdrawn or transferred to the Appellate Division. Twelve inquiries were pending at year's end. The Rule 500.10 sua sponte dismissal (SSD) screening process is valuable to the Court, the Bar and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

2. Normal Course Appeals

The Court determines most appeals "in the normal course," meaning after full briefing and oral argument by the parties. In these cases, copies of the briefs and record are circulated to each member of the Court well in advance of the argument date. Each Judge becomes conversant with the issues in the cases, using oral argument to address any questions or concerns prompted by the briefs. At the end of each afternoon of argument, each appeal argued or submitted that day is assigned by random draw to one member of the Court for reporting to the full Court at the next morning's conference.

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

3. Alternative Track Appeals

The Court also employs the alternative track of sua sponte merits (SSM) review of

appeals pursuant to Rule 500.11. Through this SSM procedure, the Court decides a number of appeals on letter submissions without oral argument, saving the litigants and the Court the time and expense of full briefing and oral argument; for this reason, the parties may request SSM review. A case may be placed on SSM track if it involves nonreviewable issues or issues decided by a recent appeal, or for other reasons listed in the Rule. As with normal-coursed appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes, and are conferenced and determined by the entire Court.

Of the 340 appeals filed in 2007, 50 (14.7%) were initially selected to receive SSM consideration, a slight decrease from the percentage initially selected in 2006 (17.7%). Thirty-nine were civil matters and 11 were criminal matters. Thirteen appeals initially selected to receive SSM consideration in 2007 were directed to full briefing and oral argument. Of the 185 appeals decided in 2007, 27 (14.6%) were decided upon SSM review (18% were so decided in 2006; 14.8% were so decided in 2005). Twenty-two were civil matters and five were criminal matters.

Of the 50 appeals filed in 2007 and initially selected to receive SSM consideration, 32 were taken from orders or judgments of the Appellate Division, First Department. Eight of these were appeals as of right based on a double dissent below, 19 were leave grants of the Appellate Division or a Justice of that court and five were by leave of this Court or a Judge of this Court.

4. Promptness in Deciding Appeals

In 2007, litigants and the public continued to benefit from the Court's remarkable tradition of prompt calendaring, hearing and disposition of appeals. The average time from argument or submission to disposition of an appeal decided in the normal course was 35 days; for all appeals, the average time from argument or submission to disposition was 31 days. The average period from filing a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately six 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 two months, again about the same as in previous years.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release to the public of a decision in a normal-coursed appeal decided in 2007 (including SSM appeals tracked to normal course) was 229 days. For all appeals, including those decided pursuant to the Rule 500.11 SSM procedure, those dismissed pursuant to Rule 500.10 SSD inquiries, and those dismissed pursuant to Rule 500.16(a) for failure to perfect, the average was 156 days. Thus, by every measure, in 2007 the Court maintained its long tradition of exceptional currency in calendaring and deciding appeals.

B. The Court's 2007 Docket

1. Filings

Three hundred and forty (340) notices of appeal and orders granting leave to appeal were filed in 2007 (293 were filed in 2006). Two hundred and seventy-nine (279) filings were civil matters (compared to 226 in 2006), and 61 were criminal matters (compared to 67 in 2006). The Appellate Division Departments issued 62 of the orders granting leave to appeal filed in 2007 (49 were civil, 13 were criminal). Of these, the First Department issued 45 (34 civil and 11 criminal).

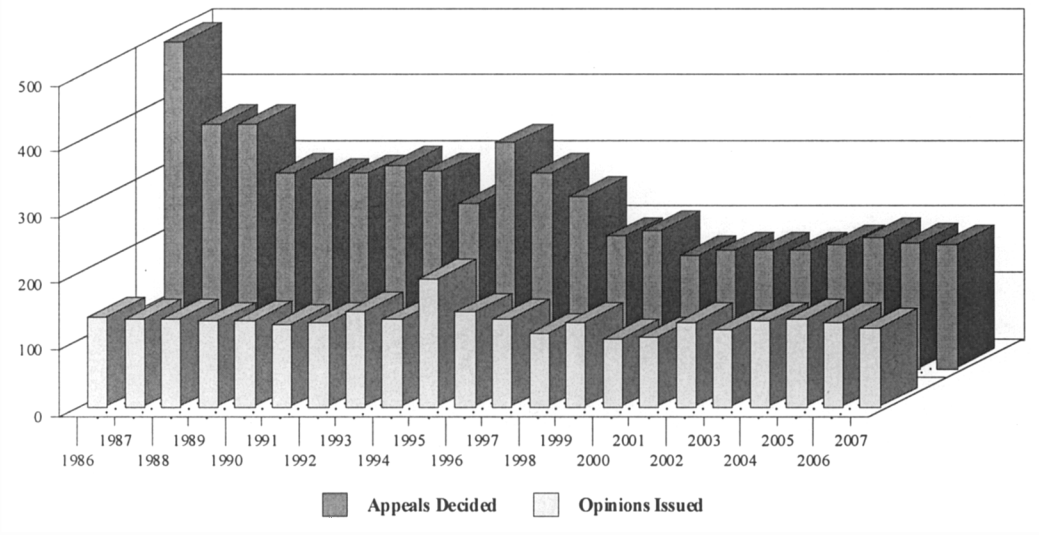
Motion filings increased in 2007. During the year, 1,481 motion numbers were used, an increase of 5.7% over the 1,401 motion numbers used in 2006. Criminal leave applications once again decreased in 2007. Two thousand three hundred eighty-two (2,382) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 76 fewer than in 2006. On average, each Judge was assigned 349 such applications during the year.

2. Dispositions

(a) Appeals and Writings

In 2007, the Court decided 185 appeals (135 civil and 50 criminal, compared to 127 civil and 62 criminal in 2006). Of these appeals, 155 were decided without dissent. The Court issued 117 signed opinions, two per curiam opinions, 30 dissenting opinions, six concurring opinions, 42 memoranda and 24 decision list entries. The chart below tracks appeals decided and full opinions (signed and per curiam) issued since Laws of 1985, chapter 300 narrowed the available predicates for appeals as of right and expanded the civil *certiorari* jurisdiction of the Court.

Appeals Decided and Opinions Issued
1986-2007

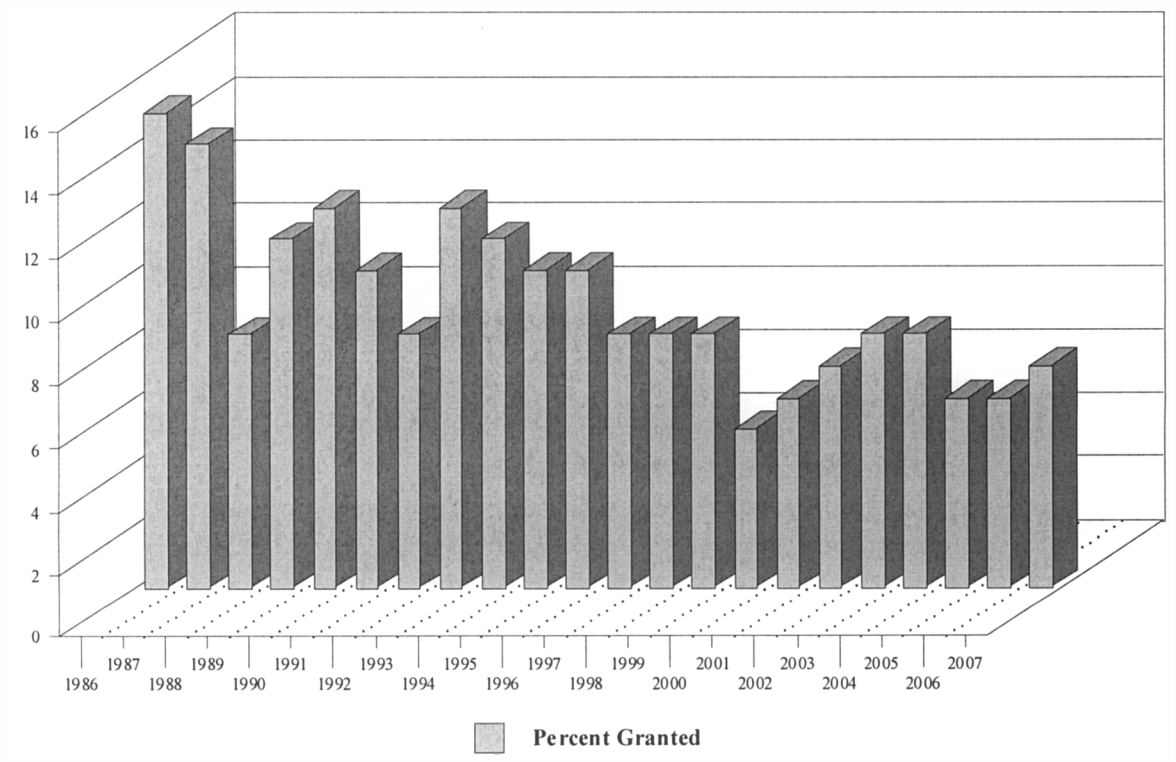


(b) Motions

The Court decided 1,440 motions in 2007 -- 43 more than in 2006. 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 62 days, while the average time from return date to disposition for all motions was 53 days.

The Court decided 1,093 motions for leave to appeal in civil cases during the year -- 76 more than in 2006. Of these, the Court granted 7% (up from 6% in 2006), denied 75.4% (up from 75.1% in 2006) and dismissed for jurisdictional defects 17.6% (down from 18.9% in 2006). The chart below reflects the percentage of civil motions for leave to appeal granted since the expansion of the Court's *certiorari* jurisdiction in 1986.

Motions for Leave to Appeal Granted by Year
1986-2007



Seventy-seven motions for leave to appeal were granted in 2007. The Court's leave grants covered a wide range of subjects. Tort issues spanned the duty of common carriers to inspect equipment, proximate cause, the scope of the affirmative negligence exception to New York City's prior written notice statute, dental malpractice, the scope of a garage owner's duty to a party allegedly injured by negligent vehicle inspection, and third party spoliation. The Court granted leave in several taxation matters to address real property tax exemptions for charitable purposes and the application of a county code's no-charge-back provision to PILOT payments. Workers' Compensation issues included the right of undocu-

mented aliens to additional compensation benefits, exclusivity of workers' compensation as a remedy in a negligence action involving snow and ice removal, whether a schedule loss of use award should be paid in a lump sum, and apportionment of litigation costs. The Court granted leave in election matters to address challenges to the validity of State committees' rules. FOIL issues included the privacy exemption, burden of proof and the substantial competitive injury exemption.

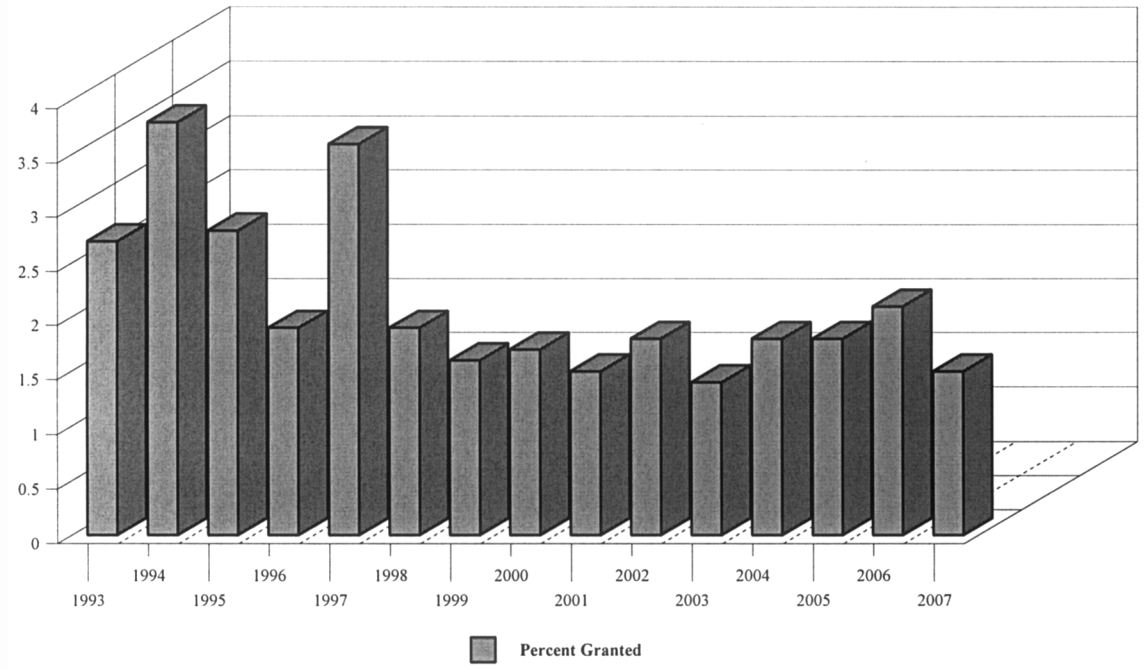
Other 2007 civil leave grants covered whether the Dead Man's Statute applies to attorney disciplinary proceedings, the necessity for a supplemental environmental impact statement, the statute of limitations applicable to a discrimination claim against a school district, poundage fees in a landlord-tenant action, the rights of adopted-out children to irrevocable trusts, full faith and credit for child support orders, intrusion on tribal lands under the Indian Law, termination of civil service employment, sex offender registration act issues, enforceability of an alleged agreement to make a bequest in a will, disqualification of an attorney in a police disciplinary proceeding, trust provisions that might relieve a parent of the statutory responsibility to provide for a child, high-low agreements in personal injury actions, a tenant's duty to maintain terrorism insurance, the owner-occupancy provision in the Rent Stabilization Code, and federal preemption of New York's consumer protection statutes.

Given that the majority of appeals are heard by its own permission, and that the issues considered are usually novel and of statewide importance, the Court continues to take steps to encourage appropriate requests for permission to file amicus curiae submissions on both pending appeals and motions for leave to appeal in civil cases. In 2007, 108 motions for amicus curiae relief were submitted to the Court, 100 of which were granted. This compares with 44 such motions and 29 such grants in 1986.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 36 of the 2,371 applications for leave to appeal in criminal cases decided in 2007 -- down from 52 in 2006. Two hundred and five applications were dismissed for lack of jurisdiction, and four were withdrawn. Three of 46 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 15 years.

Criminal Leave Applications Granted by Year
1993-2007



Laws of 2002, chapter 498 amended the criminal jurisdiction of the Court of Appeals to allow appeals by permission from intermediate appellate court orders determining applications for writs of error coram nobis. In 2007, 241 applications for leave to appeal from such orders were assigned to Judges of the Court, down from 250 in 2006. One such application was dismissed, and none was granted.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court during home chambers sessions. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments. In 2007, on average, 63 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

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

By Constitution and statute, the Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this State with a crime punishable as a felony. In 2007, the Court reviewed two determinations of the State Commission on Judicial Conduct, accepting the recommended sanction of removal in both cases. Pursuant to Judiciary Law § 44(8), the Court ordered the suspension of three judges, each with pay.

(e) Rule 500.27 Certifications and the State-Federal Judicial Council

In 1985, to promote 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 Rule 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. In September 2005, Rule 500.17 was recodified as Rule 500.27.

After a court certifies a question to this Court pursuant to Rule 500.27, 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 similarly to an appeal. Although the certified question may be determined in the normal course, by full briefing and oral argument, or pursuant to the Court's alternative procedure (*see* Rule 500.11), the preferred method of handling is full briefing and oral argument on an expedited schedule. In 2007, the average period from receipt of initial certification papers to the Court's order accepting or rejecting review was 34 days. The average period from acceptance of a certification to disposition was six months.

Five cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2006. In 2007, the Court answered the questions certified in four of those cases. After the United States Court of Appeals for the Second Circuit withdrew its certification, the questions certified in the fifth case were marked withdrawn. Also in 2007, the Court accepted seven new cases involving questions certified by the United States Court of Appeals for the Second Circuit. Five cases were decided during the year and two remained pending at the end of 2007.

As an additional aid to comity and judicial economy, the Chief Judge of the New York State Court of Appeals and the Chief Judge of the United States Court of Appeals for the Second Circuit reactivated the New York State-Federal Judicial Council to address issues of mutual concern and to sponsor educational programs for the Bench and Bar. Senior Associate Judge Carmen Beauchamp Ciparick serves as the New York State Court of Appeals representative on the Council.

(f) Capital Appeals

The State Constitution and the death penalty statute (L 1995, ch 1) provide a direct appeal to the Court of Appeals from a judgment of conviction and capital sentence. In 2007, the Court decided *People v John Taylor*, in which it modified the judgment of conviction by vacating the sentence of death and remitting to Supreme Court, Queens County, for resentencing and, as modified, affirmed.

C. Court Rules

No Court rules were amended during 2007 (*see* 22 NYCRR part 500 through part 540).

II. Administrative Functions and Accomplishments

A. Court of Appeals Hall

Court of Appeals Hall has been the Court's home for 90 years. This classic Greek Revival building, originally known as State Hall, formally opened in 1842 with offices for the Chancellor, the Register of Chancery and the State Supreme Court. On January 8, 1917, the Court of Appeals moved across the park, from the State Capitol, into the newly refurbished building at 20 Eagle Street. The Court's beloved Richardson Courtroom was reassembled in an extension to State Hall built to accommodate both the Courtroom and the Court's Library and Conference Room. Major renovations in 1958-1959 and 2002-2004 -- the latter including two additions to the building faithful to its Greek Revival design -- produced the architectural treasure the Court inhabits today. In 2007, the remaining portraits in the Court's invaluable collection were rehung in the first floor public rooms following restoration of canvases and frames.

Also in 2007, the State Legislature authorized the Court of Appeals to purchase from Albany County two long-neglected, but historically important, buildings across the street from the Courthouse. The buildings will be renovated into Court-related offices and a museum.

The Building Manager and the Deputy Building Superintendent oversee all services and operations performed by the Court's maintenance staff and by outside contractors at Court of Appeals Hall.

B. Case Management

The expressions of gratitude I regularly receive from litigants and the Bar attest to the expertise and professionalism of the Clerk's Office staff. Counsel and self-represented litigants will find a wealth of Court of Appeals practice aids on the Court's internet web site (http://www.nycourts.gov/courts/appeals). Additionally, 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 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, and consult on, programs and publications designed to educate the Bar about Court of Appeals practice.

The Clerk, Deputy Clerks, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Prisoner Applications Clerk, several secretaries, court attendants and clerical 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 ensure 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, tracking 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.

Throughout 2007, members of the Clerk's Office continued to monitor the Bar's transition to the Court's new Rules of Practice, effective September 1, 2005, and to evaluate proposed refinements to those Rules. The Clerk's staff carried forward into 2007 its work with the Office of Court Administration to replace the Court's electronic case management system. I extend my particular thanks to our Clerk's Office personnel and the Office of Court Administration's Department of Technology for their dedicated work on this valuable project.

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 Public Information Office also provides information concerning the work and history of New York's highest court to all segments of the public -- from school children to members of the Bar. Throughout the year, the Public Information Officer and other members of the Clerk's 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 Law Center at (518) 445-3287.

The Court's latest decisions are posted on the Court of Appeals internet web site within minutes after their official release. The comprehensive site also posts information about the Court, its Judges and history, summaries of pending cases and other news, as well as more than a year's worth of Court of Appeals decisions. The web site provides helpful information, as well, 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 contains links to other judiciary-related web sites.

Over 825,000 visits to the web site were recorded in 2007, averaging approximately 2,260 visits per day -- an increase of almost 146,000 visits over the previous year. In 2007, the public could access live webcasts of the Chief Judge's 2007 State of the Judiciary address, the 2007 Law Day ceremony, three installments of the Court's 2007 lecture series, as well as the investiture ceremonies for Chief Judge Kaye and Associate Judge Jones. The address for the Court of Appeals web site is: http://www.nycourts.gov/courts/appeals.

Launched in 2002 and chartered by the State of New York, the Historical Society of the Courts of the State of New York also performs a public information service. The Society fosters scholarly understanding and public appreciation of the history of the New York State courts, and collects and preserves 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. In 2007, a court analyst joined the office to provide administrative support. The office's existing secretary now focuses on duties outside the office, and provides backup assistance as necessary.

Court of Appeals records complement the official registry of attorneys maintained by the Office of Court Administration, which answers public inquiries about the status of attorneys. The Court's Office for Professional Matters prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship. The office has continued to update its internal database, created in 1998 for archiving and reviewing its files. Additionally, the office expanded the types of files included in the database and inputted data for prior years dating back to 1960.

The Court Attorney for Professional Matters drafts reports to the Court on matters relating to attorney admission and disciplinary cases, 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 proposed rule changes ultimately decided by the Court. The Court did not amend any of these rules in 2007. The Court Attorney also continues to serve on the New York State Bar Association's Committee on Legal Education and Admission to the Bar.

E. Central Legal Research Staff

Under the supervision of the 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), requests to answer certified questions and selected appeals for the full Court's review and deliberation. From December Decision Days 2006 through December Decision Days 2007, Central Staff completed 1087 motion reports, 69 SSD reports, 36 SSM reports and seven reports regarding certified questions. Throughout 2007, Central Staff remained current in its work.

Staff attorneys also write and revise research materials for use by the Judges' chambers and Clerk's staff, and perform other research tasks as requested. In 2007, the Senior Deputy Chief Court Attorney updated the Court of Appeals internal jurisdictional outline.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed in 2007 were graduates of Albany, the State University of New York at Buffalo, the University of Connecticut, Cornell University, the University of California at Davis, the University of Florida, the University of California (Hastings), New York, St. John's University, Syracuse University, Touro University and Willamette University law schools.

F. Library

The law library supports the legal information needs of the Court. The Chief Legal Reference Attorney provides extensive legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk's Office staff, using a full range of traditional and technologically-enhanced strategies that provide timely access to sources of law.

During 2007, collection development continued in the Court of Appeals Hall library and the home chambers libraries. Databases played an ever-increasing role in the provision of legal and nonlegal information. The Court purchased a five-year collection of bill jackets from the New York State Archives, which was combined with bill jackets already in the Court's possession to form a comprehensive and hyperlinked intranet database. Newly-available State Library scans of documents invaluable to research on legislative intent -- including the Poletti Reports and the complete 1909 Consolidated Laws -- augmented in-house scanning, thereby enabling creation of hyperlinked intranet databases of key documents. These databases enhance research capability by permitting electronic word searches of older material and providing access to data beyond the capacity of traditional indexes. The Court continued to benefit from the New York State Library's "electronic gateway," through which the Court accesses legal and nonlegal databases, including complete digitized back runs of core scholarly journals -- some dating to the 1600s -- provided through JSTOR and similar databases. ISYS remained key to providing searchable full-text access to over 15,300 documents in the Court's internal reports database (1996-2007) and to the scanned pre-1996 reports database, now containing over 10,400 documents.

At the request of the State Library, the Court ships depository copies 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. A byproduct of the microfiche process is a set of digital scans used by West-CRS to build its briefs database, commercially available on Westlaw.

I acknowledge with gratitude that the New York State Library, the New York State Archives, the Albany Law School Library and the New York Legislative Library continued to facilitate the Court's access to materials not part of its collection throughout 2007.

The Chief Legal Reference Attorney is a member of the Court's CLE Committee. In 2007, she revised a Corel Presentation program on *Constitutional, Statutory and Regulatory Intent and Common Law Derivation* and a program surveying the array of databases available to the New York Court of Appeals by direct subscription and via the New York State Library's "gateway." These programs were certified under the Office of Court Administration's Continuing Legal Education regulations and were offered to Judges' law clerks and staff attorneys in 2007. The Chief Legal Reference Attorney participated in planning the 2007 Court of Appeals Lecture Series and prepared ancillary exhibits for the Courtroom Anteroom. She is secretary of the Board of Trustees of The Historical Society for the Courts of the State of New York, and chair of the Society's Special Committee on the Society's Web Site (http://www.courts.state.ny.us/history).

G. Continuing Legal Education Committee

The Continuing Legal Education (CLE) Committee was established in 1999 to coordinate professional training for Court of Appeals, Law Reporting Bureau and State Board of Law Examiners attorneys. The Committee is currently chaired by a Principal Court Attorney. Other members include one of the Deputy Clerks, the Chief Court Attorney, the Chief Legal Reference Attorney, two Judges' law clerks, and two attorneys from the Law Reporting Bureau. A Central Legal Research Staff secretary manages CLE records and coordinates crediting and certification processes with the New York State Judicial Institute (JI). In addition, she prepares the paperwork necessary to comply with the rules of the JI and the CLE Board, and she provides general support to the Committee.

During 2007, the CLE Committee provided 13 programs -- including new staff training and orientation -- totaling 22 credit hours for Court of Appeals attorneys. Law Reporting Bureau and Board of Law Examiners attorneys participated in many of the offered programs. Attorneys also attended classes offered by the Appellate Division, Third Department. Several individuals viewed the JI's simulcast Lunch and Learn programs at their desk. In addition, a number of attorneys from the Court of Appeals, the Law Reporting Bureau and the Board of Law Examiners attended the JI's two-day Legal Update seminar.

H. Management and Operations

Aided by a Management Analyst and two secretarial assistants, the Director of Court of Appeals Management and Operations is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting, employee time and leave management, payroll document preparation, voucher processing, benefit program administration and annual budget request development. A supplies manager is responsible for distributing supplies, comparison shopping and purchasing office supplies and equipment.

I. Budget and Finance

The Director of 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 Clerks 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 2007-2008 fiscal year budget appropriation of $14,925,900, which included all judicial and nonjudicial staff salaries (personal services costs) and all other cost factors (nonpersonal services costs), including in-house maintenance of Court of Appeals Hall.

2. Budget Requests

The total request for fiscal year 2008-2009 for the Court and its ancillary agencies is $15,364,793, an increase of 2.9% over the current year's appropriation. The 2008-2009 personal services request of $12,326,627 reflects an increase of $310,644 over the current year's appropriation, which includes funding for salary increases for all eligible nonjudicial employees in accordance with collective bargaining contracts and administrative provisions, temporary services and overtime services.

The 2008-2009 nonpersonal services request of $3,038,166 is $128,249, or 4.4%, over the current year's adjusted appropriation. The nonpersonal services request includes adjustments in Judges' travel expense ($4,188), Judges' staff travel expense ($8,187), court administration and support services ($48,031), legal reference materials ($31,544), building maintenance operations ($1,087) and Law Reporting Bureau operations ($35,212).

Notwithstanding necessary increases in travel, administration and support services, building maintenance operations, legal reference materials and law reporting expenses, the budget request for fiscal year 2008-2009 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 2007, the Court reported filing fees of $315 for each of 142 civil appeals, totaling $44,730. Also, the Court reported filing fees of $45 for each of 898 motions, totaling $40,410. The $85,140 realized was remitted 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 ($2,700) and miscellaneous collections ($1,464.24). For calendar year 2007, revenue collections totaled $89,304.24.

J. Computer Operations

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Principal PC Analyst, assisted by a LAN Administrator and a PC Analyst. These operations include all software and hardware used by the Court, and a statewide network connecting six remote Judges' chambers with Court of Appeals Hall. Also included are two web sites: an intranet web site available to Judges and Court employees and the Court's internet site located at http://www.nycourts.gov/courts/appeals.

The Court of Appeals internet site offers immediate access to the latest decisions on cases and motions handed down by the Court, and other pertinent information of interest to the public, including the Rules of the Court and the Court's calendar. Throughout the year, the web site hosted a variety of simulcast presentations available to the public. The Department also facilitated simulcasts and teleconferences to bring meetings and CLE information from all over the State to Court employees in Albany.

The Department maintains a hands-on help desk to assist employees with hardware and software issues as they arise. Training on software and hardware is provided as needed, either within the Courthouse or via outside agencies, depending on the situation. Maintenance calls to the help desk are estimated at approximately 300 for the year.

The Department participated in Associate Judge Theodore T. Jones's technological transition to the Court of Appeals, as well as Associate Judge Eugene F. Pigott's move to permanent home chambers. Also in 2007, all of the Court's desktop computers were replaced with OCA-specified models. The old equipment was recycled to other locations within the Unified Court System.

K. Security Services

The Court Security Unit is composed of a Chief Security Attendant, Deputy Chief Security Attendant, four Senior Court Attendants and eight Senior Court Building Guards. The Chief, Deputy Chief and Senior Court Attendants are all sworn court officers and have peace officer status throughout New York State. The officers provide security at Court of

Appeals Hall by screening all persons who come to the Court, as well as all mail and packages received. Regular patrols of the area in and around the Courthouse are conducted to ensure the safety and security of the Judges, staff and visitors.

The Court's building guards are present and maintain a watchful eye over the Court, its employees and the many visitors to the Court on a 24-hour by seven-days-a-week basis. Between the officers and building guards, a constant security presence exists at Court of Appeals Hall, including during the many public events held at the Court during 2007. Additionally, the officers provided security escorts, when necessary, to the Judges of the Court, both in the Albany area and throughout the State. Building guards conduct tours of the Courtroom for members of the public visiting Court of Appeals Hall.

The court officers completed several training programs during 2007. In addition to mandatory firearms, pepper spray, baton and three-year in-service classes, officers attended classes on judicial protection, State Emergency Management Office and Federal Emergency Management Agency Incident Command Systems, and emergency vehicle operations. All Security staff and Maintenance staff also attended the defensive driving program given by the NYS Court Officers Academy.

L. Personnel

The following personnel changes occurred during 2007:

APPOINTMENTS:

Reed, Richard A. - employed as Deputy Clerk of the Court in April 2007.

Irwin, Nancy J. - employed as Stenographer, Court of Appeals in July 2007.

Costello, James A. - employed as Assistant Deputy Clerk, Court of Appeals in August 2007.

PROMOTIONS:

Bohannon, Lisa - promoted to Senior Court Analyst in January 2007.

Couser, Lisa A. - promoted to Senior Court Building Guard in January 2007.

Cross, Robert J. - promoted to Senior Court Building Guard in June 2007.

McCormick, Cynthia A. - promoted to Senior Management Analyst in November 2007.

Lawrence, Bryan - promoted to Principal Local Area Network Administrator in November 2007.

RESIGNATIONS AND RETIREMENTS:

Shaw, Linda A. - Senior Stenographer, Court of Appeals, resigned in April 2007.

Lenart, Margaret S. - Principal Stenographer, Court of Appeals, retired in May 2007 after 28 years and 7 months of service.

Mastracco, Marcus J. - Assistant Deputy Clerk, Court of Appeals, resigned in August 2007.

Bauman, Susan R. - Local Area Network Administrator, resigned in December 2007.

Doyle, John E. - Senior Security Attendant, Court of Appeals, retired in December 2007 after 2 years and 7 months of service.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Scott M. Fusaro, Rebecca A. S. Green, Sandra H. Irby, Rachael M. MacVean, Margaret P. Nyland and Justin D. Pfeiffer were appointed Court Attorneys in August 2007.

PROMOTIONS:

Jeremy D. Alexander, Anthony M. Belsito, Joshua P. Fleury, Daisy G. Ford, and Emily D. Stein were promoted to Senior Court Attorneys in August 2007. Juan C. Gonzalez moved from Court Attorney to Law Clerk to Court of Appeals Judge in March 2007. Erik A. Goergen was promoted from Senior Court Attorney to Principal Law Clerk to Court of Appeals Judge in August 2007. Barbara A. Prois was promoted from Senior Court Attorney to Principal Law Clerk to Court of Appeals Judge in August 2007. Justin C. Levin was promoted from Senior Court Attorney to Principal Court Attorney in August 2007.

COMPLETION OF CLERKSHIPS:

Senior Court Attorney E. Andrew Long completed his Central Staff clerkship in July 2007. In August 2007, Senior Court Attorney Victoria L. Choy completed her Central Staff clerkship.

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ACKNOWLEDGMENT

As are all tasks at the Court of Appeals, the production of the Annual Report is a team effort. Each year, members of the Clerk's staff contribute numerical data, narrative reports, and editing and proofreading services. I thank each of them, and mention especially Andrea Ignazio and Bryan Lawrence, who prepared the detailed appendices, Lisa Bohannon, who designed the cover and took the photograph, and Marjorie McCoy and Richard Reed, who edited the Report. I also thank the many members of the Clerk's staff who proofed the Report, particularly James Costello, Heather Davis, Margery Corbin Eddy, Hope Engel, Paul McGrath and Inez Tierney. Finally, I thank Brian Emigh, who oversaw production.

Serving the public through the Judicial branch is a privilege and a profound responsibility. I commend the entire staff for providing exemplary service to the Judges of the Court, the Bar and the public throughout the year. A complete list of Clerk's Office, Building Maintenance and Judges' staffs appears in Appendix 11.

A number of staff left the Court's employ in 2007. I thank Marcus Mastracco for his service as Assistant Deputy Clerk and Susan Bauman for her assistance as our Local Area Network Administrator. I particularly note the contributions of John Doyle, who served for 25 years as a Court Officer, the last two and a half at Court of Appeals Hall, and those of Margaret Lenart, who assisted the Judges, Court employees and the Bar for more than 28 years as an integral member of the Clerk's "front office" staff.

Finally, I acknowledge the countless individuals in the Office of Court Administration and throughout the Unified Court System who, year in and year out, provide expert assistance and timely information to the Court of Appeals, its Judges and its staff.

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III. 2007: Year in Review

This section -- Court of Appeals decisions handed down in 2007 -- reflects the range of constitutional, statutory, regulatory, and common-law issues reaching the Court each year.

ADMINISTRATIVE LAW

Cubas v Martinez (8 NY3d 611)

Plaintiffs, immigrants from foreign countries who live in New York, challenged the policy of the Department of Motor Vehicles against issuing driver's licenses to applicants who lack valid Social Security numbers, unless those applicants prove, with documents issued by the Department of Homeland Security, that they are ineligible for Social Security numbers. Although Vehicle and Traffic Law § 502(1) provides, in part, that the Commissioner of Motor Vehicles "shall require that the applicant provide his or her social security number," a Department regulation allows an applicant to obtain a license with proof that he or she is not eligible for a Social Security number. Until 2001, the Department of Motor Vehicles permitted applicants to meet this alternative by submitting a letter from the Social Security Administration stating that the applicant's Department of Homeland Security-issued documents show that no Social Security number can be issued, but in 2001 the Department of Motor Vehicles began requiring applicants without Social Security numbers to submit the underlying Department of Homeland Security documents. The Court of Appeals held that the Department of Motor Vehicles' policy did not impose a significant additional burden on driver's license applicants, since the previously required letter from the Social Security Administration could only be obtained on submission of Department of Homeland Security documents. The Court found the Department of Motor Vehicles' requirement a reasonable measure to prevent fraud and upheld it as valid.

ALTERNATIVE DISPUTE RESOLUTION

Matter of Schreiber v K-Sea Transp. Corp. (9 NY3d 331)

Plaintiff was injured while working on a tugboat owned by defendant. After the injury, defendant offered plaintiff an advance on any future settlement in exchange for agreeing to bring his claims to an arbitrator. Plaintiff later sued in court under the Jones Act (46 USC § 30104), and defendant sought to force arbitration. The Court rejected plaintiff's argument that either the Jones Act or the Federal Arbitration Act (9 USC § 2) prohibited arbitration of the claims, holding that a post-injury arbitration agreement was not a contract of employment of seamen and thus was not exempt from the Federal Arbitration Act. Arbitration also was not forbidden under the Federal Employers Liability Act (45 USC § 55) in light of the federal policy favoring arbitration. The Court also held that the "ward of the admiralty" doctrine, which requires that employers of seamen show that any contracts between themselves and those seamen are fair, did not prevent enforcement of the arbitration agreement. The Court ordered a hearing at which the plaintiff would have the burden of

showing that the agreement was obtained inappropriately.

CIVIL PROCEDURE

Reliance Ins. Co. v Polyvision Corp. (9 NY3d 52)

Answering a certified question from the United States Court of Appeals for the Second Circuit, the Court held that CPLR 205(a) -- which, in appropriate instances, adds a six-month grace period to a statute of limitations -- does not permit a corporation to refile an action that was dismissed for naming the wrong plaintiff, when the action was originally commenced in the name of a different but related corporate entity.

Fischbarg v Doucet (9 NY3d 375)
Ehrenfeld v Mahfouz (9 NY3d 501)

In these companion cases, the Court of Appeals was called upon to determine whether the respective defendants' alleged New York contacts constituted the "transaction of business" in the State to subject them to long-arm jurisdiction under CPLR 302(a)(1). In the first case, plaintiff, the New York-based author of *Funding Evil: How Terrorism is Financed -- And How to Stop It*, alleged that defendant -- a Saudi Arabian financier -- had transacted business in New York by serving litigation papers related to an English defamation action at her New York apartment and by mailing and e-mailing correspondence related to the English action to her in New York. The Court held that communications into the State regarding a foreign litigation did not constitute the transaction of business under CPLR 302(a)(1). By contrast, in the second case, the Court held that defendants' telephonic solicitation of a New York attorney to represent them in a federal action in Oregon and their numerous communications with the New York attorney -- by phone, mail, facsimile and e-mail -- constituted "transaction of business" under CPLR 302(a)(1). The Court emphasized that defendants had purposefully projected themselves into the New York legal services market to further their own interests and that their decision to do so had resulted in the creation of a professional relationship governed by New York law.

COMMERCIAL LAW

Beal Sav. Bank v Sommer (8 NY3d 318)

One bank in a syndicate sought to sue a defaulting borrower contrary to the decision of the other banks to forbear taking action. In interpreting a credit agreement and a keep-well agreement, the Court concluded that the syndicate banks intended to act collectively in the event of the borrower's default and to preclude an individual lender from disrupting the scheme of the agreements at issue. The individual bank thus had no standing to sue.

Highland Capital Mgt. LP v Schneider (8 NY3d 406)

An investment company sued family members, alleging that they had breached an oral agreement to sell it promissory notes. The United States Court of Appeals for the Second Circuit asked the Court whether the notes were "securities" within the meaning of section 8-102(a)(15) of the Uniform Commercial Code. The Court determined that the notes

fulfilled the requirements of §§ 8-102(a)(15)(i) (the transferability test), 8-102(a)(15)(ii) (the divisibility test) and 8-102(a)(15)(iii) (the functionality test), and therefore qualified as securities.

White Plains Coat & Apron Co., Inc. v Cintas Corp. (8 NY3d 422)

Answering a certified question from the United States Court of Appeals for the Second Circuit, the Court held that a generalized economic interest in soliciting business for profit does not constitute a defense to a claim of tortious interference with an existing contract for an alleged tortfeasor with no previous economic relationship with the breaching party.

COMPROMISE AND SETTLEMENT

Matter of Eighth Jud. Dist. Asbestos Litig. (8 NY3d 717)

In this multi-defendant action, plaintiffs entered into a confidential high-low agreement with one of the defendants whereby it was agreed that such defendant's total liability would fall into a predetermined range. The existence of the high-low agreement was kept hidden from the other defendant until after the jury verdict in favor of plaintiffs. The Court held that the secret agreement denied the non-agreeing defendant a fair trial, and crafted a new rule providing that whenever a plaintiff and a defendant in a multi-defendant litigation enter into an agreement where the agreeing defendant remains a party to the litigation, the agreement must be disclosed to the court and the non-agreeing defendants.

CONSTITUTIONAL LAW

Matter of Worth Constr. Co., Inc. v Hevesi (8 NY3d 548)

Pursuant to his discretionary authority under article X, § 5 of the New York State Constitution to supervise the accounts of public corporations, the New York State Comptroller refused to approve a contract entered into between petitioner, Worth Construction Company, Inc., and respondent New York State Thruway Authority. The review and approval functions undertaken by the Comptroller, performed at the request of the Thruway Authority, were deemed incidental to the supervision of the Thruway Authority's accounts. The Court concluded that the Comptroller had the discretionary authority to review and approve the contract and, because oversight was performed at the request of the Thruway Authority, the Comptroller did not exceed his constitutional authority.

Property Clerk of Police Dept. of City of N.Y. v Harris (9 NY3d 237)

Respondent Property Clerk impounded petitioner's automobile after it allegedly was used in a narcotics transaction. The Court was asked to determine whether petitioner's wife was entitled to offer evidence that she did not permit or suffer the illicit use of the vehicle, in an effort to obtain its release at a constitutionally-required "retention hearing," the purpose of which is to determine whether a vehicle should be impounded during the pendency of a criminal proceeding. The Court held that innocent co-owners have a due process right to present such evidence. In so holding, the Court recognized that the City has an important

interest in ensuring that impounded vehicles are not sold, lost, stolen, destroyed, or used in additional criminal activity. Those interests must be balanced against innocent co-owners' present possessory right to use impounded vehicles to access critical life necessities such as earning a livelihood, obtaining an education, or receiving necessary medical care.

CRIMINAL LAW

People v Havrish (8 NY3d 389)

While complying with an order of protection that required him to turn over his firearms to the police, defendant surrendered an unlicensed handgun, resulting in a prosecution for criminal possession of a weapon in the fourth degree. Defendant moved to suppress the revolver, claiming that the court order compelling him to turn his guns over to the police violated his Fifth Amendment right against self-incrimination. Although the Fifth Amendment right does not generally extend to physical evidence, the Court determined that defendant was entitled to suppression in this case because the act of surrendering the handgun was testimonial in that it revealed defendant's subjective thought processes, which are protected by the Fifth Amendment privilege.

People v Chiddick (8 NY3d 445)

In the course of a robbery, defendant was confronted and seized by an employee of the building being robbed. In an effort to escape, defendant bit the employee on the finger, causing the finger to crack and bleed and causing "moderate pain." Defendant was charged with second degree assault (Penal Law § 120.05[6]) and burglary (*id.* § 140.25), both of which require "physical injury," defined as "impairment of physical condition or substantial pain." Considering the injury objectively and the victim's subjective description of the experience, the Court determined the requirement of substantial, as opposed to trivial, pain was met. The Court also held that the assailant's motive and the fact that the victim required hospital treatment for his injury were relevant to the determination.

People v LeGrand (8 NY3d 449)

At trial, defendant moved for the admission of expert testimony concerning the weaknesses and dangers inherent in eyewitness testimony: in particular, the effect of "weapon focus," the lack of correlation between witness confidence and accuracy of identification, and the effect of post-event information on accuracy and confidence malleability. After a *Frye* hearing, Supreme Court found that the proposed testimony was relevant to the facts of the case, that defendant's witness was a qualified expert and that the proposed testimony was beyond the ken of the typical juror. However, the court denied defendant's motion to admit expert testimony, ruling that the proposed expert testimony was not generally accepted within the relevant scientific community. The Court concluded that all of the proposed expert testimony, except for that pertaining to the impact of weapon focus, was generally accepted within the relevant scientific community. Taking into account that trial courts generally have the power to limit the amount and scope of evidence presented, the Court held that where the case turns on the accuracy of eyewitness identifications and there is little or no corroborating evidence connecting the defendant to the crime, it is an abuse of discretion for a trial court to exclude expert testimony on the reliability of eyewitness identi-

fications if that testimony is relevant to the witness's identification of defendant, based on principles generally accepted within the relevant scientific community, proffered by a qualified expert, and on a topic beyond the ken of the average juror.

People v Newton (8 NY3d 460)

Defendant, who was indicted for third-degree sodomy (Penal Law § 130.40[3]), alleged that he perceived the sexual act to be consensual. It was undisputed that he had consumed beer steadily in the hours before the incident, and defense counsel unsuccessfully urged the trial court to instruct the jury on intoxication. The Court decided that because a defendant's subjective mental state is not an element of this crime -- commonly referred to as date or acquaintance rape -- evidence of intoxication at the time of the sexual act was irrelevant.

People v Rosas (8 NY3d 493)

Defendant was convicted of two counts of murder in the first degree. Supreme Court imposed consecutive life sentences for these convictions. The Court held that Penal Law § 70.25(2) mandated that the sentences run concurrently, because that section provides that concurrent sentences must be imposed for offenses committed through a single act. Here, the act supporting both first degree murder convictions -- shooting one person with the intent to kill that person and to kill or seriously injure another person -- was the same.

People v Louree (8 NY3d 541)

When defendant pleaded guilty, the trial court did not mention that a period of post-release supervision would follow his sentence. The trial court subsequently imposed a seven-year sentence with five years of post-release supervision. When defendant moved to withdraw his guilty plea the trial court denied the motion, and the Appellate Division affirmed the judgment of conviction and sentence. The Court reversed, concluding that when a trial judge does not fulfill the obligation to advise of post-release supervision during the plea allocution, the defendant may challenge the plea as not knowing, voluntary and intelligent on direct appeal. This is so notwithstanding the absence of a post-allocution motion, given the unavailability of either a motion to withdraw the plea under CPL 220.60(3) or a motion to vacate the judgment of conviction under CPL 440.10.

People v Kozlow (8 NY3d 554)

Defendant, who was charged with five counts of attempted dissemination of indecent material to minors in the first degree (Penal Law §110, former Penal Law § 235.22), claimed that his communications could not have "depicted" sexual contact within the meaning of Penal Law § 235.22 since they included no visual, sexual images. The Court rejected his claim, holding that it was clear that legislators intended to criminalize the activities of adults who engage minors in "sexually infused communications," which included those predators who used words, rather than images, to lure minors.

Matter of Polito v Walsh (8 NY3d 683)

Petitioners were convicted by a federal jury of murder in aid of racketeering. The United States Court of Appeals for the Second Circuit reversed and ordered the charge dismissed because the evidence did not show that the murder was in aid of racketeering. Sub-

sequently, a state grand jury indicted petitioners for murder. Petitioners sought a writ of prohibition against the state prosecution, relying on a provision of the State's double jeopardy statute which states: "A person may not be twice prosecuted for the same offense." The Court rejected petitioners' claim, holding that this statutory language provides no more protection than the United States Constitution. Since it was undisputed that the state court murder prosecution did not violate the federal constitutional prohibition on double jeopardy, petitioners could not prevail.

People v Litto (8 NY3d 692)

The People sought to charge defendant with, among other counts, vehicular manslaughter in the second degree and driving while intoxicated for his driving while under the influence of a hydrocarbon, Dust-Off. Vehicle and Traffic Law § 1192(3) does not define "intoxicated." The Court concluded -- based on the language of the statute, its legislative history and its scheme -- that the Legislature intended to use "intoxication" to mean a disordered state of mind caused by alcohol, not drugs. Dismissal of the vehicular manslaughter and driving while intoxicated charges was thus required.

People v Hill (9 NY3d 189)

The Court explained in *People v Catu* (4 NY3d 242, 245 [2005]) that, "[b]ecause a defendant pleading guilty to a determinate sentence must be aware of the postrelease supervision component of that sentence in order to knowingly, voluntarily and intelligently choose among alternative courses of action, the failure of a court to advise of postrelease supervision requires reversal of the conviction." Here, defendant pleaded guilty to rape in the first degree in full satisfaction of the indictment. The trial court sentenced him to a determinate 15-year imprisonment term. No mention was made, either during the plea or during the sentencing that followed one month later, of an additional five-year term of postrelease supervision. The trial court ultimately resentenced defendant to a total period of incarceration (12½ years) plus postrelease supervision (2½ years) equal to his originally promised sentence of incarceration. The Court of Appeals held that a *Catu* error cannot be cured by resentencing a defendant to a total period of incarceration and postrelease supervision that is roughly equal to the negotiated period of incarceration. Rather, the court must vacate defendant's involuntary guilty plea to restore defendant to his position prior to the constitutional infirmity.

People v Greene (9 NY3d 277)

Defendant was convicted of manslaughter in the second degree for the homicide of Anthony Berrios. Detective Michael Elliott, who was assigned to investigate the killing, learned that it was precipitated by a facial slash as a result of an earlier altercation at a nightclub. Detective Elliott canvassed area hospitals to determine if any individuals came in for emergency treatment for facial slash wounds. At Lincoln Hospital, upon asking an administrator "if anyone came in for a slashing to the face on that date," he was given defendant's name and address. Elliott obtained the defendant's arrest record and his photograph from a prior arrest. A witness to the Berrios shooting identified defendant from the photograph, which led Elliott to more information and to locate and arrest defendant. On appeal, defendant argued that the evidence obtained from the hospital was inadmissible because it violated the statutory physician-patient privilege of CPLR 4504 and should have

been suppressed because his constitutional privacy rights were violated. The Court noted that the privilege does not apply to "such ordinary incidents and facts as are plain to the observation of anyone without expert or professional knowledge" (*Klein v Prudential Ins. Co. of Am.*, 221 NY 449, 453 [1917]), but decided that it need not decide whether the privilege was violated, because evidence obtained as a result of the violation need not be suppressed. The privilege is a statutory creation, not based on either the State or Federal Constitution and, thus, without more, suppression of evidence obtained as a result of its violation is not required.

People v Danielson (9 NY3d 342)

The Court was called upon to determine the scope of weight of the evidence review when a defendant has failed to preserve a challenge to the legal sufficiency of his conviction. The Court held that in performing a weight of the evidence review, the reviewing court must weigh the credible evidence, conflicting testimony and the strength of competing inferences in light of the elements of the crime as charged without defendant's objection at trial.

People v Cuadrado (9 NY3d 362)

Defendant had been indicted for murder, attempted robbery and weapons possession stemming from a botched attempt to hold up a delicatessen. As part of a plea bargain, defendant agreed to plead guilty to a charge of assault, brought by superior court information. Fourteen years later, defendant filed a motion under CPL 440.10 to vacate the assault conviction because the superior court information was not valid. The People argued that the motion should be denied based on CPL 440.10(2)(c), which prevents the court from granting relief on the basis of issues that could have been resolved on direct appeal but were not raised at that time. Defendant argued that the Legislature does not have the power to limit the court's authority to address fundamental jurisdictional or mode of proceedings errors. The Court held that, as applied to this fact situation, CPL 440.10(2)(c) is a valid exercise of the Legislature's authority to make reasonable rules about the manner in which claims of jurisdictional error may be raised.

People v Zimmerman (9 NY3d 421)

Defendant, a retired business executive, was examined under oath in Ohio in connection with a New York Attorney General antitrust investigation. A grand jury investigation into allegations that defendant testified falsely during his examination was subsequently commenced. Defendant was indicted for perjury, and the People sought to exert "particular effect" jurisdiction over defendant, as set forth in CPL article 20, in New York County. The Court reaffirmed its holding in *Matter of Taub v Altman* (3 NY3d 30 [2004]) and held that the evidence presented to the grand jury was insufficient to support "particular effect" jurisdiction.

People v Gajadhar (9 NY3d 438)

The issue in this appeal was whether a defendant may waive his constitutional right to a trial by a jury of 12 persons in a situation where one of the deliberating jurors becomes unavailable and there are no alternates available for substitution because the alternates were discharged at defendant's request before deliberations began. The Court determined that, in

this situation, the trial court could accept defendant's explicit request to have jury deliberations proceed with 11 members where defendant executed a written waiver in open court with the approval of the trial judge in accordance with article I, § 2 of the New York State Constitution.

DEATH PENALTY

People v Taylor (9 NY3d 129)

During the robbery of a Queens fast-food restaurant, defendant and his accomplice shot -- execution style -- the seven restaurant employees, five of whom died. Defendant was indicted and tried for numerous crimes, including several first-degree murder charges, for which a death sentence was sought. Prior to deliberations, the judge read to the jury the deadlock jury instruction under CPL 400.27(10) and further advised the jury that he would "almost certainly" sentence defendant to consecutive sentences totaling 175 years. Defendant was convicted of six counts of first-degree murder and sentenced to death. Two years later, in *People v LaValle* (3 NY3d 88 [2004]), the Court held that the deadlock jury instruction was coercive and thus unconstitutional because it violated a defendant's due process rights and right to a fair trial. Relying on the principle of *stare decisis*, the Court vacated the death sentence and reaffirmed the holding in *LaValle* that the deadlock jury instruction was unconstitutional and could not be ameliorated by the judge's further instruction.

DISCLOSURE

Muriel Siebert & Co., Inc. v Intuit, Inc. (8 NY3d 506)

In this appeal, the Court held that disqualification of defendant Intuit's attorneys was unwarranted although they had conducted an *ex parte* interview of a former executive of plaintiff, who was previously a member of plaintiff's "litigation team" and privy to privileged and confidential information. Holding that no disciplinary rule prohibited the conduct engaged in by defense counsel, the Court nonetheless advised that counsel conducting an *ex parte* interview of an adversary's former employee must conform to all ethical standards when doing so.

Arons v Jutkowitz, Webb v New York Methodist Hosp., Kish v Graham (9 NY3d 393)

These three appeals called upon the Court to decide whether an attorney may interview an adverse party's treating physician privately when the adverse party has affirmatively placed his medical condition in controversy. Noting that it had previously recognized the importance of informal discovery practices in litigation, the Court opined that no reason existed why a nonparty treating physician should be less available for an off-the-record interview than other nonparties, although the Health Insurance Portability and Accountability Act of 1996 (HIPAA) imposed procedural prerequisites unique to the informal discovery of health care professionals. As a result, an attorney wishing to contact an adverse party's treating physician must first obtain a valid HIPAA authorization or a court or administrative order, or must issue a subpoena, discovery request or other lawful process with satisfactory assurances relating to either notification or a qualified protective order. Plaintiffs who place

their medical condition in controversy waive the physician-patient privilege, and therefore have no basis for refusing to furnish any requested HIPAA-compliant authorization. Further, an attorney who approaches a nonparty treating physician (or other health care professional) for an interview must reveal his client's identity and interest, and must make clear that any discussion with counsel is entirely voluntary and limited in scope to the particular medical condition at issue in the litigation.

ENVIRONMENTAL LAW

Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast (9 NY3d 219)

In a proceeding involving State Environmental Quality Review Act (SEQRA) review of an application to a planning board seeking subdivision approval for a residential development, the Court held that a lead agency's determination whether to require a supplemental environmental impact statement (SEIS) is discretionary. The lead agency need not await permitting decisions, nor solicit comments from other agencies, when considering the necessity of a SEIS. As long as the lead agency takes a "hard look" at the changes and makes a reasoned elaboration for its decision, its determination will be upheld.

FAMILY LAW

Matter of Sheena D. (8 NY3d 136)

After a finding of neglect based upon sexually abusing his 16-year-old sister-in-law and keeping a shotgun accessible to his two young sons, ages 2 and 4, petitioner was barred by Family Court from having contact with his sons until they turned 18 years old. The dispositional order releasing the two children to the custody of their mother had neither an expiration date nor a requirement of periodic court review. On appeal, the Court noted that under Family Court Act § 1056(1), the duration of an order of protection is tied to the duration of a concurrent dispositional order. However, the Court held that a dispositional order that has no expiration date cannot be accompanied by an open-ended order of protection because it would eviscerate the Legislature's intention of limiting the length of orders of protection in child protective proceedings and providing for periodic court review of such orders.

Matter of E. S. v P. D. (8 NY3d 150)

In this appeal, the Court was asked to decide whether a grandmother was properly granted visitation with her grandson as allowed by section 72(1) of the Domestic Relations Law and, if so, whether this provision was constitutional in view of the Supreme Court of the United States' decision in *Troxel v Granville* (530 US 57 [2000]). The Court noted that section 72(1) incorporates the traditional presumption that a fit parent's decisions are in the child's best interest, as required by *Troxel*. Further, the Court opined, the trial court properly determined that the grandmother had cleared the high hurdle created by the presumption before considering the many circumstances bearing upon the child's best interest and granting her visitation. Accordingly, the Court concluded that the statute was constitutional both facially and as applied.

Ross v Louise Wise Servs., Inc. (8 NY3d 478)

Compensatory damages are intended to make the victim whole. Punitive damages punish the tortfeasor and deter the wrongdoer and others similarly situated from engaging in the same conduct in the future. Here, the Court of Appeals held that although Louise Wise Services may have committed the tort of wrongful adoption by failing to disclose certain information about the biological family's history to the adoptive parents, the agency's conduct did not rise to the level of moral turpitude required for punitive damages. Thus, plaintiffs were limited to seeking compensatory damages.

Matter of Greene County Dept. of Social Servs. v Ward (8 NY3d 1007)

In a case concerning an adoptive mother who permanently relinquished her parental rights to a county department of social services, the Court ruled the exemption from the child support obligation for the "parent" of a "child born out of wedlock" (Social Services Law § 398[6][f]; 18 NYCRR 422.4) does not apply to a single woman who adopted a child born to unmarried parents, as it was intended to apply solely to the biological "mother" or "father" of the child. The concurrence concluded that the Department of Social Services had failed to provide mandatory preventative services to an adoptive mother and child in need.

GENERAL BUSINESS LAW

Sperry v Crompton Corp. (8 NY3d 204)

In this putative class action suit alleging price-fixing, the Court was asked whether treble damages are available in connection with a Donnelly Act claim. After reviewing the legislative history underlying state antitrust and class action statutes, the Court determined that three-fold damages in such class action suits are in the nature of a penalty under CPLR 901(b) and, absent express statutory authorization, are not recoverable.

INSURANCE LAW

Appalachian Ins. Co. v General Elec. Co. (8 NY3d 162)

Here, the Court was required to interpret insurance policies with "per occurrence" limits to decide whether General Electric could group together as a single occurrence numerous personal injury claims arising from the exposure of individuals to asbestos insulation in GE turbines at worksites across the country. Adhering to the "unfortunate event" test developed in *Arthur A. Johnson Corp. v Indemnity Ins. Co. of N. Am.* (7 NY2d 222 [1959]), the Court determined that the claims could not be aggregated as a single occurrence because they lacked any spatial or temporal relationship among them, given that the asbestos exposure incidents differed in terms of when and where exposure occurred, whether the exposure was prolonged and for how long, and the number of GE turbine sites involved.

BP A.C. Corp. v One Beacon Ins. Group (8 NY3d 708)

Insurer denied a defense to an additional named insured, contending that liability in the underlying action must be determined before such obligation arises. On appeal, the

Court reaffirmed the well-settled principle that an insurer's exceedingly broad duty to defend its named insured is triggered when the allegations in the complaint, however meritless, fall within the terms of the policy. The Court held that the same standard used to determine whether a named insured is entitled to a defense must be used to determine if an additional named insured is entitled to a defense, regardless whether liability in the underlying action is established.

Raffellini v State Farm Mut. Auto. Ins. Co. (9 NY3d 196)

In this litigation between an insured and his automobile liability insurance carrier, the Court was asked whether the "serious injury" exclusion in the No-Fault Law applies to a supplementary uninsured/underinsured motorist endorsement. After plaintiff settled with the driver responsible for the injuries he sustained in an automobile accident, he sought to recover further pain and suffering damages under the supplementary uninsured/ underinsured motorist (SUM) coverage in his policy. His carrier declined payment in the absence of proof that plaintiff had suffered a serious injury as defined in the No-Fault Law. Plaintiff claimed that the serious injury threshold applied only to uninsured motorist benefits authorized in Insurance Law § 3420(f)(1) -- not underinsured motorist claims addressed in Insurance Law § 3420(f)(2). Reading section 3420 as a whole and cognizant of the interpretation adopted by the Superintendent of Insurance in pertinent regulations, the Court held that plaintiff could not obtain non-economic loss damages without demonstrating that he suffered a serious injury.

LABOR LAW

Matter of New York City Tr. Auth. v New York State Pub. Empl. Relations Bd. (8 NY3d 226)

The New York City Transit Authority sought to annul a decision of the Public Employment Relations Board that charged the Transit Authority with violating the *Weingarten* rights of one of its employees. A "*Weingarten* right" was established in *NLRB v J. Weingarten, Inc.* (420 US 251 [1975]), and gave an employee of an entity subject to the National Labor Relations Act the right to have a union representative present at any investigatory interview, if the employee reasonably believes the interview may result in disciplinary action. Igor Komarnitskiy, a car inspector for the Transit Authority, was asked to provide a written response to the allegation that he used a racial slur when he was asked for a pass before he could enter a rail yard. Komarnitskiy provided a written response, prepared with the help of a Transport Workers Union representative. The Transit Authority then ordered Komarnitskiy to come to the supervisor's office alone and provide a new response because it suspected the Transit Workers Union representative influenced the content of the first response. Komarnitskiy alleged that his *Weingarten* rights were violated because he could not bring the Transit Workers Union representative with him to the meeting with the supervisor. The Court held that the Taylor Law, found in Civil Service Law § 202, does not give a *Weingarten* right to New York public employees. The Taylor Law uses language similar to that found in the statute at issue in *Weingarten*, insomuch as it allows employees to join and participate in labor organizations, but it does not include the critical language relied on by the Supreme Court of the United States in the federal case. The Court concluded that the right to have a representative present at such interviews is not inherent in the right to participate

in a union and thus is not present in the text of the Taylor Law, but employees may seek such a right through collective bargaining.

Matter of County of Chautauqua v Civil Serv. Empls. Assn. (8 NY3d 513)

This case required the Court to determine whether layoffs and rights of displacement pursuant to a collective bargaining agreement were arbitrable under the Taylor Law. A provision of the parties' agreement directed that "an employee's seniority shall determine the order to be followed" for layoff purposes. The Court held that this collective bargaining agreement provision was "plainly irreconcilable" with Civil Service Law § 80(1), which grants the employer "a nondelegable discretion to determine -- for reasons of economy, among others -- its staffing and budgetary needs in order to effectively deliver uninterrupted services to the public," and that this prerogative could not be "altered or modified by agreement or otherwise." As to the second grievance -- regarding displacement rights -- the parties' agreement required the employer to first displace "within [a] department" and, upon exhaustion, "the employee shall have the right to displace in other departments." The Court concluded that section 80(4) -- which mandated that reductions in force "be made from among employees holding the same or similar positions in the entire department or agency" where such reductions occur -- did not clearly "prohibit, in an absolute sense, a public employer from agreeing to permit employees to 'bump' less senior employees in another department or division within the same layoff unit." Because no public policy prohibits that provision of the agreement, the Court held the second grievance arbitrable.

Mayor of the City of N.Y. v Council of the City of N.Y. (9 NY3d 23)

Under the Taylor Law (Civil Service Law § 200 et seq.) and the New York City Collective Bargaining Law (New York City Administrative Code § 12-307[a][2]), the Mayor of New York City negotiates certain universal terms for City employment with a panel of bargaining units representing more than 50% of the City's workforce. An exception to this process exists for members of the "uniformed police, fire, sanitation and correction services," with each of whose bargaining units the Mayor must negotiate separately (New York City Administrative Code § 12-307[a][4]). In 2001, the City Council passed a law providing that dispatchers and emergency medical technicians (EMTs) were members of the uniformed fire service. The Mayor sought a declaratory judgment that this amendment was invalid. He argued that the amendment usurped his prerogative under the Taylor Law to agree with bargaining units on the terms and conditions of employment. The Court rejected this argument, holding that the amendment merely defined the procedure by which such an agreement could be negotiated. The Court also rejected the Mayor's argument that the amendment required a referendum for enactment because it abolished, transferred or curtailed the Mayor's power, holding that only laws that limit a power granted to an elected official as part of the structure of the local government require such a referendum.

LAND USE

328 Owners Corp. v 330 W. 86 Oaks Corp. (8 NY3d 372)

In 1999, a tenants' corporation acquired a dilapidated five-story brownstone located on West 86th Street in Manhattan from the City of New York's Department of Housing

Preservation and Development for $340,000. The conveyance was made pursuant to the Urban Development Action Area Act. Consistent with the Act, the City Council and Mayor approved the sale. Covenants in the deed indicated that -- as required under the Act -- the purpose of the conveyance was rehabilitation or conservation. Additional covenants required the tenants' corporation to make certain repairs and to maintain current tenants' rents for two years. The tenants' corporation did not comply with any of the covenants. Instead, it sold the property in 2001 to a private developer for a reported $2.25 million. The Court held that the deed clearly stated that the City's conveyance -- for a fraction of the land's fair market value -- was conditioned upon compliance with the Act and the covenants, and that the developer, the tenants' successor in interest, took title subject to those covenants.

Matter of Haberman v Zoning Bd. of Appeals of City of Long Beach (9 NY3d 269)

A court settlement between petitioner and the City of Long Beach and its Zoning Board of Appeals (ZBA) provided that petitioner would apply for variances, which would be granted according to certain conditions, including time limits in which petitioner needed to apply for building permits. The settlement called for petitioner to pay money to the City to fund public improvements, and the City agreed to begin construction of the improvements within a certain time period. Petitioner paid the money to the City, but the City failed to meet its deadline. The City asked petitioner for an extension of time. In a letter, petitioner agreed to grant the extension, in return for an extension of his time limits on applying for building permits. The Corporation Counsel consented to the letter as attorney for the City and the ZBA; the letter was then incorporated into a stipulation signed by counsel for all parties and "so ordered" by Supreme Court. Later, petitioner's construction company applied for and received a building permit. However, the ZBA revoked the permit, claiming that petitioner's time extension was not valid because it had not been ratified by a vote of the ZBA. Petitioner brought a proceeding to annul the ZBA's revocation and reinstate his building permit. The Court held that, where a zoning board has issued a variance, the board's lawyer, acting with actual or apparent authority, may agree to extend the time limits in the variance.

O'Mara v Town of Wappinger (9 NY3d 303)

On certification from the Court of Appeals for the Second Circuit, the Court resolved whether and under what circumstances an open space restriction imposed pursuant to Town Law § 276 is enforceable against a subsequent purchaser. In 1962, the Town of Wappinger Planning Board approved a condominium project. A plat, filed in the County Clerk's office, had an "Open Space" notation for two of the parcels. In 2002, plaintiffs purchased the two subject parcels and took title subject to any restrictions, conditions and covenants of record. The Court held that Real Property Law § 291 is inapplicable because there was never a "conveyance" within the meaning of Real Property Law § 290(3), and that an open space restriction placed on a plat pursuant to Town Law § 276 and filed pursuant to Real Property Law § 334 is enforceable against a subsequent purchaser.

LIMITATION OF ACTIONS

Williamson v PricewaterhouseCoopers LLP (9 NY3d 1)

The Court was asked to determine for the first time whether the continuous representation doctrine applied to toll the statute of limitations in an auditing malpractice context. Plaintiff, the liquidating trustee of two hedge funds, brought malpractice claims against defendant accounting firm based on its improper audits of the hedge funds' financial statements for the fiscal years 1995 through 2000. Defendant argued that plaintiff's claims were time-barred. Plaintiff countered that the statute of limitations should be tolled under the continuous representation doctrine because each audit was one step in the continuous and interrelated service defendant provided to the hedge funds from 1990 through 2002. The Court held that, in the circumstances presented, the continuous representation doctrine was not available to toll the limitations period because the "mutual understanding" required under the doctrine was not present. Plaintiff's allegations, the Court noted, did not establish a course of representation as to the particular problems that gave rise to his malpractice claims. Specifically, plaintiff failed to allege that defendant and the hedge funds explicitly contemplated further representation regarding any of the audits in question.

MENTAL HEALTH LAW

State of N.Y. ex rel. Harkavy v Consilvio (8 NY3d 645)

In this habeas corpus proceeding, convicted sex offenders who were involuntarily transferred to state psychiatric facilities upon the completion of their prison sentences challenged the legality of their civil commitment. While the proceeding was pending, the Legislature enacted the Sex Offender Management and Treatment Act of 2007, adding a new article 10 to the Mental Hygiene Law addressing the procedure for the post-incarceration civil commitment of sex offenders. The detailed legislation requires screening of sex offenders nearing the completion of their prison sentences to determine whether they have mental abnormalities necessitating commitment in a psychiatric hospital. Individuals suspected of having such mental abnormalities are entitled to a jury trial and, if further commitment or supervision is deemed warranted by the jury, the court decides whether the offender is a dangerous sex offender requiring confinement or whether the offender is a suitable candidate for outpatient supervision after release from prison. Similar to the petitioners in the earlier case of *State of N.Y. ex. rel. Harkavy v Consilvio* (7 NY3d 607 [2006]), the Court determined that the state erred in relying on the commitment procedures in article 9 of the Mental Hygiene Law, and the matter was remitted to Supreme Court to afford petitioners the proper hearing and commitment procedures under the new article 10.

PARTNERSHIP LAW

Bailey v Fish & Neave (8 NY3d 523)

At issue in this appeal was the propriety of an amendment to a partnership agreement passed by a majority of shareholders that affected compensation to withdrawing partners. The Court held that the amendment was proper because the agreement, by its terms,

unambiguously permitted amendments by majority vote. In so holding, the Court reaffirmed the importance and weight accorded to partnership agreements, especially in the context of law firm/partner relationships.

PUBLIC OFFICERS LAW

Matter of Data Tree, LLC v Romaine (9 NY3d 454)

Data Tree, LLC, a commercial provider of online public land records, requested under the Freedom of Information Law (Public Officers Law article 6) certain land records from the Suffolk County Clerk's Office. Data Tree asked that the Clerk provide the records in computer image form, "TIFF form," or by microfilm. Data Tree brought an article 78 proceeding seeking an annulment of the denial of its request and to compel disclosure. The Court held that the burden lies squarely with the agency to prove that compliance with such request would require the Clerk to disclose information excluded under the privacy exemption of the Freedom of Information Law. In remitting the matter to Supreme Court, the Court noted that Data Tree's commercial motive was irrelevant to the privacy analysis. The Court further held that questions of fact exist as to whether disclosure may be accomplished by merely retrieving information already maintained electronically by the Clerk's Office or whether complying with Data Tree's request would require creating a new record.

RELIGIOUS CORPORATIONS LAW

Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahana (9 NY3d 282)

The issue on this appeal was whether resolution of an election controversy between two rival factions of a religious congregation could be achieved through the application of neutral principles of law without judicial intrusion into matters of religious doctrine. The Court held that the dispute here between the two factions implicated membership issues requiring intrusion into constitutionally protected ecclesiastical matters. Thus, the dispute must be resolved by the Congregation, not by the Court.

Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v Congregation Yetev Lev D'Satmar, Inc. (9 NY3d 297)

In a dispute over the ownership of a cemetery for members of the Satmar Community, the Court held that record support exists for the finding that a one-half interest transfer of the cemetery was not in the best interests of the Congregation. Thus, the Congregation was not entitled to retroactive approval of the transfer under the Religious Corporations Law.

SECURITIES LAW

Rosenberg v MetLife, Inc. (8 NY3d 359)

The United States Court of Appeals for the Second Circuit inquired whether statements by an employer on a National Association of Securities Dealers (NASD) employee

termination notice are entitled to absolute or qualified privilege in a libel action. When a financial services representative is terminated by a registered securities firm, NASD requires that the employer file a "Form U-5" indicating whether the former employee had been subject to criminal charges, customer complaints or an internal review pertaining to the violation of investment rules. If so, the employer must further disclose the nature of the allegation. U-5 forms are entered on a central securities registration system available to the securities industry, and certain information is available on-line to the investing public. In this case, a terminated employee sued his former employer in federal court seeking damages for employment discrimination, fraudulent misrepresentation, breach of contract and libel in connection with statements the employer made on the U-5. Based on the compulsory nature of the disclosure, NASD's quasi-judicial function in regulating the securities industry, and the policy underlying the U-5 Form of protecting the investing public, the Court held that the statements were protected by an absolute privilege.

SOCIAL SERVICES LAW

Matter of Melendez v Wing (8 NY3d 598)

Petitioner, who resided with her spouse and three minor children, received public assistance that included an emergency shelter allowance for individuals diagnosed with acquired immunodeficiency syndrome or human immunodeficiency virus-related illness, and family members residing with them. The Court decided that Social Services Law § 131-c (1) prohibited consideration of a minor's federal Supplemental Security Income benefits as family resources when calculating the emergency shelter allowance. Although the federal law that section 131-c(1) was meant to mirror had since been repealed, this did not implicitly amend section 131-c(1) or alter the Legislature's purpose and intent at the time it enacted this provision.

Matter of Tomeck (8 NY3d 724)

The social services commissioner filed a claim and objections to an estate accounting, asserting that decedent wife owed Medicaid benefits provided to her husband because she was a responsible relative with resources to pay for his care. The key question was whether attributing or deeming the institutionalized husband's Social Security income to the wife subjected the husband's Social Security benefits to "execution, levy, attachment, garnishment, or other legal process" in contravention of 42 USC § 407(a), the Social Security Act's anti-alienation provision. The Court decided that the federal anti-alienation provision did not foreclose attributing the husband's Social Security benefits to the wife; therefore, she had sufficient means to pay for her husband's nursing home care when he became eligible for Medicaid. As a result, an implied contract for the husband's care was created under Social Services Law § 366(3)(a), giving the county department of social services the right to assert a claim against the estate to recover Medicaid payments made on the husband's behalf.

TORTS

Bingham v New York City Tr. Auth. (8 NY3d 176)

A pedestrian sued the New York City Transit Authority to recover damages for personal injuries she sustained when she fell while descending a stairway used as a means of access to and egress from the New York City subway. The Court held that where a stairwell or approach is primarily used as a means of access to and egress from the common carrier, the carrier has a duty to exercise reasonable care to see that such means of approach remain in a safe condition or, where appropriate, to take such precautions or give such warnings as would protect those using such area from unforeseen dangers.

Kolnacki v State of New York (8 NY3d 277)

Claimant served upon the State a complaint seeking damages for injuries allegedly suffered when she fell at a state park. Although Court of Claims Act § 11(b) required her to state the "total sum claimed" in her complaint, plaintiff did not do so. The Court held that failure to state the total sum was a jurisdictional defect that required dismissal of the complaint. As the Court recognized, however, the Legislature was free to alter those requirements at any time. On August 15, 2007, the Legislature did just that; it amended § 11(b) to except from the "total sum" pleading requirement claims for "personal injury, medical, dental or podiatric malpractice or wrongful death," thereby bringing the Court of Claims Act into compliance with CPLR 3017.

Thyroff v Nationwide Mut. Ins. Co. (8 NY3d 283)

In this certified question case from the United States Court of Appeals for the Second Circuit, the issue was whether a common-law conversion claim can be based on the misappropriation of electronic records and data. After examining the historical evolution of conversion in New York, the Court concluded that the claim was available to redress misappropriation of this category of intangible property -- electronic records stored on a computer -- in that such records are legally indistinguishable from printed documents.

Ortega v City of New York (9 NY3d 69)

In this case, the Court declined to recognize the new tort of third-party negligent spoliation of evidence. Plaintiffs were injured when their vehicle burst into flames on the highway. After towing the van from the roadway, the City of New York inadvertently destroyed it, even though plaintiffs had obtained a preservation order that would have allowed them to inspect the vehicle. Plaintiffs then sought to pursue a spoliation claim against the City, alleging that the destruction of the vehicle prevented them from determining what had caused the vehicle to catch fire and, in turn, from possibly identifying a party responsible for damages. Noting that non-tort remedies already exist in New York for the destruction of evidence, the Court deemed the spoliation tort unduly speculative since the loss of the evidence left the parties no reliable means of ascertaining whether expert inspection of the vehicle would have benefitted plaintiffs in the underlying litigation.

Boyd v Manhattan & Bronx Surface Tr. Operating Auth. (9 NY3d 89)

Plaintiff injured her hand and shoulder when grabbing a loose metal strap on a New York City bus to steady herself as the bus began to move. She filed suit against the bus op-

erator and its parent, alleging that the strap was defective and the bus company had a duty to ensure such defects were not present. Defendants argued that the bus driver did not have either actual or constructive notice of the defect and thus plaintiff's negligence claim failed. Defendants asked the court to give the jury an actual and constructive notice charge, instructing the jury not to find them negligent if they did not know, and would not have known even while using reasonable care, of the defect. The court instead charged the jury with Pattern Jury Instruction (PJI) 2:164, which states, in relevant part, that "[a] common carrier such as a bus company is required to know, and is charged with knowing the danger to its passengers from faulty maintenance of its vehicle and equipment, and is also charged with knowing how to avoid such dangers." The jury found for the plaintiff. The Court reiterated its holding in *Bethel v New York City Tr. Auth.* (92 NY2d 348 [1998]) that a common carrier owes only the basic negligence standard of "reasonable care under the circumstances" and rejected plaintiff's argument that the PJI 2:164 charge adequately communicated the reasonable care standard to the jury. The Court thus held that in cases such as this against common carriers, courts should charge juries with actual and constructive notice upon being requested to do so by defendants, and said that courts should avoid the cited language in PJI 2:164 in future charges.

Haymon v Pettit (9 NY3d 324)

In this negligence action, the Court resolved whether a duty to warn or protect non-patron spectators of a baseball game existed under the circumstances. Defendant baseball park operator rewarded such non-patrons with free tickets if they retrieved foul balls hit out of the stadium. Plaintiff's then-14-year old son was severely injured by a driver with a .11% blood alcohol level when he chased a foul ball into an adjacent street. The record indicated that the infant "was wearing headphones while chasing the ball and failed to look both ways before crossing the street." The Court determined that the baseball park operator did not owe a duty because it had not "created or contributed" to a dangerous condition on the park's surrounding premises. Stating that mere foreseeability is insufficient to impose a duty, the Court determined that, under the circumstances, the park operator's promotion -- rewarding *retrieval*, not chasing, of balls -- did not give rise to a duty where there were "inherent risks associated with crossing the street," which "are multiplied when [done] so indiscriminately." Additionally, because foul balls "can land on virtually any square foot of property surrounding a stadium," imposition of a duty to warn or protect would be unfair and impractical.

UNFAIR COMPETITION

ITC Ltd. v Punchgini, Inc. (9 NY3d 467)

Plaintiffs own and operate Bukhara, a restaurant in New Delhi, India, which is highly regarded by those with an avid interest in fine cuisine. Defendants own and operate the similarly named Bukhara Grill in Manhattan, which features many of the New Delhi restaurant's signature dishes and replicates many of its distinctive design elements. In response to certified questions asked by the Court of Appeals for the Second Circuit, the Court reaffirmed that when a business, through renown in New York, possesses goodwill constituting property or commercial advantage in this state, that goodwill is protected from misappro-

priation under New York unfair competition law. This is so whether the business is domestic or foreign. To succeed on a misappropriation claim, a plaintiff would have to show, as an independent prerequisite, that a defendant had appropriated (i.e., deliberately copied) its trademark or dress, and that its mark, when used in New York, called to mind its goodwill. However, in response to the certified question whether "New York common law permit[s] the owner of a famous mark or trade dress to assert property rights therein by virtue of the owner's prior use of the mark or dress in a foreign country," the Court did not recognize the "famous" or "well-known" marks doctrine.

WORKERS' COMPENSATION

Matter of LaCroix v Syracuse Exec. Air Serv., Inc. (8 NY3d 348)

The Court determined, contrary to the Workers' Compensation Board, that compensation for loss of use of a body part due to a permanent partial disability, known as a "schedule loss of use" award, may not be made in one lump sum, as the statute expressly requires periodic payment.

Burns v Varriale (9 NY3d 207)

The Workers' Compensation Board classified claimant as having a nonschedule permanent partial disability. The Court held that the value of future workers' compensation benefits for a claimant with such a disability is speculative, the present value of these benefits cannot be ascertained at the time claimant recovers damages in a third-party action, and claimant is not entitled to an apportionment of attorney's fees based on such future benefits. The Court noted, however, that compensation carriers should be required to periodically pay their equitable share of attorney's fees and costs incurred by claimants in securing any continuous compensation benefits. To effect this, the Court stated that trial courts, in the exercise of their discretion, can fashion a means of apportioning litigation costs as they accrue, and of monitoring how the carrier's payments to the claimant are made and, thereby, ensure that the payment of attorney's fees by the carrier is based on an actual, nonspeculative benefit.

Fung v Japan Airlines Co., Ltd. (9 NY3d 351)

The Court considered the relationship between the exclusivity provisions of Workers' Compensation Law §§ 11 and 29(6) and principles of agency. An employee of the Port Authority of New York and New Jersey was injured on a patch of ice on a parking lot at John F. Kennedy International Airport, for which he later received workers' compensation payments. Pursuant to a lease agreement with the Port Authority, defendant Japan Airlines contracted with Aero Snow Removal Corp. to "push and pile" snow following one inch of accumulation and to provide salting and sanding services upon request. Although the Port Authority/Japan Airlines lease explicitly declared that such agreement did "not constitute [Japan Airlines] as agent or representative of the Port Authority," Japan Airlines signed the contract with Aero as "the agent for [the] Port Authority." Rejecting the Appellate Division's conclusion that Japan Airlines had an exclusivity defense under section 11 because it "was serving as the Port Authority's managing agent," the Court concluded "title alone" is insufficient and is merely a starting point to inquire whether "a working relationship with

the injured plaintiff sufficient in kind and degree [exists] so that the third party, or the third-party's employer, may be deemed plaintiff's [special] employer" for purposes of the exclusivity defense. In rejecting plaintiff's negligence claim against Aero in the related third-party action, the Court held that "merely plowing the snow" -- whereby a thin sheet of ice may have remained, or snow may have melted and refrozen -- did not suffice to impose tort liability upon Aero where its actions "could not be said 'to have created or exacerbated a dangerous condition.'"

IV. Appendices

APPENDICES

1. **Judges of the Court of Appeals**

2. **Pertinent Clerk's Office Telephone Numbers**

3. **Summary of Total Appeals Decided in 2007 by Jurisdictional Predicate**

4. **Comparative Statistical Analysis for Appeals Decided In 2007**
   - **All Appeals - % Civil and Criminal**
   - **Civil Appeals - Type of Disposition**
   - **Criminal Appeals - Type of Disposition**

5. **Civil Appeals Decided - Jurisdictional Predicates**

6. **Criminal Appeals Decided - Jurisdictional Predicates**

7. **Motion Statistics (2003-2007)**

8. **Criminal Leave Applications Entertained by Court of Appeals Judges (2003-2007)**

9. **Threshold Review of Subject Matter Jurisdiction by the Court of Appeals: SSD (Sua Sponte Dismissal) - Rule 500.10**

10. **Office for Professional Matters Statistics**

11. **Nonjudicial Staff**

APPENDIX 1

JUDGES OF THE COURT OF APPEALS

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

Hon. Carmen Beauchamp Ciparick
Senior 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

Hon. Eugene F. Pigott, Jr.
Associate Judge of the Court of Appeals

Hon. Theodore T. Jones, Jr.
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:
Heather Davis, Esq. (518) 455-7705

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

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

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

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

Court of Appeals internet web site
http://www.nycourts.gov/courts/appeals

SUMMARY OF TOTAL APPEALS DECIDED IN 2007 BY JURISDICTIONAL PREDICATE
January 1, 2007 through December 31, 2007

BASIS OF JURISDICTION: ALL APPEALS	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Dissents in Appellate Division	15	4	3	0	0	22
Permission of Court of Appeals or Judge thereof	49	29	13	0	0	91
Permission of Appellate Division or Justice thereof	26	10	3	0	0	39
Constitutional Question	5	2	1	0	0	8
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	0	1	0	24	25
Totals	**95**	**45**	**21**	**0**	**24**	**185**

BASIS OF JURISDICTION: CIVIL APPEALS	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Dissents in Appellate Division	15	4	3	0	0	22
Permission of Court of Appeals	24	17	12	0	0	53
Permission of Appellate Division	18	7	3	0	0	28
Constitutional Question	5	2	1	0	0	8
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	0	0	0	24	24
Totals	**62**	**30**	**19**	**0**	**24**	**135**

BASIS OF JURISDICTION: CRIMINAL APPEALS	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Permission of Court of Appeals Judge	25	12	1	0	0	38
Permission of Appellate Division Justice	8	3	0	0	0	11
Other [1]	0	0	0	0	1	1
Totals	**33**	**15**	**1**	**0**	**1**	**50**

[1] 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 500.27).

APPENDIX 4

COMPARATIVE STATISTICAL ANALYSIS FOR APPEALS DECIDED IN 2007

ALL APPEALS - % CIVIL AND CRIMINAL

	2003	2004	2005	2006	2007
Civil	74% (130 of 176)	74% (136 of 185)	70% (137 of 196)	67% (127 of 189)	73% (135 of 185)
Criminal	26% (46 of 176)	26% (49 of 185)	30% (59 of 196)	33% (62 of 189)	27% (50 of 185)

CIVIL APPEALS - TYPE OF DISPOSITION

	2003	2004	2005	2006	2007
Affirmed	42%	51%	49%	57%	46%
Reversed	32%	33%	31%	21%	22%
Modified	8%	4%	9%	8%	14%
Dismissed	--	1%	--	--	--
Other (e.g. judicial suspension; Rule 500.27 certified question)	18%	11%	11%	14%	18%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	2003	2004	2005	2006	2007
Affirmed	67%	76%	69%	69%	66%
Reversed	20%	14%	24%	16%	30%
Modified	9%	4%	5%	12%	4%
Dismissed	4%	6%	2%	3%	--

CIVIL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2003	2004	2005	2006	2007
Appellate Division Dissents	16% (20 of 130)	22.75% (31 of 136)	12.4% (17 of 137)	15% (19 of 127)	16% (22 of 135)
Court of Appeals Leave Grants	50% (65 of 130)	51.5% (70 of 136)	50.4% (69 of 137)	43% (54 of 127)	39% (53 of 135)
Appellate Division Leave Grants	7% (9 of 130)	9.5% (13 of 136)	19.7% (27 of 137)	21% (27 of 127)	21% (28 of 135)
Constitutional Question	6% (8 of 130)	4.5% (6 of 136)	5.8% (8 of 137)	9% (11 of 127)	6% (8 of 135)
Stipulation for Judgement Absolute	--	--	.8% (1 of 137)	--	--
CPLR 5601(d)	2% (3 of 130)	.75% (1 of 136)	--	--	1% (2 of 135)
Supreme Court Remand	--	--	--	--	--
Judiciary Law § 44 [1]	6% (8 of 130)	3% (4 of 136)	5.1% (7 of 137)	2% (3 of 127)	4% (5 of 135)
Certified Question from Federal Court (Rule 500.27) [2]	12% (16 of 130)	8% (11 of 136)	5.8% (8 of 137)	10% (13 of 127)	13% (17 of 135)
Other	1% (1 of 130)	--	--	--	--

[1] Includes judicial suspension matters

[2] Includes decisions accepting/declining certification

APPENDIX 6

CRIMINAL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2003	2004	2005	2006	2007
Permission of Court of Appeals Judge	90% (41 of 46)	65% (32 of 49)	85% (50 of 59)	85% (53 of 62)	76% (38 of 50)
Permission of Appellate Division Justice	8% 4 of 46)	29% (14 of 49)	13% (8 of 59)	15% (9 of 62)	22% (11 of 50)
Other	2% (1 of 46)	6% (3 of 49)	2% (1 of 59)	--	2% [1] (1 of 50)

[1] People v Taylor, capital appeal

MOTION STATISTICS (2003 - 2007)

Motions Undecided as of January 1, 2007 - 172

Motion Numbers Used in 2007 -1481

Motions Undecided as of December 31, 2007 - 180

Motions Dispositions During 2007 - 1440

	2003	2004	2005	2006	2007
Motion Numbers Used for Calendar Year	1363	1199	1344	1401	1481
Motions Decided for Calendar Year	1377	1222	1222	1397	1440
Motions for leave to appeal	1053*	905*	967*	1021*	1100*
granted	86	75	61	61	77
denied	774	644	697	764	824
dismissed	187	182	203	192	192
withdrawn	6	4	6	4	7
Motions to dismiss appeals	13	6	6	8	11
granted	7	3	3	4	6
denied	6	2	2	4	4
dismissed	0	0	0	0	1
withdrawn	0	1	1	0	0
Sua Sponte and Court's Own motion dismissals	89	98	81	92	89
TOTAL DISMISSAL OF APPEALS	96	101	84	96	95
Motions for reargument of appeal	7	14	21	16	27
granted	0	0	0	0	1
Motions for reargument of motion	59	44	38	62	41
granted	0	1	1	1	2
Motions for assignment of counsel	38	43	44	61	48
granted	36	41	43	51	47
Legal Aid	12	8	10	9	8
denied	2	2	1	0	0
dismissed	0	0	0	1	1

APPENDIX 7 (continued)

	2003	2004	2005	2006	2007
Motions to waive rule compliance	0	1	1	0	0
granted	0	0	0	0	0
Motions for poor person status	82	122	140	177	213
granted	0	0	0	0	4
denied	0	0	1	0	0
dismissed	82	122	139	177	209
Motions to vacate dismissal/preclusion	1	1	1	3	4
granted	0	0	0	3	2
Motions for calendar preference	1	0	4	0	1
granted	0	0	0	0	0
Motions for amicus curiae status	105	93	95	119	108
granted	93	88	93	114	100
Motions for Executive Law § 71 Order (AG)	4	1	0	2	2
Motions for leave to intervene	4	2	2	2	3
granted	1	0	1	2	3
Motions to stay/vacate stay	26	14	22	21	17
granted	2	5	1	2	2
denied	3	0	4	0	1
dismissed	21	9	17	17	14
withdrawn	0	0	0	2	0
Motions for CPL 460.30 extension	37	26	33	32	27
granted	27	24	25	27	20
Motions to strike appendix or brief	5	10	7	6	8
granted	1	2	2	1	3
Motions to amend remittitur	0	0	1	1	2
granted	0	0	0	0	0
Motions for miscellaneous relief	15	14	5	6	14
granted	2	4	1	0	2
denied	8	6	4	5	9
dismissed	5	4	0	1	2
withdrawn	0	0	0	0	1
Withdrawals/substitution of counsel	3	1	2	1	0
granted	3	1	1	1	0
denied	0	0	1	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

	2003	2004	2005	2006	2007
TOTAL APPLICATIONS ASSIGNED:	2557	2570	2473	2458	2382
TOTAL APPLICATIONS DECIDED: [1]	2601	2644	2383	2436	2371
TOTAL APPLICATIONS GRANTED:	37	46	42	52	36
TOTAL APPLICATIONS DENIED:	2365	2407	2109	2166	2126
TOTAL APPLICATIONS DISMISSED:	191	176	228	212	205
TOTAL APPLICATIONS WITHDRAWN:	8	15	4	6	4
TOTAL PEOPLE'S APPLICATIONS:	44	48	44	47	46
(a) GRANTED:	4	9	5	5	3
(b) DENIED:	36	33	37	35	40
(c) DISMISSED:	1	1	1	3	2
(d) WITHDRAWN:	3	5	1	4	1
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	397	367	353	355	349 [2]
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	5	7	6	7	5

[1] Includes some applications assigned in previous year.

[2] This average was calculated by dividing the total number of applications assigned during ten and one-third months of the year by seven and dividing the total number assigned during one and two-thirds months by six, because only six Judges were being assigned for the first one and two-thirds months.

APPENDIX 9

2007

THRESHOLD REVIEW OF SUBJECT MATTER JURISDICTION BY THE COURT OF APPEALS

SSD (sua sponte dismissal) - Rule 500.10

	2003	2004	2005	2006	2007
Total Number of Inquiry Letters Sent	76	73	90*	74	75
Appeals Withdrawn or Discontinued on Stipulation	2	4	1	1	5
Dismissed by Court sua sponte or on motion	42	53	55	52	44
Transferred sua sponte to Appellate Division	2	1	5	4	3
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)	3	5	5	5	9
Jurisdistion Retained - appeals decided	4	2	1	1	2
Inquiries Pending	14	8	21	11	12

* Following inquiry letters sent in For the People Theatres of New York, Inc. v City of New York and Ten's Cabaret, Inc. v City of New York, the Appellate Division, First Department, granted appellants leave to appeal and the Court of Appeals discontinued the review of subject matter jurisdiction.

COMPARATIVE ANALYSIS OF OFFICE FOR PROFESSIONAL MATTERS STATISTICS

2003-2007

TOPIC	2003	2004	2005	2006	2007
Attorneys Admitted (OCA) [1]	8247	8415	8515	8643	8906
Certificates of Admission	118	128	119	134	75
Clerkship Certificates	6	10	3	2	7
Petitions for Waiver	149 [2]	171 [3]	191 [4]	189 [5]	195 [6]
Written Inquiries	93	98	102	67	104
Disciplinary Orders/Name Changes	796 [7]	1469 [7]	899 [7]	1921 [7]	1565 [7]

[1] The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (see Judiciary Law § 468).

[2] Includes correspondence to 3 law schools reviewing their LL.M. programs under Rule 520.6.

[3] Includes correspondence to 3 law schools reviewing their LL.M. programs under Rule 520.6.

[4] Includes correspondence to 7 law schools reviewing their LL.M. programs under Rule 520.6.

[5] Includes correspondence to 11 law schools reviewing their LL.M. programs under Rule 520.6.

[6] Includes correspondence to 5 law schools reviewing their LL.M. programs under Rule 520.6

[7] Includes orders involving multiple attorneys' violation of the registration requirements (Judiciary Law § 468-a).

APPENDIX 10

APPENDIX 11

NONJUDICIAL STAFF

Alexander, Jeremy D. - Senior Court Attorney, Court of Appeals

Ali, Vivian - Principal Stenographer, Court of Appeals

Andrews, Barbara J. - Secretary to Judge G. B. Smith (retired 01/26/07)

Asiello, John P. - Assistant Consultation Clerk, Court of Appeals

Atwell, Angela M. - Senior Service Aide

Austin, Louis C. - Senior Court Building Guard

Bahr, Harold E. - Senior Law Clerk to Chief Judge Kaye

Bauman, Susan R. - Local Area Network Administrator (resigned 12/26/07)

Belsito, Anthony M. - Senior Court Attorney, Court of Appeals

Bohannon, Lisa - Senior Court Analyst

Branch, Jr., Clifton R. - Principal Law Clerk to Judge Jones

Brizzie, Gary J. - Principal Custodial Aide

Brousseau, Cara Johnson - Principal Law Clerk to Judge Read (resigned 07/16/07)

Burstein, Devin J. - Senior Law Clerk to Chief Judge Kaye (resigned 12/15/07)

Byrne, Cynthia D. - Criminal Leave Applications Clerk

Calacone, Stephen F. - Clerical Research Aide

Capehart, Julie D. - Law Clerk to Judge R.S. Smith (resigned 08/02/07)

Carro, Christine - Secretary to Judge Ciparick

Appendix 11 (Continued)

Choy, Victoria L. - Senior Court Attorney, Court of Appeals (resigned 08/14/07)

Cleary, Lisa M. - Principal Stenographer, Court of Appeals

Cohen, Stuart M. - Clerk of the Court of Appeals

Coleman, Lillian M. - Principal Custodial Aide

Conley, Paul F. - Senior Clerical Assistant, Court of Appeals

Costello, James A. - Assistant Deputy Clerk, Court of Appeals

Couser, Lisa A. - Senior Court Building Guard

Cross, Robert J. - Senior Court Building Guard

Dautel, Susan S. - Assistant Deputy Clerk, Court of Appeals

Davis, Heather A. - Chief Motion Clerk

Donelin, AnneMarie - Secretary to Chief Judge Kaye

Donnelly, William E. - Assistant Building Superintendent I

Doyle, John E. - Senior Security Attendant, Court of Appeals (retired 12/26/07)

Dragonette, John M. - Senior Court Building Guard

Drury, Lisa A. - Senior Law Clerk to Judge Read

Duncan, Priscilla - Secretary to Judge Read

Dunn, Matthew R. - Senior Principal Law Clerk to Judge Graffeo

Dunne, Brian J. - Law Clerk to Judge Read

Eddy, Margery Corbin - Principal Court Attorney, Court of Appeals

Edwards, Kevin P. - Senior Court Building Guard

Elkind, Diana - Law Clerk to Judge R.S. Smith

Emigh, Brian J. - Building Manager

Engel, Hope B. - Senior Deputy Chief Court Attorney, Court of Appeals; Court Attorney for Professional Matters

Farrell, Laurence - Deputy Chief Security Attendant, Court of Appeals

Fernandez, Cristina L. - Law Clerk to Judge Ciparick

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

Fleury, Joshua P. - Senior Court Attorney, Court of Appeals

Fludd, Christopher - Senior Court Building Guard

Ford, Daisy G. - Senior Court Attorney, Court of Appeals

Gerber, Matthew L. - Senior Security Attendant, Court of Appeals

Gilbert, Marianne - Principal Stenographer, Court of Appeals

Goergen, Erik A. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Pigott

Gonzalez, Juan C. - Court Attorney, Court of Appeals; Senior Law Clerk to Judge Jones

Grogan, Bruce D. - Senior Principal Law Clerk to Judge Pigott

Haas, Tammy L. - Principal Assistant Building Superintendent

Hancock, Dora N. - Secretary to Judge Jones

Heaney, Denise C. - Senior Security Attendant, Court of Appeals

Herrington, June A. - Principal Stenographer, Court of Appeals

Ho, Dale - Law Clerk to Judge R.S. Smith (resigned 08/14/07)

Appendix 11 (Continued)

Ignazio, Andrea R. - Principal Stenographer, Court of Appeals

Irwin, Nancy J. - Stenographer, Court of Appeals

Kaplan, David J. - Principal Law Clerk to Judge Ciparick (resigned 11/30/07)

Kearns, Ronald J. - HVAC Assistant Building Superintendent

King, Bradley T. - Law Clerk to Judge Ciparick

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

Kong, Yongjun - Principal Custodial Aide

Lawrence, Bryan D. - Principal Local Area Network Administrator

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

Lenart, Margaret S. - Principal Stenographer, Court of Appeals (retired 05/31/07)

Leonard, Donna M. - Senior Court Building Guard

Levin, Justin C. - Principal Court Attorney, Court of Appeals

Long, E. Andrew - Senior Court Attorney, Court of Appeals (resigned 07/12/07)

Lyon, Gordon W. - Principal Law Clerk to Judge Pigott (resigned 08/18/07)

Mastracco, Marcus J. - Assistant Deputy Clerk, Court of Appeals (resigned 08/1/07)

Mayo, Michael J. - Deputy Building Superintendent

McCormick, Cynthia A. - Senior 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

Minshell, Janice L. - Principal Stenographer, Court of Appeals

Appendix 11 (Continued)

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

Mulyca, Jonathan A. - Clerical Assistant, Court of Appeals

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

O'Friel, Jennifer A. - Principal Law Clerk to Judge Ciparick (resigned 08/19/07)

Pepper, Francis W. - Principal Custodial Aide

Polechronis, Ralia E. - Law Clerk to Chief Judge Kaye

Pollack, Lee M. - Senior Law Clerk to Judge R.S. Smith

Prois, Barbara A. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Read

Rath, Gerard S. - Principal Law Clerk to Judge Ciparick

Ravida, Tina - Principal Custodial Aide

Rebold, Jonathan E. - Law Clerk to Chief Judge Kaye

Reed, Richard A. - Deputy Clerk of the Court of Appeals

Reddy, Anne C. - Senior Law Clerk to Chief Judge Kaye

Salazar, Dana Lynn - Principal Law Clerk to Judge Read (resigned 08/17/07)

Shaw, Linda M. - Stenographer, Court of Appeals (resigned 04/09/07)

Sherwin, Stephen P. - Senior Principal Law Clerk to Judge Graffeo

Smith, Reed A. - Senior Law Clerk to Judge R. S. Smith (resigned 08/02/07)

Soloveichik, Yitzchak E. - Law Clerk to Judge R.S. Smith

Somerville, Robert - Senior Court Building Guard

Spencer, Gary H. - Public Information Officer, Court of Appeals

Spiewak, Keith J. - PC Analyst

Appendix 11 (Continued)

Stein, Emily D. - Senior Court Attorney, Court of Appeals

Stevens, Mark P. - Chief Security Attendant, Court of Appeals

Stromecki, Kristie L. - Principal Law Clerk to Judge Pigott

Taylor, Janice E. - Senior Principal Law Clerk to Judge Jones

Tierney, Inez M. - Principal Court Analyst

Unkeless, Elaine Rapp - Senior Law Clerk to Chief Judge Kaye (resigned 12/14/07)

VanDeloo, James F. - Senior Assistant Building Superintendent

Waddell, Maureen A. - Secretary to Judge Pigott

Warenchak, Andrew R. - Principal Custodial Aide

Wasserbach, Debra C. - Secretary to Judge Graffeo

Welch, Joseph H. - Senior Clerical Assistant, Court of Appeals

Wodzinski, Esther T. - Secretary to Judge R.S. Smith