2002

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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CONTENTS

State of New York
Court of Appeals

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The Court of Appeals is an institution rich with traditions. One time-honored practice is to rotate responsibility for the introductory letter to the Annual Report around the conference table. Ironically (some might say providentially), that task falls to me at a time when my name has been submitted by the President of the United States to the Senate for confirmation as a Judge of the United States Court of Appeals for the Second Circuit. The task is thus bittersweet, for it may represent one of my last opportunities to write, as an insider, of the wonder of Eagle Street.

The document that follows chronicles the work of this great Court during 2002. It explains our practices and tabulates the efforts of Judges and staff. It announces the departure of dear colleagues and coworkers, while introducing new members of our Court family. It highlights our collective effort as our State's highest Court to explain the law of New York with clarity and precision for practitioners and the public. It gives the reader a focused view of our mission -- to do justice for all New Yorkers.

To those ends, this report accomplishes much. However, it falls short in one regard because the words we use here have their limits. They cannot capture the unwaivering devotion of all who come to work and serve at Eagle Street. There is something very special here -- all of us feel it. When we left Eagle Street last spring to expedite the courthouse renovation, that sense of purpose and commitment went with us. And while all of us long to return to our home, this Court has stayed on course through the unselfish efforts of all who toil here.

Prior to my service on the Court, I spent almost 12 years in Albany as a college student, legislative counsel and Member of the Assembly. I distinctly remember passing the Court at night, its windows ablaze despite the late evening hour. I did not know then of the dedication and commitment to excellence that burns at the core of this Court. I know it now -- it will stay with me wherever I go.

Richard C. Wesley

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Introduction

Writing 2,500 years ago, Heraclitus observed that "all is flux, nothing stays still." For the Court of Appeals, 2002 was the year these words rang especially true.

After several years of planning, Court of Appeals Hall was vacated in May 2002 in anticipation of the demolition, renovation and new construction that soon ensued. Since then, Judges and staff have been housed at a suburban office park ten miles from our home in downtown Albany. The cover of this Report attests to the extent of the renovation and rebuilding that occurred throughout 2002.

Despite the dislocation, the work of the Court remained unaffected, as the Judges continued hearing oral argument in the Courtroom throughout the year. Indeed, the year 2002 saw review of the Court's first capital appeal since 1984.

In September 2002, the Court convened at Brooklyn's historic Borough Hall -- its first Session outside Court of Appeals Hall in almost 50 years. This was a great occasion both for the Court and for Brooklyn as, during three days of oral argument, nearly 1,300 lawyers, law students and members of the public attended the proceedings.

Also in 2002, six long-term employees with 186 years of combined experience left Court of Appeals employ. These treasured employees are sorely missed.

Finally, the year ended with the retirement of Associate Judge Howard A. Levine following an exceptional public service career, capped by his nine-year tenure on the Court of Appeals. Judge Levine is an exemplary jurist and person. He leaves his indelible imprint on the Court in every regard.

I am delighted that these, and many other Court events will be preserved -- on paper and electronically -- by the Historical Society of the Courts of the State of New York, itself launched in 2002.

The 2002 Annual Report is divided into four parts. The first part offers a narrative, statistical and graphic overview of matters filed with and decided by the Court in 2002. The second describes various functions of the Clerk's Office and summarizes the administrative accomplishments of the year. The third part highlights selected decisions of 2002. The fourth consists of appendices with detailed statistics and other information.

I. The Work of the Court

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

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

In addition to appellate jurisdiction, the State Constitution vests the Court of Appeals with power to answer questions of New York law certified to it by a federal appellate court or

another state's court of last resort. Also, the Court of Appeals is the exclusive forum for review of determinations by the State Commission on Judicial Conduct.

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

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

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

Each year, in conjunction with the Appellate Division Departments, the Court of Appeals publishes a timetable for appellate review of primary election-related matters. In August of each year, the Court holds a special Election Session to consider expedited motions for leave to appeal and appeals as of right 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 an appeal lies as of right or a motion for leave to appeal is granted, oral argument of the appeal is usually scheduled for the same day. Election appeals are decided expeditiously, often the same or following day.

In 2002, the Court and its Judges disposed of more than 4,250 matters, including 176 appeals, 1,352 motions and 2,724 criminal leave applications. A detailed analysis of the Court's work follows.

A. Capital Case Matters

1. Capital Appeals Pending

The State Constitution and the death penalty statute provide a direct appeal to the Court of Appeals from a judgment of conviction and capital sentence. The first notice of appeal in a capital case under the 1995 statute was filed in August 1998 in the Kings County case of People

v Darrel K. Harris. In 1999, notices of appeal were filed in four additional capital cases: People v Angel Mateo (Monroe County), People v Robert Shulman (Suffolk County), People v Stephen LaValle (Suffolk County) and People v James F. Cahill, III (Onondaga County). In 2000, one notice of capital appeal was filed, in People v Nicholson McCoy (Suffolk County). No notices of appeal were filed in a capital case in either 2001 or 2002.

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

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

The Court heard oral argument of the appeal in People v Darrel K. Harris on May 6, 2002. The Court handed down its opinion affirming the conviction and vacating the sentence on July 9, 2002 (see People v Darrel K. Harris, 98 NY2d 452; see also page 28 of this Report).

People v James F. Cahill, III is scheduled for oral argument in the Fall of 2003. In May 2002, capital appellant Cahill filed his 805-page opening brief. Also in 2002, the Court granted the Attorney General intervenor status pursuant to Executive Law § 71, and granted two motions to file briefs amicus curiae. One motion was brought by the New York Civil Liberties Union; the second motion was brought jointly by 23 individual attorneys and two organizations, People Against the Death Penalty/CNY and the New York State Association of Criminal Defense Lawyers.

In 2002, Final Capital Appeal Management Orders were issued in the Mateo, Shulman and LaValle appeals. The Capital Defender Office filed its 297-page opening brief in the LaValle appeal in December 2002.

2. Administrative and Rulemaking Responsibilities

The 1995 death penalty statute created significant responsibilities for the Court of Appeals, requiring substantial judicial and staff time and other resources in order to meet these

obligations in a timely manner. A comprehensive list of tasks completed since 1995 in compliance with the statute, or to effectuate this Court's review of capital appeals, can be found in the Clerk's 2001 Annual Report. In 2002, the Court approved changes to the capital case data report form required by Judiciary Law § 211-a to reflect changes enacted in the definition of first degree murder (see Penal Law § 125.27; L 2001, ch 300). In the coming year, the Clerk's Office staff will adapt the Court's computerized case management system to handle the differential demands and volume of documentation involved in capital appeals.

3. Counsel in Capital Matters

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

The Standards for Appellate Counsel in Capital Cases (22 NYCRR 515.1) govern the qualification of private attorneys to serve as assigned capital appellate counsel. Having determined that Judiciary Law § 35-b(4)(b)(iv), which required this Court to approve standards for private counsel in capital cases, did not expressly apply to capital appellate and state post-conviction counsel, the Chief Judge acted pursuant to the powers delegated to her by the New York Constitution, article VI, § 28, to promulgate standards for capital appellate and state post-conviction counsel, which standards were approved by the Court of Appeals in May 1998 (22 NYCRR 515.2).

A private attorney may seek appointment as lead or associate counsel on a capital appeal by submitting to the CDO an application, on the form approved by the Administrative Board of the Courts and available from the CDO, with the required documentation and attachments. The CDO reviews each application and delivers all completed applications to the appropriate Departmental Screening Panel, together with a statement concerning the attorney's completion of the requisite training and the CDO's recommendation whether the attorney is qualified for appointment. Each Screening Panel designates those attorneys deemed qualified for appointment as capital appellate counsel and reports these designations to the Court of Appeals. The Court incorporates the names of the attorneys so designated into a roster of capital appellate attorneys and, thereafter, in its discretion, may assign attorneys from this roster to capital appeals. Through 2002, Screening Panels had designated eighteen attorneys as qualified to serve as capital appellate or state post-conviction counsel.

The Court of Appeals' December 1998 order approving reduced capital counsel fee schedules for the four Judicial Departments had directed the Departmental Screening Panels to submit to the Chief Judge, by December 31, 1999, reports "relating the experiences under the original and revised uniform capital counsel fee schedules." This inquiry was thereafter deferred,

pending resolution of the Governor's appeal in Mahoney v Pataki. In May 2002, the Court of Appeals held that the capital statute granted the Court the authority to include in the capital counsel fee schedules payment for "reasonably necessary" legal and paralegal assistance to lead and associate counsel in capital cases (see Mahoney v Pataki, 98 NY2d 45; see also page 27 of this Report).

B. The Court's Docket

The Court determines most appeals "in the normal course," meaning after oral argument and full briefing by the parties. In these cases, copies of the briefs and record are circulated to each member of the Court well in advance of the argument date. Each Judge becomes fully conversant with the issues in the cases, using oral argument to address any questions or concerns prompted by the briefs. At the end of each afternoon of argument, the appeals are assigned by random draw to individual Judges for reporting at the next morning's Conference to the full Court. When, at Conference, a majority of the Court agrees with the reporting Judge's proposed disposition, the reporting Judge becomes responsible for preparing the Court's writing in the case. If the majority of the Court disagrees with the recommended disposition of the appeal, the Judge taking the majority position who is seated immediately to the right of the reporting Judge assumes responsibility for the proposed writing, thus maintaining randomness in the distribution of writings for the Court. Draft writings are circulated to all Judges during the Court's subsequent Home Chambers session and, after further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next Albany session of the Court.

The Court also employs the alternative track of sua sponte merits (SSM) review of submissions pursuant to Rule 500.4. Through its SSM procedure, the Court decides a small number of appeals on written submissions without oral argument, saving the litigants and the Court the time and expense of full briefing and oral argument. A case may be placed on SSM track, for example, if it involves issues decided in a recent appeal. As with normal-coursed appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes, and are fully conferenced and determined by the entire Court.

1. Calendar and Currency

In 2002, litigants and the public continued to benefit from the prompt calendaring, hearing and disposition of appeals. The average period from filing of a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately 6.2 months, slightly shorter than in previous years. The average period from readiness (all papers served and filed) to calendaring for oral argument was approximately 1.5 months, about the same as in previous years. The average time from argument or submission to disposition of an appeal decided in the normal course was 37 days; for all appeals, the average time from argument or submission to disposition was 34 days.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release to the public of a decision in a normal-coursed appeal decided in 2002 (including SSM appeals tracked to normal course) was 229 days. For all appeals, including those decided pursuant to the SSM procedure, those dismissed pursuant to Rule 500.3 sua sponte subject matter jurisdictional inquiries (SSD), and those dismissed pursuant to Rule 500.9 for failure to perfect, the average was 175 days. Thus, by every measure, the Court maintained its currency in calendaring and deciding appeals in 2002.

2. Filings

Two hundred ninety (290) notices of appeal and orders granting leave to appeal were filed in 2002 (286 were filed in 2001). Two hundred and thirty (230) filings were civil matters (compared to 218 in 2001), and 60 were criminal matters (compared to 68 in 2001). The Appellate Division Departments issued 21 of the orders granting leave to appeal filed in 2002 (11 were civil, 10 were criminal). Of these, the First Department issued 15 (10 civil and 5 criminal).

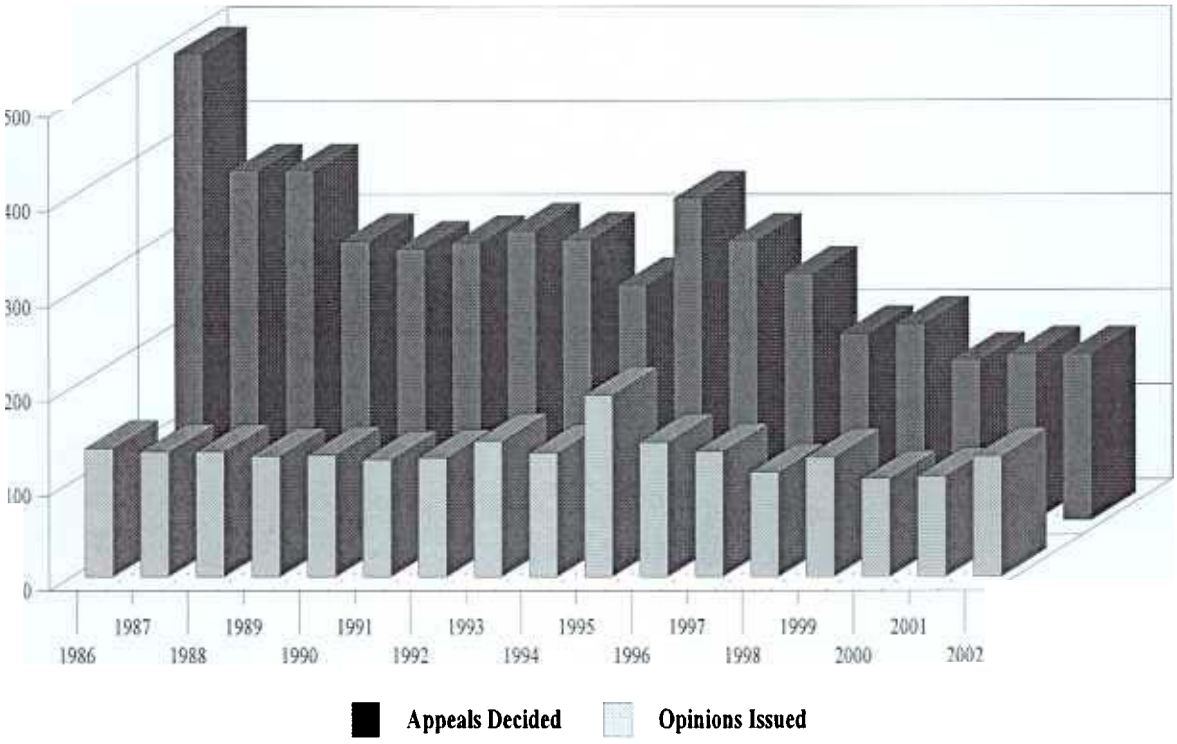
Motions and criminal leave applications continued to decline in 2002. During the year, 1,381 motions were filed, a decrease of 4.2% from the 1,439 motions filed in 2002. Two thousand six hundred and five (2,605) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court in 2002, 222 fewer than in 2001. On average, the Judges were each assigned 388 such applications during the year.

3. Dispositions

(a) Appeals and Writings

As in 2001, the Court decided 176 appeals in 2002 (109 civil and 67 criminal, compared to 134 civil and 42 criminal in 2001). Of these appeals, 153 were decided unanimously. The Court issued 118 full opinions, nine per curiam opinions, 36 memoranda and 13 entries. Twenty-three dissenting opinions and two concurring opinions were written. The chart on the next page tracks appeals decided and full opinions issued since Laws of 1985, chapter 300 expanded the civil *certiorari* jurisdiction of the Court.

Appeals Decided and Opinions Issued
1986-2002



Opinions issued includes signed unanimous and majority opinions, and opinions Per Curiam

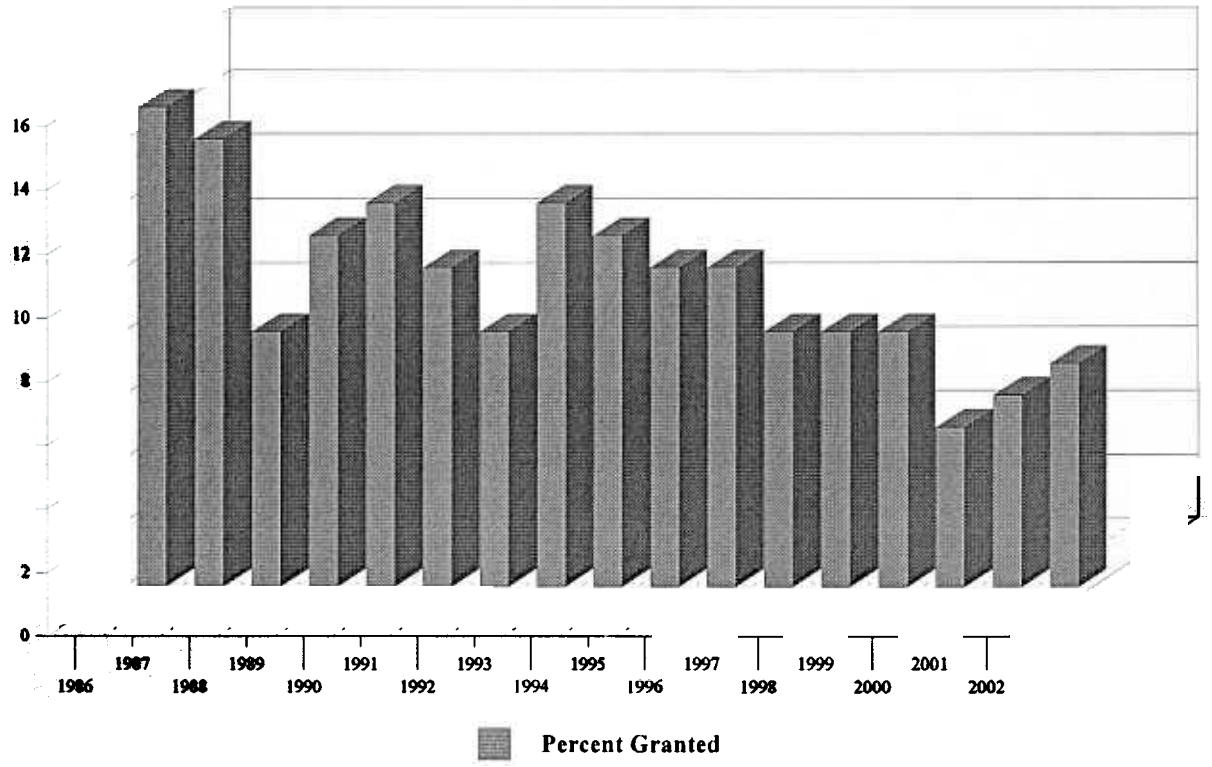
(b) Motions

The Court decided 1,352 motions in 2002 -- 122 fewer than in 2001, consonant with the decline in motion filings in 2002. Each motion was decided upon submitted papers and an individual Judge's written report, reviewed and voted upon by the full Court. The average period of time from return date to disposition for civil motions for leave to appeal was 56 days, while the average time from return date to disposition for all motions was 48 days.

Of the 1,008 motions for leave to appeal in civil cases decided in 2002, the Court granted 7.1% (up from 6.5% in 2001), denied 71.8% (down from 74.2 % in 2001), and dismissed 21.1%

(up from 19.3% in 2001) for jurisdictional defects. The chart below reflects the percentage of civil motions for leave to appeal granted since the expansion of the Court's *certiorari* jurisdiction in 1985.

Motions for Leave to Appeal Granted by Year
1986-2002



The 71 grants of civil motions for leave to appeal in 2002 covered a broad range of issues. Once again, negligence and insurance matters topped the list of subject categories for motions granted. Insurance issues included timeliness of notices of claim, the scope of liability insurance, cancellation of policies and the insurer's duty to defend. Landowners' duties and the State's duty to prevent inmate-on-inmate assaults were among the tort issues the Court brought up for review. Other frequent issues in motions for leave to appeal were civil rights, zoning and public health.

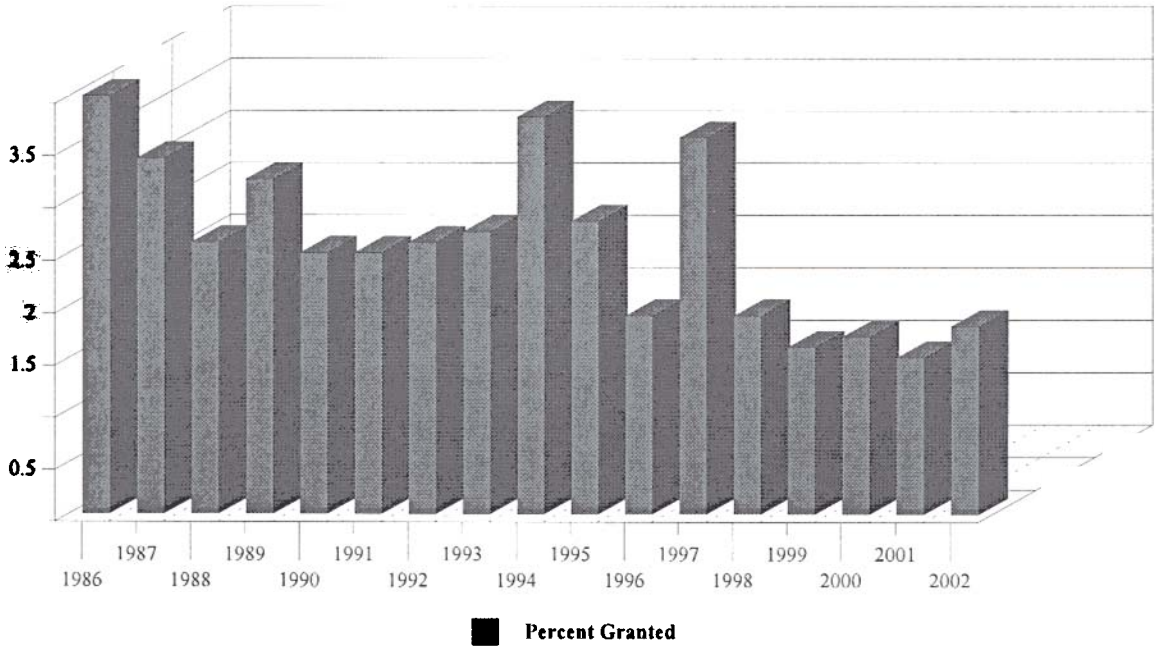
The 2000 Annual Report noted the Court's concern regarding the substantial decline in motions pursuant to Rule 500.11(e) for amicus curiae relief during 2000. That trend was soundly

reversed in 2001. In 2002, 112 motions for amicus curiae relief were filed, 91 of which were granted. Given that the Court hears the majority of appeals by its own permission, and that the questions presented are usually novel and of statewide importance, the Court encourages appropriate requests for permission to file amicus curiae submissions.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 46 of the 2,724 applications for leave to appeal in criminal cases decided in 2002 -- increased from 43 in 2001. One hundred and seventy-nine applications were dismissed for lack of jurisdiction, and six were withdrawn. Nine of 59 applications filed by the People were granted. The chart below reflects the percentage of applications for leave to appeal granted in criminal cases from 1986 through 2002.

Criminal Leave Applications Granted by Year
1986-2002



Laws of 2002, chapter 498 amended the criminal jurisdiction of the Court of Appeals to allow defendants to file an application for leave to appeal from the order of an intermediate appellate court denying a writ of error coram nobis. By the end of 2002, 42 such applications were assigned to Judges of the Court. Although this legislation generated a great deal of inquiring correspondence and many applications for leave to appeal, the long-term effect of the legislation on the Court's criminal docket cannot yet be predicted.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court during Home Chambers sessions. In 2002, on average, 68 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments.

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

By Constitution and statute, the Court of Appeals has exclusive jurisdiction to review determinations of the Commission on Judicial Conduct, and to suspend a judge, with or without pay, where the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this State with a crime punishable as a felony (see generally NY Const, art VI, § 22; Judiciary Law § 44). In 2002, the Court reviewed two determinations of the State Commission on Judicial Conduct, accepting the recommended sanction of removal in one case and the recommended sanction of admonition in the other. Pursuant to Judiciary Law § 44(a), the Court ordered six suspensions of judges, one without pay and five with pay. The Court later ordered the continued suspension without pay of one of these judges.

(e) Rule 500.17 Certifications

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

After a court certifies a question to this Court pursuant to Rule 500.17, the matter is referred to an individual Judge, who circulates a written report for the entire Court analyzing whether the certification should be accepted. When the Court of Appeals accepts a certified question, the matter is treated as an appeal. Although the certified question may be determined

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*In recent years, as an additional aid to comity and judicial economy, the Chief Judge of the New York Court of Appeals and the Chief Judge of the Court of Appeals for the Second Circuit reactivated the New York State-Federal Judicial Council. Chaired by New York Court of Appeals Associate Judge Howard A. Levine until his retirement, the Council addresses issues of mutual concern, and has sponsored a number of educational programs. Judge George B. Daniels, of the United States District Court for the Southern District of New York, was appointed to succeed Judge Levine as the Council Chair.

in the normal course, by full briefing and oral argument, or pursuant to the Court's SSM procedures (see Rule 500.4), the preferred method of handling is full briefing and oral argument on an expedited schedule. The average period from receipt of initial certification papers to the Court's order accepting or declining review is 41 days. The average period from acceptance of a certification to disposition is six months.

Two cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2001. In 2002, the Court answered the questions certified in both cases. Also in 2002, the Court accepted three cases involving questions certified by that court. All three cases remained pending at the end of 2002.

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

1 Rule 500.3 (Jurisdiction)

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

Reflecting the complexity of this Court's jurisdiction, in 2002, 94 appeals were subject to Rule 500.3 inquiry, of which all but nine were withdrawn, dismissed sua sponte or on motion, or transferred to the Appellate Division (13 inquiries were pending at year's end). The SSD screening process is valuable to the Court, the bar and the parties because it identifies at the earliest possible stage of the appeal process whether an appeal is jurisdictionally defective and, hence, destined for dismissal or transfer by the Court.

2. Rule 500.4 (Merits)

Through the SSM procedure, the Court decides appeals expeditiously on written submissions without oral argument. Of the 290 appeals filed in 2002, 22 (7.6%) were initially selected to receive sua sponte merits consideration. Of the 176 appeals decided in 2002, 18 (10.2%) were decided upon SSM review.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the external disposition of an SSM decided in 2002 was 131 days. This compares with an average of 229 days for appeals heard in the normal course.

Four of the 22 appeals selected in 2002 for SSM consideration were pending administratively at the end of the year. Another was administratively normal-coursed and yet another was dismissed for failure to prosecute. The remaining 16 were submitted to the Court for SSM review. In addition to these 16 appeals, six appeals, initially selected in 2001 for SSM consideration, were assigned to the Court in 2002. Fourteen (63.6%) of the 22 appeals assigned as SSMs in 2002 were decided on an SSM basis. Five (22.8%) were directed to full briefing and oral argument, and three (13.6%) SSMs remained pending on December 31, 2002.

In addition to the 14 appeals decided on SSM track in 2002 that had been submitted for review in 2002, four appeals submitted in 2001 were also decided as SSMs in 2002. Of the 18 appeals decided on SSM submissions in 2002, 12 were civil appeals and six were criminal appeals. One was decided in a signed opinion, 15 were decided in memoranda and two were decided in decision list entries. All 18 decisions were unanimous. There were six affirmances and 12 reversals.

D. Court Rules

The Court did not amend its Rules during 2002.

II. Administrative Functions and Accomplishments

A. Court of Appeals Hall

The historic Court renovation and construction project continues to top the list of administrative matters. The Building Manager, Deputy Building Superintendent and their staff have long been responsible for the excellent condition and beautiful appearance of Court of Appeals Hall. Last renovated in the late 1950s, Court of Appeals Hall proved no longer adequate to house the Court's judicial and nonjudicial staff, or its twenty-first century operations. In 1999, the Court determined to pursue renovation of Court of Appeals Hall and the construction of two three-story additions to the building. Construction began in earnest in November 2001, and is expected to conclude in Fall 2003. The project will renovate approximately 60,000 square feet of the Courthouse interior, updating its electrical, plumbing, ventilation, heating and cooling systems. The approximately 33,000 square feet of new space will match the building's exterior and interior design. The Courtroom itself will remain essentially unchanged. The Dormitory Authority is serving as Project Manager; DeWolff Partnership, of Rochester, as Project Architect; and BBL Construction Services, of Albany, as Construction Manager.

Throughout 2002, the Chief Judge, and the Clerk, Deputy Clerk, Building Manager and Deputy Building Superintendent met regularly with the design development team to plan and implement the project. The Associate Judges of the Court and all department heads participated

in developing the design plan. In May 2002, the Judges and Court staff moved to temporary quarters. The Courtroom remained open for oral argument throughout 2002. The Building Manager and the Deputy Building Superintendent provided on-site supervision of the construction while maintaining the full range of services at the Court's temporary location.

I am grateful that the New York State Bar Association made available to arguing counsel its lounge and restroom facilities. I also extend the thanks of the Court to our other neighbors, the Albany County Courthouse, Albany City Hall and St. Mary's Roman Catholic Church, for their cooperation and forbearance throughout the construction process.

B. Case Management

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

In addition, many members of the Clerk's Office staff respond -- in person, by telephone and in writing -- to inquiries and requests for information from attorneys, litigants, the public, academicians and other court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. Members of the Clerk's Office staff also regularly participate in programs designed to educate the Bar about the Court's practice.

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 Internet web site and are available in print at Court of Appeals Hall. The office arranges for live television coverage of oral argument at the Court. In 2002, given widespread interest in the Court's first capital oral argument under the 1995 death

penalty statute, the Public Information Office worked with the Court's Information Technology Department and the Office of Court Administration to provide simultaneous broadcast of the argument in People v Darrel K. Harris to three remote locations. The argument was also made available on the Court of Appeals Internet web site.

The Public Information Office provides information concerning the work and history of New York's highest court to all segments of the public. Ordinarily, throughout the year, the Public Information Officer and other members of the Clerk's Office staff conduct tours of the historic Courtroom for visitors. Most tours have been suspended during the renovation of Court of Appeals Hall, but are expected to resume in the Fall of 2003. 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 arguments before the Court, and of special events conducted by the Chief Judge or the Court. The office arranged the videotaping of the special three-day session the Court held at Brooklyn Borough Hall in September 2002, with assistance from the Borough Hall staff and the Office of Court Administration. Videotapes 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, including previously unavailable tapes recorded from April 1998 through December 2001, may be ordered from the Law Center at (518) 445-2329.

The Court's Internet web site received more than 82,000 visitors during 2002. The comprehensive web site posts information about the Court, its Judges, history, summaries of pending cases and other news, as well as more than a year's worth of Court of Appeals decisions. The latest decisions are posted within minutes after their official release. The web site provides helpful information about the Court's practice -- including its Rules, civil and criminal jurisdictional outlines, session calendars, and a form for use by pro se litigants -- and it provides links to other judiciary-related web sites. The text and webcast of Chief Judge Kaye's 2003 State of the Judiciary address are posted on the home page, and the text of prior speeches can be reached through the "Court News" link. The address of the Court of Appeals web site is: http://www.courts.state.ny.us/ctapps.

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

D. Office for Professional Matters

The Court Attorney for Professional Matters manages the Office for Professional Matters, supported by a secretary. The office has access, via computer terminal, to information on each

attorney admitted to practice in the State. The Court's records complement the official registry of attorneys maintained by the Office of Court Administration, which answers public inquiries about the status of attorneys. The office prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship. Additionally, the Court Attorney drafts preliminary reports to the Court on matters relating to (1) attorney admission and disciplinary cases, (2) petitions for waiver of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law and the Rules for the Licensing of Legal Consultants, and (3) proposed rule changes ultimately decided by the Court. The Court did not amend any of these Rules in 2002.

The Office for Professional Matters continues to work on a database created in 1998 for archiving and reviewing filed petitions for waiver of the Court's Rules of Admission, and is updating a database and complementary manuals created in 1998 for disciplinary motions.

The Court Attorney for Professional Matters continues to serve on the New York State Bar Association's Committee on Legal Education and Admission to the Bar. Additionally, the Court Attorney for Professional Matters served on the State Bar's Special Committee on Multi-Jurisdictional Practice.

E. Central Legal Research Staff

Under the supervision of individual Judges and the Clerk of the Court, the Central Legal Research Staff prepares draft reports on motions (predominantly civil motions for leave to appeal), certified questions and selected appeals for the full Court's review and deliberation. During 2002, Central Staff Attorneys completed 1,025 motion reports, 71 SSD reports, 18 SSM reports and 2 reports on certified questions. Throughout 2002, Central Staff maintained excellent currency in its work.

Staff attorneys also write and revise research materials for use by the Judges' Chambers and the Clerk's Office, and perform other research tasks as requested. In 2002, under the direction of the Deputy Chief Court Attorney, Central Staff again revised and updated the civil jurisdictional outline for internal use.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. In 2002, staff attorneys were graduates of Albany, Brooklyn, SUNY at Buffalo, Cornell University, Harvard University, CUNY at Queens, Pace University, Syracuse University, Touro College and University of Miami law schools. Staff attorneys hired for 2003 will represent Albany, Brooklyn, Southern Illinois University and Western New England University law schools.

F. Library

The law library fulfills the legal information needs of the Court. The Chief Legal Reference Attorney provides extensive legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk's Office staff, using a full range of traditional and technologically-enhanced strategies to provide timely, accurate and efficient access to sources of law-related information. The Chief Legal Reference Attorney also identifies emerging legal issues and, by anticipating the Court's future research needs, ensures that necessary resources are in place when such matters come before the Court.

Collection development in the Conference Room library and in the Home Chambers libraries continued in 2002. Newly-published works falling within the Court's collection development policy were acquired, replacing seldom-used and superseded materials. Current Awareness Bulletins listing the contents of recent law reviews were issued each Session, and the Election Digest was updated and distributed prior to the Election Session.

In 2002, the library staff continued to maintain and augment 21 in-house ISYS databases, and others are in the planning stage. As each decision list is released, the library staff adds the relevant documents to the ISYS Reports database and transmits them electronically to the Law Reporting Bureau to facilitate its work. By December 2002, the full-text Reports (1996-2002) database contained almost 9,500 documents. Work commenced on a project to scan the 1900-1995 reports and, to date, over 1,000 have been processed. Work also continued on the bill jackets database which contains electronic images of the Court's bill jacket files. These files, now numbering 1,359, are added to *ISYS:web Databases*, transmitted to the Law Reporting Bureau for its internal use, and transmitted to the Office of Court Administration for inclusion in the LION information system.

In 2002, the library staff expanded to three hours the Corel Presentation program on *Constitutional, Statutory and Regulatory Intent, and Common Law Derivation*. This program, and a one-hour interactive presentation on *ISYS:web Databases*, have been certified under the Office of Court Administration's Continuing Legal Education (CLE) regulations and both were offered to Judges' law clerks and staff attorneys in September 2002. The Chief Legal Reference Attorney coordinated Lexis and Westlaw CLE training provided to the Court's law clerks and staff attorneys.

Due to renovations at the New York State Archives and at the request of its personnel, no Court materials were transferred to the Archives during 2002. At the request of the State Library, the Court continued to ship the depository copy of records and briefs to CRS, Inc., which creates a 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.

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

In 2002, the Chief Legal Reference Attorney was responsible for obtaining a provisional Regents' Charter for the newly-formed Historical Society for the Courts of the State of New York. She is a charter member and secretary of the Society's Board of Trustees, and chair of the Special Committee that developed the Society's web site (http://www.courts.state.ny.us/history/) to coincide with the Society's formal launch in September 2002. The Chief Legal Reference Attorney also served on the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System, was a member of the Court's CLE committee, and served on the Board of the American Association of Law Libraries of Upstate New York.

G. Continuing Legal Education Committee

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

During 2002, the CLE Committee provided 24 live or video programs for Court of Appeals and Law Reporting Bureau attorneys, covering 48.50 credit hours (6 in ethics, 31.50 in skills and 11 in practice management/professional practice). Many of the Court's staff attorneys taught accredited CLE classes, and Judge Graffeo and one of her law clerks presented a class on CPLR article 78 proceedings. Other topics included ethics, legal research, capital appeals, criminal law and procedure, civil practice and similar subjects specially geared toward the work of Court of Appeals attorneys.

H. Management and Operations

The Director, Court of Appeals Management and Operations, aided by a Principal Court Analyst and two secretarial assistants, is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting,

payroll document preparation, voucher processing, benefit program administration and annual budget request development.

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

I. Budget and Finance

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

1. Expenditures

The work of the Court and all its ancillary agencies was performed within the 2002-2003 fiscal year budget appropriation of $13,138,335. This figure included all judicial and nonjudicial staff salaries (personal services costs) and all other cost factors (non-personal services costs), including in-house maintenance of Court of Appeals Hall and the Court's temporary quarters.

2. Budget Requests

The total request for fiscal year 2003-2004 for the Court and its ancillary agencies is $13,251,535, an increase of about one percent over the current year's appropriation. The 2003-2004 personal services request of $10,899,588 reflects an increase of $54,357 over the current year's appropriation. This request includes funding for all judicial and nonjudicial positions as well as funding for salary increases for all eligible nonjudicial employees in accordance with collective bargaining contracts and administrative provisions, temporary services and overtime services.

The 2003-2004 non-personal services request of $2,351,947 reflects an increase of $58,843 over the current year's adjusted appropriation. The requested nonpersonal services appropriation of $2,351,947 includes adjustments in travel ($16,428), court administration ($7,159), building maintenance operations ($1,422) and legal reference ($37,321), and decreases in equipment expenses (-$2,999) and in the Law Reporting Bureau's requested appropriation (-$488).

The modest increase in the budget request for fiscal year 2003-2004 illustrates that the Court and its ancillary agencies performed their functions economically and efficiently. The Court will continue to maximize opportunities for savings to forestall increases in future budget requests.

3. Revenues

In calendar year 2002, the Court received filing fees of $250 for each of 88 civil appeals. The $22,000 realized was reported to the State Treasury, Office of the State Comptroller and Office of Court Administration pursuant to the Court Facilities Legislation (L 1987, ch 825). Additional revenues were realized through the slip opinion distribution service ($6,600) and miscellaneous collections ($943.18). For calendar year 2002, revenue collections totaled $29,543.18.

J. Computer Operations

The two-person Information Technology (I.T.) Department, which consists of a Principal PC Analyst and a LAN Administrator, oversees all aspects of the Court's computer operations, including a WAN connecting seven locations and a LAN in the Court's Albany location.

In the beginning months of 2002, the Department focused on moving the computer operations and equipment from Court of Appeals Hall to the Court's temporary quarters. All computers, servers and related equipment were dismantled and packed, then moved to the new location and successfully reinstalled over one weekend in May. Communication among all seven locations was restored following less than four hours' interruption in service. As part of the relocation process, obsolete equipment was identified and removed from the inventory.

The I.T. Department provides support for all databases used by the Court. The Department gives substantial structure and ongoing assistance to the Library's ISYS project, a searchable database containing internal Court documents, available through the Court's Intranet to all Court employees in all locations. The AS/400 Case Management System is also supported on an ongoing basis, as are several individual databases using Microsoft Access or other software. In 2002, the I.T. Department continued to offer a Help Desk for computer technical support to Court personnel. Approximately 500 calls are answered and resolved each year. Training for new software and hardware is provided as needed. Additional technical support is available to employees via the Court's Intranet.

In 2002, the Department devoted considerable effort to researching replacement hardware for the AS/400 minicomputer used to run the Court's case management system. The system hardware is outdated, and no longer compatible with the PC hardware and software currently used to access it. To retain the functionality of the present system, the Department purchased a new AS/400, model 270, which will be installed in late winter 2003.

The I.T. Department created and maintains the Court of Appeals' Internet web site (http://www.courts.state.ny.us/ctapps), which offers immediate access to Court decisions and other information of interest to the public. During the year, in cooperation with the Office of Court Administration Information Technology staff, the Department produced three successful Internet programs: the webcast of Chief Judge Kaye's "2002 State of the Judiciary" address on

January 9, 2002 (receiving 981 visits on the web site in 2002); the webcast of the Court's May 1, 2002 Law Day Ceremony, "Celebrate our Freedom" (552 visits), and the live broadcast of the first appellate oral argument heard in a New York capital case since 1984, People v Darrel K. Harris, on May 6, 2002 (2,782 visits). The Court's web site has been redesigned and will be published in its new format in early 2003.

K. Security Services

Supervised by the Chief Security Attendant, five Security Attendants performed a variety of functions, including screening all visitors and packages entering Court of Appeals Hall and the Court's temporary location, and conducting regular patrols of the two buildings and their immediate surroundings. During 2002, Court officers participated in various security training sessions, including executive protection training with the New York City Police Department, Court Officer Recertification Training and firearms requalification. The Building Guard staff was trained and certified in mandatory security guard training.

I acknowledge with appreciation the presence and professionalism of State Police Investigators assigned to Court of Appeals Hall in 2002.

L. Fire and Safety

During 2002, the Fire and Safety Committee continued to monitor building safety requirements in both Court locations. Security Attendants maintain first aid equipment and a cardiac automatic external defibrillator for the protection of staff and visitors, and are trained to administer first aid to ill or injured staff or visitors.

M. Personnel

The following personnel changes occurred during 2002:

APPOINTMENTS:

Scott A. Goldstein was employed as Security Attendant, Court of Appeals in April 2002.

Joseph H. Welch was employed as Court Building Guard in June 2002.

Carroll B. Alexander, Jr. was employed as Court Building Guard in June 2002.

Shannon D. Marshall was employed as Court Building Guard in September 2002.

Cynthia D. Byrne was employed as Clerical Assistant, Court of Appeals in October 2002.

Ronald J. Kearns was employed as First Assistant Building Superintendent in December 2002.

PROMOTIONS

Laurence Farrell was promoted to Deputy Chief Security Attendant, Court of Appeals in June 2002.

Nicholas M. Natalizio was promoted to Senior Security Attendant, Court of Appeals in May 2002.

James A. Costello was promoted to Assistant Deputy Clerk to Court of Appeals in September 2002.

Andrea R. Ignazio was promoted to Senior Stenographer, Court of Appeals in October 2002.

RETIREMENTS:

Frederic J. Carroll, Supervising Court Attendant, Court of Appeals, retired on August 23, 2002, after 39 years and three months of service.

Martin F. Strnad, Assistant Deputy Clerk to Court of Appeals, retired on August 29, 2002, after 28 years and three months of service.

George P. Connair, Senior Services Aide, retired on September 20, 2002, after 30 years of service.

Laurene L. Tacy, Assistant Deputy Clerk to Court of Appeals, retired on September 26, 2002, after 35 years and two months of service.

Joseph R. Torre, Senior Court Building Guard, retired on September 30, 2002, after 26 years and two months of service.

RESIGNATIONS:

Michael A. O'Connor, Court Building Guard, resigned on March 9, 2002

Charles C. Wager, First Assistant Building Superintendent, resigned on October 17, 2002.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Jonathan M. Bernstein, Lisa DellAquila, Stephen P. Sherwin, Kimberly A. Stock, Lisa J. Ross and Jaime Irene Roth were appointed Court Attorneys in August 2002.

PROMOTIONS

Elizabeth Brace Cambria was promoted from Senior Court Attorney to Principal Court Attorney in August 2002, but served as a Principal Law Clerk to Judge Levine through December 2002. Terrence James Cortelli, Heather Davis, Beth A. Diebel, Molly Graver, Emily Morales and Sean D. Ronan were promoted from Court Attorneys to Senior Court Attorneys in August 2002.

COMPLETIONS OF CLERKSHIP:

Senior Court Attorneys Margery Corbin Eddy and M. Pierce LaVergne completed their Central Staff Clerkships in July 2002. Principal Court Attorneys Matthew W. Lerner and David W. Novak and Senior Court Attorney Meredith R. Miller completed their clerkships in August 2002. Court Attorney Lisa DellAquila completed her Central Staff clerkship in November 2002 and is now a Law Clerk to Judge Rosenblatt; Ms. Corbin Eddy is now a Principal Law Clerk to Judge Graffeo.

ACKNOWLEDGMENT

Heraclitus also said "nothing endures but change." Throughout 2002, and in the face of extraordinary challenges, the Court's staff worked to assure the effective operation of the Court of Appeals. I thank each staff member for providing the Judges of the Court, the Bar and the public both stability and exemplary service. Special thanks, as well, to our six long-term employees who retired during 2002.

Assistant Deputy Clerks Martin Strnad and Laurene Tacy were the Court's public face. For three decades, they served litigants, counsel and the public with unparalleled skill and sensitivity. Their contribution to the work of the Court cannot be overestimated.

In the course of her 27-year tenure with the Court of Appeals, Carmel Loffredo worked as a secretary for the Clerk's Office -- in the offices of Prisoner Applications, Central Legal Research Staff and Professional Matters -- and for Judges Hugh R. Jones, Stewart F. Hancock, Jr. and Howard A. Levine. She will long be remembered for the breadth of her experience in, and the depth of her commitment to, the Court of Appeals.

Supervising Court Attendant Frederic Carroll spent his entire career at the Court of Appeals. For the last 22 years, Fred's voice announcing the beginning and end of each day's oral argument calendar resounded throughout the Courtroom. We hear it still.

Senior Services Aide George Connair served the Court and its Judges with uncommon humor and loyalty for 30 years. An essential member of the Court's "special events" planning team, George's caring and professional touch marked every Court gathering. The Court mourns the death of George Connair on February 28, 2003.

Finally, Senior Building Guard Joseph Torre kept the midnight watch over Court of Appeals Hall for more than 26 years. His behind-the-scenes dedication and vigilance were greatly appreciated.

Each year, the members of the Clerk's Office staff contribute to the production of this Report by providing numerical data, narrative reports, and editing and proofreading services. I thank all of them, and mention specially Andrea Ignazio, who prepared the detailed appendices, and James Costello, Susan Dautel, Rosemarie Fitzpatrick and Cynthia McCormick who provided proofreading services. Marjorie McCoy's editorial work was invaluable. William Fitzpatrick oversaw production. A complete list of Clerk's Office, Building Maintenance and Judges' staffs appears in Appendix 11.

III. 2002: Year in Review

This section presents an overview of Court of Appeals decisions handed down in 2002. These decisions highlight the range of constitutional, statutory, regulatory and common law issues reaching the Court each year.

Constitutional Law

Matter of David B.; Matter of Richard S. (97 NY2d 267)

The constitutional question before the Court was the showing of dangerousness the Due Process Clause requires to retain in a psychiatric facility a person acquitted of a crime by reason of insanity pursuant to CPL 330.20. Recognizing that the Supreme Court of the United States had held that a showing of both "mental illness" and "dangerousness" was necessary in order to satisfy due process requirements for involuntary retention of an insanity acquittee in a mental facility, the Court concluded that the constitutionally required element of dangerousness was subsumed in the language of CPL 330.20, although the word did not appear on the face of the statute. Because the courts below focused on the findings of mental illness without necessary, concomitant findings of dangerousness, both matters were remitted for factfinding on the issue of dangerousness.

LaValle v Hayden (98 NY2d 155)

Plaintiffs challenged the constitutionality of the joint ballot method of election, outlined in Education Law § 202, to elect individual regents in the event of a bicameral legislative deadlock. Following an historical review of the joint ballot and the Board of Regents, the Court held that when not acting in a lawmaking capacity, the Legislature can constitutionally function as a unicameral body. The Court upheld the constitutionality of the joint ballot in this context.

Consumer Protection

DiCintio v DaimlerChrysler Corp. (97 NY2d 463)

Addressing an issue of statutory construction that has challenged courts around the country, the Court determined that the Magnuson-Moss Warranty Act (15 USC §§ 2301-2312) does not apply to automobile leases. The Court concluded that the Warranty Act protects only "consumers," defined as "buyers" of consumer products, persons to whom such products are transferred during the term of an applicable warranty, and persons entitled to enforce a warranty. Because the statutory definition of a warranty presupposes the sale of a consumer product, and a similar assumption inheres in the term "buyer," the Warranty Act applies only when a sale occurs. The Court also noted that Congress was well aware that the Warranty Act's definitions would exclude lessees of automobiles and deliberately chose these, rather than more expansive,

definitions. In this respect, the Court observed, Congress provided less consumer protection than did the New York Legislature in its Lemon Law (General Business Law § 198-a).

Goshen v Mutual Life Ins. Co. of N.Y.; Scott v Bell Atl. Corp. (98 NY2d 314)

These companion cases provided the Court the opportunity to clarify the general applicability and territorial reach of New York's Consumer Protection Act, General Business Law § 349. Both cases involved in-state and out-of-state plaintiffs allegedly deceived through transactions within New York State. In Goshen, a series of plaintiffs purchased "vanishing premium" insurance policies from defendant insurers. In Scott, plaintiffs subscribed to defendants' high speed Internet access "DSL" service. Plaintiffs alleged that the policies and services constituted "deceptive acts or practices." The Court looked to the plain language of the statute and the underlying legislative history to determine that the transaction from which an alleged deception originates must occur in New York. In so holding, the Court articulated a transaction-specific analysis in which the occurrence or actual implementation of the scheme, and not the consumer's residence, is dispositive.

Government

People v Gilmour (98 NY2d 126)

Executive Law § 63 (3) authorizes the Attorney General to prosecute criminal defendants upon the request of "the head of any * * * department, authority, division or agency of the state." In this case, the counsel to the State Police, not its department head, requested the Attorney General's involvement in the defendant's prosecution. The Court of Appeals determined that counsel's request was insufficient to invoke the Attorney General's prosecutorial powers. The Court held that, under the statute, a request must come from the department head, and that a subordinate's request does not satisfy the statute if there is no indication that the request was made at the department head's express behest.

Commercial Law

Bluebird Partners v First Fid. Bank (97 NY2d 456)

General Obligations Law § 13-107 provides that, in the absence of an express writing to the contrary, a bond transfer vests in the transferee certain bond-related claims of the transferor, whether or not those claims were known to exist at the time of the transfer. The question raised in this case was whether a transferee of bonds needs to demonstrate its own, independent injury before it can invoke the statute. The Court of Appeals determined that the plain language of the statute did not create such a requirement. Thus, plaintiff Bluebird Partners, an investment firm that had acquired millions of dollars' worth of debt certificates issued by Continental Airlines, could bring an action against the trustee charged with overseeing Continental's subsequent bankruptcy, even though Bluebird had purchased the certificates at a discount and had suffered no actual injury.

Nissho Iwai Europe v Korea First Bank (99 NY2d 115)

The Court was asked to interpret the terms of a revolving standby letter of credit and determine whether renewal of the letter of credit was conditioned on repayment of prior installments disbursed by the issuing bank. Applying the long-standing principle that a commercial document must be interpreted in accordance with the plain meaning of its terms, the Court concluded that a repayment condition will be enforced only if the parties explicitly set forth that requirement in the terms of the letter of credit.

Business and Corporations

Baker v Health Mgt. Sys. (98 NY2d 80)

On a certified question from the United States Court of Appeals for the Second Circuit, the Court addressed whether New York Business Corporation Law § 722(a) requires indemnification of legal fees incurred as the result of a corporate officer or director's claim for indemnification for the defense of an underlying suit. The Court held that the language and history of the statute require a "reasonably substantial nexus" between the officer's expenditures and the underlying suit. Because the officer's expenditures here arose not from his need to defend against the underlying securities litigation, but from the corporation's refusal to indemnify him for his defense in the securities litigation, the Court concluded that a sufficient nexus did not exist and the officer was not entitled to recover "fees on fees."

Capital Punishment

People v Mower (97 NY2d 239)

Defendant pleaded guilty to murder in the first degree on the last day that the District Attorney could have filed a notice of intent to seek the death penalty, and was sentenced to an agreed-upon term of life imprisonment without the possibility of parole. On appeal, defendant argued that his sentence was illegal pursuant to the Court's decision in Matter of Hynes v Tomei and, therefore, he was entitled to be resentenced to an indeterminate prison term of 20-to-25 years to life. The Court disagreed, holding that a sentence of life without parole may be imposed upon a defendant who pleads guilty to first degree murder where the prosecution had declined to seek the death penalty.

Mahoney v Pataki (98 NY2d 45)

In an appeal involving assigned counsel fees in capital cases, defendants challenged a determination by the Departmental Screening Panels and the Court of Appeals that Judiciary Law § 35-b authorizes a schedule of capital counsel fees that includes reimbursement for legal and paralegal assistance afforded assigned counsel during the defense of a capital case. Holding first that plaintiffs, lawyers assigned to represent capital defendants seeking reimbursement for paralegal and legal assistance, had standing to pursue their claims under section 35-b, the Court concluded that inclusion of paralegal and legal assistance in the schedule of capital counsel fees

was a reasonable exercise of the discretion Judiciary Law § 35-b vested in the Screening Panels and the Court of Appeals.

People v Darrel K. Harris (98 NY2d 452)

Defendant was convicted on six first-degree murder counts, and on counts of attempted first-degree murder and second-degree criminal possession of a weapon. The jury sentenced defendant to death. The Court held that defendant failed to overcome the presumption of constitutionality with respect to CPL 270.20(1)(f), which requires a "death qualification" process to ensure that prospective jurors are able to consider the death penalty as a sentencing option. The Court held, further, that to the extent the trial court forecast the type of individual who could avoid jury service when it described the life/death qualification process, defendant was not prejudiced. Finally, the Court ruled that defendant's claim that his for-cause challenge to a juror pursuant to CPL 270.20(1)(f) should have been granted was meritless, because he did not correlate that juror's expressed skepticism regarding the mitigating factor of child abuse with the juror's views on the death penalty or her ability to exercise the sentencing discretion conferred by the statute. The Court vacated defendant's death sentence pursuant to controlling precedent of Matter of Hynes v Tomei which, consistent with Jackson v United States, had struck the post-death notice/plea bargaining provisions of the death penalty statute as unconstitutional.

Remedies

Matter of Aurecchione v New York State Div. of Human Rights (98 NY2d 21)

Petitioner prevailed on an employment discrimination claim before the State Division of Human Rights. The Division awarded petitioner back pay, but refused to award "pre-determination interest" accruing from the date of discrimination. The Court ultimately held that the award of pre-determination, or pre-judgment, interest was a necessary element of a complete recovery. The refusal to award pre-determination interest, without justification, constituted an abuse of discretion.

520 East 81st St. Assoc. v State of New York (99 NY2d 43)

Before the Court was the proper method of computing damages resulting from the State's temporary regulatory taking of 39 Manhattan apartment units. The taking was effected through a 1984 enactment that prevented the owner from selling the apartments as condominiums. In a 1994 decision, Manocherian v Lenox Hill Hosp., this Court invalidated that enactment. In this action, claimants argued they were entitled to the 1985 sale price of the apartments, plus interest, to be fully compensated for their lost opportunity to sell. The State countered that damages for a temporary regulatory taking were limited to lost rental income, plus the diminution in value of the fee, over the period of the taking. The Court concluded that where the "highest and best use" of the property was a sale, as the courts below determined, just compensation principles required that claimant be awarded lost sale proceeds, plus interest representing a rate of return on those proceeds over the course of the taking.

N.X. v Cabrini Med. Ctr. (97 NY2d 247)

After undergoing a laser ablation of genital warts, plaintiff -- still under the effects of anesthesia -- was placed in a four-bed recovery room. Plaintiff claimed that a surgical resident, not one of the physicians overseeing her care, sexually abused her while she was recovering from surgery, and that several nurses failed to protect her from the abuse. The nurses claimed that although they knew of the resident's presence in the recovery area, they did not see or hear the sexual assault on plaintiff. Plaintiff commenced this action asserting several causes of action against the hospital, including negligence in failing to safeguard her adequately. She also claimed that Cabrini was vicariously liable for the resident's conduct, alleging the resident was acting in the scope of his employment or under the cloak of apparent authority. The Court held that Cabrini was not vicariously liable for the resident's misconduct, that a sexual assault perpetrated by a hospital employee does not further hospital business and that such an assault is a clear departure from the scope of employment, having been committed for wholly personal motives. However, the Court did determine that issues of fact existed whether the nurses actually observed or unreasonably ignored events immediately preceding the misconduct that indicated a risk of imminent harm to plaintiff, thus triggering the need for protective action.

Alami v Volkswagen of Am. (97 NY2d 281)

At the time decedent was killed in an automobile accident, his blood alcohol content exceeded the limit set forth in Vehicle and Traffic Law § 1192(2). His wife brought suit against the manufacturer of her husband's automobile, asserting that defects in the vehicle enhanced his injuries and caused his death. The trial court precluded the claim, finding that the decedent's drunk driving constituted a serious violation of law and that his injuries were the direct result of that violation. In reversing, the Court refused to extend the Barker/Manning preclusion rule beyond claims where parties to the suit were involved in the underlying criminal conduct, or where a criminal plaintiff sought to impose a duty arising out of an illegal act. Further, the Court noted, if a manufacturer did defectively design a vehicle, it breached a duty to any driver involved in a crash, regardless of the initial cause. Finally, the Court observed that decedent's wife did not seek to profit from her husband's intoxication, but only asked that the manufacturer honor its duty to produce a product that did not unreasonably enhance or aggravate a user's injuries.

Bauer v Female Academy of Sacred Heart (97 NY2d 445)

Examining two interrelated issues, the Court was called upon to determine whether a window washer, injured when he fell from a third story window ledge, could assert claims under both Labor Law § 240(1), which applies to workers injured by elevation-related hazards, and Labor Law § 202, specifically covering injuries to window washers. Notwithstanding some overlap in coverage between the two statutes, the Court found no reason to imply exclusivity. Absent a clear expression of legislative intent to the contrary, the Court concluded that neither its own precedents nor the mere fact of similarity in coverage prevented plaintiffs from proceeding under both provisions. The Court also concluded that, although Labor Law § 202 once imposed strict liability in specifically requiring that certain safety devices be provided to

window washers, subsequent amendments, deferring all safety requirements to the provisions of the Industrial Code, now require that comparative negligence principles be applied.

Espinal v Melville Snow Contrs. (98 NY2d 136)

Plaintiff slipped and fell in her employer's parking lot. Barred by the Workers' Compensation Law from bringing an action against the employer, she sued the company under contract with the employer to plow and remove snow from the premises, arguing that the company had negligently failed to remove the snow that caused her to fall and sustain injuries. The question presented to the Court of Appeals was whether the contractor could be held liable in tort to a third party, such as plaintiff. In concluding that the contractor could not be held liable, the Court analyzed New York tort law, determining that a contractual obligation will not give rise to tort liability in favor of a third party unless one of three conditions exists: (1) plaintiff had detrimentally relied on the contractor's continued performance; (2) the contractor completely displaced another party's duty to maintain the premises safely; or (3) in performing its duties under the contract, the contractor created or exacerbated a dangerous condition. Holding that plaintiff failed to prove any of these circumstances, the Court concluded that the snow removal company owed plaintiff no duty.

Chianese v Meier (98 NY2d 270)

CPLR article 16 partially abrogates New York's common law, under which any joint tortfeasor -- whatever its share of fault -- could be held jointly and severally liable for an entire judgment. Under the statute, a joint tortfeasor's liability for non-economic losses is limited to its proportionate share of the losses, provided that the tortfeasor is 50% or less at fault. CPLR 1602(5), however, provides that "actions requiring proof of intent" are not subject to the liability apportionment provisions of CPLR article 16. This exception plainly applies to prevent defendants who have committed an intentional tort from apportioning liability to co-tortfeasors. The Chianese case presented a hybrid situation in which plaintiff, the victim of an intentional assault by a third party, prevailed on a negligent security claim against her landlord. The Appellate Division Departments had split on whether the CPLR 1602(5) exception applies to prevent a negligent defendant from apportioning liability where the negligence is premised on the intentional act of a third party. Relying on the language of the statute and the legislative history and purpose, the Court of Appeals concluded that a negligence claim based on a third party's intentional act was not an "action requiring proof of intent" under CPLR 1602(5) and, thus, apportionment of liability was proper.

Church v Callanan Industries, Inc. (99 NY2d 104)

The issue in this case was whether a subcontractor that failed to install the final 100 feet of a section of guardrail on the New York State Thruway called for in its subcontract could be liable to plaintiff, who was rendered quadriplegic when the car in which he was traveling crashed into a ditch. In determining that the subcontractor was not liable, the Court applied the general rule that breach of a contractual obligation alone is insufficient to impose upon a contractor tort liability to non-contracting third parties. The Court concluded that this case did not fall within the exceptions to that rule. Specifically, the Court held that (1) the subcontractor did not create or substantially increase the preexisting risk of harm to third parties, (2) the driver of the car did

not detrimentally rely on the subcontractor's continued performance of its duties, and (3) the subcontractor had not assumed the Thruway Authority's safety-related obligations with respect to the guardrail system.

Toure v Avis Rent A Car Sys.; Manzano v O'Neil; Nitti v Clerrico (98 NY2d 345)

In these personal injury cases arising from motor vehicle accidents, the Court assessed the sufficiency of expert affidavits addressing the extent or degree of the injured plaintiffs' physical limitations to determine whether these claims could proceed to trial under the No-Fault Law. In clarifying the type of medical testimony necessary to reach the "serious injury" threshold -- a predicate to suit under the No-Fault statute -- the Court held that a numeric percentage of a plaintiff's loss of range of motion or a qualitative assessment of a plaintiff's condition may suffice, provided the expert's evaluation is supported by objective medical evidence and plaintiff's limitations are compared to the normal function, purpose and use of the injured body organ, member, function or system.

Firth v State of New York (98 NY2d 365)

This case presented the Court of Appeals its first opportunity to apply traditional defamation jurisprudence to statements published on an Internet web site. The State Education Department had posted on its web site a report by the Office of the State Inspector General that criticized a civil servant's managerial style and job performance. Although the State did not alter the text of the report after posting it to the site, it did later modify the web site by posting an unrelated report. The Court first determined that the "single publication rule" applies to Internet publications as well as to traditional mass media and, thus, each "hit" on the web site leading to a view of the report could not be considered a new publication retriggering the statute of limitations. The Court also rejected claimant's argument that the modification of the web site was a republication of the first report, reasoning that the mere addition to a web site of unrelated information cannot be equated with the repetition of defamatory material in a separately published edition of a book or newspaper.

Sanchez v State of New York (99 NY2d 247)

Claimant, an inmate in a maximum security state penitentiary who was assaulted by two unidentified fellow inmates, brought a claim against the State alleging negligent supervision. The lower courts held that proof of foreseeability essential to a negligence claim against the State for a prison assault requires a showing that: the State knew the inmate was at risk and failed to take reasonable steps to protect the inmate; the State knew the assailant was dangerous but failed to protect other inmates; or the State had both notice and the opportunity to intervene to protect the inmate but failed to do so. The claim was dismissed on summary judgment for lack of proof of such notice. The Court of Appeals reinstated the claim, concluding that this formulation of the notice requirement improperly modified the traditional foreseeability standard because it precluded consideration of constructive notice -- what the State reasonably should have known under the circumstances. Because claimant's submissions raised a triable issue of fact as to the foreseeability of the assault, summary judgment for the State was improper.

Mosher-Simons v County of Allegany (99 NY2d 214)

A child was beaten to death by his aunt, with whom he had been placed by Family Court. An Allegany County Department of Social Services caseworker had prepared home studies of the child's relatives, pursuant to Family Court's order, without recommending a specific placement. After a federal district court declined to exercise supplemental jurisdiction over the mother's negligent placement claim against the county, she brought suit in state court. The Court of Appeals held that because the home study did not recommend a specific placement, the mother's claim was premised on faulty home evaluation, rather than upon negligent placement. Moreover, the Court determined that the fact-gathering process antecedent to Family Court's placement decision, including the home study, was entitled to judicial immunity because it was an integral part of the judicial decisionmaking process, and the caseworker functioned as an extension of the court while acting within the scope of its order to complete the study.

Municipalities

Matter of Council of City of N.Y. v Public Serv. Commn. of State of N.Y. (99 NY2d 64)

Relying on a regulation promulgated by the Public Service Commission, which states that cable franchise renewals require the approval of the "local legislative body," the City Council commenced this article 78 proceeding to annul Public Service Commission orders approving the renewal of cable franchises. The Commission had concluded that, under this regulation, the "local legislative body" in the City of New York was the Franchise and Concession Review Committee, which is authorized by the City Charter to approve franchise renewals. Thus, City Council approval was unnecessary. The Court agreed that renewals of cable franchises in the City of New York did not require City Council approval. Although the City Council plays a role by passing a resolution to authorize a franchise, the City Charter explicitly bars the City Council from further participation once the resolution is passed. The Court held that the Public Service Commission's interpretation of its own regulation was entitled to deference, and that its interpretation was rational.

Public Employment

Weingarten v Board of Trustees of N. Y. City Teachers' Retirement Sys. (98 NY2d 575)

Plaintiffs, a group of New York City teachers, sought to have compensation they earned from "per session" employment -- such as teaching summer school, evening and adult education classes and working with various athletic and nonathletic extracurricular activities -- included as part of their "annual salary" for the purpose of computing their retirement benefits. The Court held that such compensation was pensionable because, by specifically excluding other forms of compensation from the calculation of retirement benefits but not excluding earnings from "per session" work, the Legislature indicated its intent to include "per session" compensation in teachers' retirement benefits.

Matter of Sakow (97 NY2d 436)

Plaintiffs had filed notices of pendency on properties involved in an accounting action. The notices had been vacated or had expired without timely renewal. The Court held that the language of CPLR article 65, its legislative history and underlying policies all prohibited plaintiffs from filing new notices of pendency after the previously filed notices concerning the same causes of action or claims expired without timely renewal.

State of New York v The Seventh Regiment Fund (98 NY2d 249)

In 1909, current and former members of the Seventh Regiment, a state militia unit, formed The Seventh Regiment Fund, a nonprofit corporation devoted to regimental interests. Through bequests and gifts, the Regiment accumulated historically significant memorabilia -- including flags, medals, trophies, documents and art works -- with an estimated value today of six to ten million dollars. In 1952, Regiment officers sold the memorabilia to the Fund for one dollar. No militia personnel outside the Regiment, and no other state agencies or officers, were informed of the sale. In 1996, a task force on the State's military heritage learned of the transaction, and the State sued to recover unlawfully converted State property. This Court, first, rejected the State's argument that, when suing as a sovereign claiming irreplaceable personal property, the State is immune from statutes of limitation. Second, the Court determined that the State's claim to the memorabilia may nevertheless be timely, because a cause of action for conversion accrues when the defendant exercises ownership over the plaintiff's goods to the exclusion of the plaintiff's rights. The State's claim did not necessarily accrue in 1952, when Regiment officers sold the memorabilia to the Fund. The Court remitted the matter to the trial court to determine the proper accrual date and to resolve other issues.

McCoy v Feinman (99 NY2d 295)

Plaintiff brought a malpractice action against the attorney who represented her in her divorce, alleging that he negligently failed to secure pre-retirement death benefits under her now deceased ex-husband's employee benefit plan. Defendant conceded negligence in failing to prepare a Qualified Domestic Relations Order (QDRO), required under ERISA for an ex-spouse to receive pre-retirement death benefits. However, defendant argued that the three-year statute of limitations governing malpractice actions had expired. The Court of Appeals held that because ERISA states that a QDRO can convey only those rights the parties stipulated to as a basis for judgment, the attorney's failure to stipulate to the pre-retirement death benefits, and not his failure to file the QDRO, caused plaintiff's injury. The Court stated that plaintiff's cause of action accrued no later than the date of the judgment on which the stipulation was based, and thus was time-barred because the judgment had been entered more than three years before the commencement of the malpractice action. In addition, the Court held that defendant's continuing failure to file the QDRO was not the immediate cause of plaintiff's injury and, thus, did not toll the statute of limitations under the continuous representation doctrine.

Zoning and Land Use

Matter of Dreikausen v Zoning Bd. of Appeals of City of Long Beach (98 NY2d 165)

In this case, the Court of Appeals explored when a zoning dispute becomes moot. Petitioners, who challenged the grant of a use variance to a condominium development project, failed to seek preliminary injunctive relief before Supreme Court and resisted posting an undertaking in conjunction with their request for injunctive relief before the Appellate Division. By the time the proceeding reached the Court of Appeals, the project was substantially completed. Petitioners' failure to seek injunctive relief earlier, the absence of bad faith by the builders, the fact that the challenge did not extend beyond the parties, and the substantial completion of the project, weighed together, rendered the appeal moot.

FOIL

Matter of Newsday, Inc. v Empire State Dev. Corp. (98 NY2d 359)

Here, pursuant to the Freedom of Information Law (FOIL), a newspaper sought to compel the Empire State Development Corporation to release copies of subpoenas in its possession that had been served by the District Attorney's office in the course of an investigation. The Appellate Division had ruled that the subpoenas were immune from disclosure because they were judicial records. Reversing, the Court of Appeals concluded that the Development Corporation is a governmental agency subject to FOIL, not part of the judiciary. Because the Development Corporation had possession of the subpoenas, the subpoenas were "agency records" that had to be released, notwithstanding that the subpoenas were originally mandates of a court or issued for a court. The Court explained that immunity from FOIL of subpoenaed records, in a court's possession, does not run with those records.

Criminal Law and Procedure

People v Brady (97 NY2d 233)

Defendant, on trial for robbery, objected to the prosecutor's request that defendant be subject to cross-examination about an unrelated robbery, as to which he had pleaded guilty but had not yet been sentenced. Defendant argued violation of his constitutional right against compelled self-incrimination. The trial judge held that if he testified, defendant could be cross-examined as to admissions during his allocution to the first robbery, but he could not be cross-examined as to events outside the scope of the allocution. The Court of Appeals affirmed, holding that the prospect of self-incrimination was too speculative to constitute a bar to cross-examining defendant as to his admissions regarding the first robbery. At the time of trial for the second robbery, nothing indicated that the previous, unrelated guilty plea was the least bit suspect or vulnerable.

People v Smith (97 NY2d 324)

In this case, the Court was asked to decide if the trial court committed constitutional error in denying defendant's motion for a mistrial, where a non-testifying witness's statement had been inadvertently included on the back of a trial exhibit provided the jury. Defendant had been indicted for the murder of one victim and the wounding of another. After he was picked up for questioning by the police, he gave a signed confession as well as a taped confession. At trial, defendant recanted the signed confession, stating that although he had been present at the scene, he left with the non-testifying witness well before the time of the murder. In the statement mistakenly given the jury, the non-testifying witness indicated she had not given defendant a ride on the night of the shootings but, rather, had given him a ride home two weeks prior to the shootings. After the jury brought the error to the court's attention, the court gave a prompt curative instruction that the statement was hearsay and not to be considered. The jury convicted defendant of murder in the second degree, and the Appellate Division affirmed. In affirming the lower courts, the Court held that the error was harmless beyond a reasonable doubt as "there [was] no reasonable possibility that the error might have contributed to defendant's conviction."

People v Brown (97 NY2d 500)

In this prosecution for criminal sale of a controlled substance in or near school grounds, the Court held that expert testimony regarding street-level narcotics operations was properly admitted to explain why a suspect might not possess prerecorded buy money or drugs, even if arrested soon after the transaction. The Court held this expert testimony admissible because it involved matters beyond the common knowledge of an average juror and would aid the jury in resolving factual issues relating to the intricacies of narcotics street sales, including methods used to avoid seizure by police. The Court emphasized that such testimony should be paired with appropriate limiting instructions to the jury.

People v Hernandez (98 NY2d 8)

As the result of a warrantless arrest, defendant was charged in a misdemeanor complaint with consumption of alcohol in a public place, disorderly conduct and resisting arrest. The trial court dismissed the complaint pursuant to CPL 140.45. On the People's appeal pursuant to CPL 450.20(1), the Appellate Term reversed and reinstated the accusatory instrument. This Court held the Appellate Term erred in so doing, as it had no jurisdiction to entertain the People's appeal. CPL 450.20(1) only authorizes an appeal from an order dismissing an accusatory instrument if the order was entered "pursuant to section 170.30, 170.50, or 210.20." In contrast, the Legislature did not provide the People any right of appeal from CPL 140.45 dismissals. The case was remitted to the Appellate Term to dismiss the appeal.

People v Abad (98 NY2d 12)

Does the suspicionless stop of a taxicab pursuant to the New York City Police Department Taxi/Livery Robbery Inspection Program (TRIP) pass constitutional muster? The Court of Appeals answered yes. Defendant, a passenger in a taxicab that had consented to suspicionless stops by the police, challenged the stop as violating his Fourth Amendment rights. Distinguishing its prior decision in Muhammad F., the Court concluded that the stop met constitutional requirements. The Court rested its decision on the unchallenged public interest

in preventing crime against livery cab drivers, the limitation on officers' discretion to stop only participating vehicles, and the reduced intrusiveness to drivers and passengers resulting from program structure and guidelines.

People v Arnold (98 NY2d 63)

In a case of first impression, the Court considered whether a trial judge, presiding over a criminal case, may call its own witness to testify when the prosecution and defense choose not to call this witness during presentation of their cases. Relying on the basic principle that the judge's function is to protect the record at trial, not to make it, the Court held that, in those unusual circumstances in which a court feels compelled to call its own witness, the court should explain why and invite comment from the parties in order to balance its intended aim against any possible claim of prejudice, and to provide appellate courts a basis to review its decision. In this case, the trial court erred in calling its own witness -- without significant discussion -- after both sides had decided not to call the witness and had rested.

People v Arroyo (98 NY2d 101)

During trial, defendant expressed dissatisfaction with his attorney's efforts and informed the trial court of his desire to proceed pro se. The court allowed defendant to do so. His subsequent conviction was affirmed by the Appellate Division. This Court held that the trial court failed to secure an effective waiver of counsel necessary to allow defendant to represent himself. Although aware of the need for a searching inquiry, by its summary disposition of defendant's request, the trial court did not test defendant's understanding of the risks of self-representation or provide a reliable basis for appellate review. Accordingly, the trial court failed to evaluate adequately defendant's competency to waive counsel, to warn him of the risks inherent in proceeding pro se and to apprise him of the importance of a lawyer in the adversarial system of adjudication.

People v Wolf (98 NY2d 105)

Defendant, an attorney, was convicted of commercial bribery in the first degree after paying kickbacks to insurance company adjusters out of his contingent fees in exchange for expediting the settlement of his clients' personal injury claims. The Court held that payment of the kickback alone was not sufficient to establish that the defendant's employer suffered the "economic harm" necessary to sustain a felony commercial bribery conviction under Penal Law § 180.03. Instead, a showing of the economic harm element of felony commercial bribing requires proof that, absent the corrupt arrangement, the employer of the kickback payee would have paid a lower price or secured some other more favorable financial terms. The Court clarified that the statute is not satisfied by proof of solely intangible, esoteric, or theoretical harms that would not result in additional costs increasing the price of goods or services to consumers. In this case, there was no proof that one of the insurance companies involved would have accepted an honest offer by the defendant attorney to settle the cases for a lesser amount and in an expedited manner without the kickback. Accordingly, the Court reduced one of the first degree commercial bribing counts to commercial bribery in the second degree.

People v Molnar (98 NY2d 328)

When investigating a complaint of a foul smell coming from defendant's apartment, police officers were confronted with an overwhelming odor, later determined to be caused by a rotting corpse. The officers broke into the apartment, without a warrant, and discovered the body. The Court of Appeals concluded that the entry was legal, and that a warrant had not been required. The Court determined that the strong odor indicated the presence of an emergency situation inside the apartment, and that the officers were justified in forcing their way in, after they unsuccessfully tried other reasonable means of gaining entry.

People v Sanchez (98 NY2d 373)

In this case, the Court considered whether the evidence -- showing that defendant pointed a gun at the victim and discharged it from a distance within 18 inches, striking the victim in the chest and killing him -- was legally sufficient to support defendant's conviction for "depraved indifference" murder, which requires a showing that defendant recklessly engaged in conduct creating a grave risk of death to another. The Court rejected defendant's argument that the People established only an intentional killing, reasoning that the jury could have accepted that the shooting was not deliberately intended to cause death based on the trajectory of the bullet, the physical positions of the defendant and the victim when the shooting occurred, and the preexisting good relationship between the defendant and victim. Additionally, the Court held that the jury reasonably could have found that defendant's conduct presented such an extremely high risk of causing the victim's death as to demonstrate the manifest depravity needed to establish the charged crime.

People v Harris; People v Wright (99 NY2d 202)

Each defendant in this joint appeal presented a distinct attorney conflict-of-interest situation. Unknowingly, defendant Harris's pre-trial attorney simultaneously represented a key prosecution witness. Defendant Wright's attorney previously represented a prosecution witness on an unrelated matter, but elicited a waiver of the attorney-client privilege from that witness on the record. The Court held that neither defendant was denied effective assistance of counsel because in neither situation did the potential conflict of interest operate on defense counsel's representation.

People v Berroa (99 NY2d 134)

Defendant was indicted for murder in the second degree and related offenses. At trial, two witnesses testified to observing defendant shoot the victim from point blank range. Defense counsel pursued only a misidentification defense. At a bench conference at the close of a defense witness's direct testimony, the court observed that the witness's testimony suggested an alibi. The trial court read to the jury a stipulation, signed by defense counsel, that she had no knowledge that the witness intended to testify to an alibi for defendant. Defendant was found guilty of murder in the second degree, and sentenced to 25 years to life imprisonment. The Court held that reversal was required based on a conflict of interest compromising the effectiveness of defendant's representation, because defense counsel was the only source of the information contained in the stipulation. Thus, defense counsel's credibility was directly and necessarily pitted against that of the defense witness and, thereby, undercut defendant's defense.

People v Ramos (99 NY2d 27)

Defendant, charged with second-degree murder, claimed that his constitutional right to counsel was violated when the police intentionally delayed his arraignment in order to obtain a confession. Defendant raised this argument for the first time on appeal, but claimed it was not subject to the preservation requirement because of its constitutional dimension. The Court of Appeals rejected defendant's claim, concluding that the state constitutional right to counsel was not implicated in this case. A person has a right to counsel in two situations: when, while in custody, the person requests or obtains an attorney, or upon the commencement of judicial proceedings. Given that defendant had waived his right to counsel and, at the time of his confession, judicial proceedings had not yet started, the Court concluded that defendant had not raised a valid constitutional right-to-counsel argument, but rather simply asserted a violation of the prompt-arraignment statute, which had to have been preserved to be reviewable.

People v James; People v Jones (99 NY2d 264)

In these consolidated appeals, the Court held that Batson challenges had not been preserved. In Batson v Kentucky, the Supreme Court held that a prosecutor could not use peremptory challenges to strike a prospective juror because he or she was African-American. The Court of Appeals emphasized that when a "party raises an issue of a pattern of discrimination in excluding jurors, and the court accepts the race neutral reasons given, the moving party must make a specific objection to the exclusion of any juror still claimed to have been the object of discrimination. It is incumbent upon the moving party to be clear about any person still claimed to be improperly challenged." The opinion also noted that four current and three former members of the Court had called upon the Legislature to reexamine peremptory challenges.

Arbitration

Matter of New York City Tr. Auth. v Transport Workers Union of Am. (99 NY2d 1)

In reinstating two arbitration awards that overruled Transit Authority determinations to dismiss employees for safety violations and imposed lesser sanctions, the Court explored the narrow public policy exception permitting judicial intervention in the arbitration process and its outcome. With respect to both awards at issue here, the public policy consideration invoked by the Transit Authority did not meet the strict standards for overturning such awards. The Transit Authority had attempted to rely on its general statutory power to manage the operation of transit facilities for the safety of the public (Public Authorities Law § 1204[15]). The Court concluded, however, that the statutory provision did not prohibit an arbitrator from deciding the appropriate penalties in employee disciplinary matters and did not preclude the terms of the awards themselves.

Evidence

Matter of New York City Health and Hosps. Corp. v Morgenthau (98 NY2d 525)

An assailant, identified only as a Caucasian male who may have been bleeding when fleeing the scene of the crime, stabbed a man to death in Manhattan. Unable to locate the assailant for over two years, the District Attorney conjectured that he sought medical treatment shortly after the homicide. The District Attorney thus served Grand Jury subpoenas on 23 hospitals, seeking records on all Caucasian male patients treated for an injury caused by a knife on the night of the homicide. New York City Health and Hospitals Corporation invoked the physician-patient privilege and moved to quash the subpoenas. The Court of Appeals held that the subpoenas must be quashed, reasoning that the subpoenas called for information requiring judgment of a medical nature, which is protected by the physician-patient privilege, and that the evidence in question did not fall within one of the physician-patient privilege exceptions created by the Legislature.

Contracts

511 W. 232nd Owners Corp. v Jennifer Realty Co. (98 NY2d 144)

Plaintiffs, the board of directors of a cooperative corporation and a number of individual shareholders and proprietary lessees, alleged that the sponsor of their apartment building's conversion into a cooperative breached its contractual duty to dispose of all its shares within a reasonable time. Defendant asserted a defense based on documentary evidence. Addressing the sufficiency of the pleadings, the Court determined that plaintiffs' cause of action survived defendant's motion to dismiss. The Court held that the complaint sufficiently asserted that the sponsor undertook a duty in good faith to timely sell shares in the building so as to create a viable cooperative, but instead retained a majority of those shares. The Court further held that, by keeping a majority of shares, the sponsor defeated the purpose of the contract and ensured that it would retain control of the building, because the cooperative board would be elected by its vote.

Greenfield v Philles Records (98 NY2d 562)

The members of a 1960s singing group, "The Ronettes," sued their music producer, Phil Spector, for royalties he allegedly owed them for licensing the right to use The Ronettes' songs in television commercials and movies (known as synchronization rights). The Ronettes claimed that Spector's right to use the recordings was restricted to album production. In resolving the dispute, the Court of Appeals was asked to decide whether an artist's transfer of full ownership rights in master recordings carries with it the right to redistribute those recordings in different electronic or technological formats. The Court concluded that the unconditional transfer of ownership rights in a musical recording includes the right to reproduce the work in different formats, including synchronization, unless an explicit reservation of rights in the parties' agreement limits such use. Although The Ronettes were unable to share in the profits Spector realized from synchronization licensing, the case was remitted to Supreme Court to recalculate royalties due on the domestic sales of records and compact discs.

Housing

Matter of Gilman v New York State Div. of Hous. & Comm. Renewal (99 NY2d 144)

The Court determined that the Rent Regulation Reform Act of 1997 (RRRA) is applicable to fair market rent appeals and, as a result, affects the comparability data required in these appeals. The RRRA clarified and reinforced the four-year statute of limitations in rent overcharge claims and limited "examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint." Because the Legislature specifically directed that the RRRA apply to all cases pending before the Division of Housing and Community Renewal, the agency properly informed owners involved in pending cases of the new legislation and its effect on comparability data. The new statute, however, said nothing about the wholesale introduction of new evidence at the appellate level. Thus, the Court held that the agency acted irrationally when it allowed an owner to submit new comparability data on appeal without showing good cause, as required by the agency's own governing regulations.

Insurance

Matter of Brandon (Nationwide Mut. Ins. Co.) (97 NY2d 491)

At issue in this case involving Supplemental Uninsured Motorists (SUM) coverage was the requirement that the insured provide the insurer with timely notice of any legal action the insured brings against the tortfeasor. The insured, Brandon, gave his insurer, Nationwide, timely notice of his claim against the under-insured driver whose vehicle injured him, but Brandon failed to inform Nationwide of the tort action he brought months later, and Nationwide therefore disclaimed coverage. When Brandon brought a proceeding to compel Nationwide to arbitrate his claim, Nationwide moved to stay the arbitration permanently. The Court of Appeals rejected Nationwide's late notice argument, holding that the insurer was required to show that it had been prejudiced by Brandon's failure to give timely notice. As the Court noted, parties seeking to escape contractual obligations normally are required to show a material breach or prejudice. Historically, insurance carriers denying coverage on the basis of late notice of claim have been exempted from this requirement because of their needs to protect themselves from fraud by investigating claims early, set reserves and take an early role in settlement discussions. As the Court recognized, none of these rationales applies when a SUM insurer asserts late notice of an underlying action.

Allstate Ins. Co. v Serio (98 NY2d 198)

In this matter, the United States Court of Appeals for the Second Circuit sought an authoritative interpretation of the Insurance Law from the Court of Appeals. The Department of Insurance determined, after an investigation, that insurance companies in the Rochester area were violating Insurance Law § 2610 (b). That section forbids auto casualty insurers from steering policyholders to particular auto-repair shops with which the insurance company has an established business relationship. The Department issued an advisory communication, "Circular Letter No. 4 of 1994," which articulated the Department's interpretation of section 2610 (b). Allstate and GEICO Insurance Companies brought separate actions in federal district court,

seeking declarations that section 2610 (b) violated their free speech rights under the Federal and State Constitutions and that Circular Letter 4 was an unconstitutional restriction on commercial speech under federal and state law. The District Court granted the insurers' summary judgment motions, holding that under the multi-part test articulated in Central Hudson Gas & Elec. Corp. v Public Serv. Commn., the restrictions on commercial speech did not directly and materially advance the State's interest and the restrictions were not narrowly drawn to effect the State's interest. On appeal, the Second Circuit certified four questions to the Court of Appeals, including whether Circular Letter 4 was a valid interpretation of Insurance Law § 2610 (b). The Court of Appeals determined that both the statute's legislative history and its express language only regulate when an insurance company can make recommendations or suggestions that repairs be performed at a particular shop. The statute does not regulate content or placement of material promoting an insurance company's repair program, or discussion or distribution of an insurer's text. The Court determined that although the Legislature sought to protect a consumer's right to choose and to combat the practice of coercing or enticing insureds to use certain shops, the Department had failed to show how Circular Letter 4, an expansive construction of section 2610 (b), advanced such legislative purpose.

Consolidated Edison Co. of N. Y. v Allstate Ins. Co. (98 NY2d 208)

In this case arising from environmental pollution that occurred for over 50 years on land once owned by Con Edison's corporate predecessors, the Court addressed two key issues of insurance law. First, should the insured, Con Edison, have the burden of proving at trial that damage was the result of an "accident" or "occurrence" within the meaning of its insurance policies, or should the insurers have the burden of proving that it was not? The Court held that because "accident" and "occurrence" operate as terms of coverage, rather than terms of exclusion, the burden of proof was correctly placed on Con Edison. The second issue was how liability for long-term environmental damage should be allocated among successive insurers for summary judgment purposes. Con Edison's position was that it should be permitted to collect its total liability under any policy in effect during the years that the property damage occurred, while the insurers contended that liability should be allocated pro rata among all of the policies. Although the policies did not explicitly mandate proration of liability, the Court agreed with the insurers, concluding that pro rata allocation was more consistent with both the language of the policies and the uncertainty as to what actually transpired during any particular policy period.

Town of Massena v Healthcare Underwriters Mut. Ins. Co. (98 NY2d 435)

In an underlying federal action, brought pursuant to the First and Fourteenth Amendments to the United States Constitution and 42 USC § 1983, a physician alleged that in retaliation for his having stated publicly that a hospital failed to offer nurse-midwifery services for anti-competitive reasons, the hospital engaged in a campaign of harassment designed to punish him for his speech. He alleged defamation and other torts. The hospital sought a defense from its insurers under three policies. The Court held that one of the insurers, Healthcare Underwriters Mutual Insurance Company, had a duty to defend claims of libel and slander as these claims were within the plain language of the policy.

Pierre v Providence Washington Ins. Co. (99 NY2d 222)

The Court was asked to interpret a federally-mandated insurance policy endorsement attached to liability policies issued to motor carriers that transport goods in interstate commerce. The plaintiff was injured when the vehicle he was driving was struck by a tractor-trailer. The issue before this Court was whether the insurer could be required to satisfy the judgment against the driver and the owner of the tractor cab when its named insured -- Blue Hen, the owner of the trailer -- was not a party to plaintiff's lawsuit. The Court concluded that the insurer was obligated to pay the judgment, determining that plaintiff could recover from the insurer, despite the fact that the judgment in the personal injury action was not obtained against Blue Hen, because the driver and the tractor cab owner fell within the policy definition of "the insured." In so holding, the Court relied on the plain language of the federally-mandated endorsement -- which requires a motor carrier insurance company to compensate an injured party for a judgment obtained against "the insured," and the public policy underlying the endorsement -- to ensure that parties injured in tractor-trailer accidents are compensated.

IV. Appendices

APPENDICES

APPENDIX 1

JUDGES OF THE COURT OF APPEALS

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

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

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

Hon. Richard C. Wesley
Associate Judge of the Court of Appeals

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

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

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

APPENDIX 2

PERTINENT CLERK'S OFFICE TELEPHONE NUMBERS

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

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

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

Court of Appeals Internet web site
http://www.courts.state.ny.us/ctapps

SUMMARY OF TOTAL APPEALS DECIDED IN 2002 BY JURISDICTIONAL PREDICATE
January 1, 2002 through December 31, 2002

BASIS OF JURISDICTION: ALL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Dissents in Appellate Division	10	6	2	0	0	18
Permission of Court of Appeals or Judge thereof	61	38	8	2	0	109
Permission of Appellate Division or Justice thereof	17	8	0	1	0	26
Constitutional Question	2	3	0	0	0	5
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	1	1	2	0	14	18[1]
Totals	**91**	**56**	**12**	**3**	**14**	**176**

BASIS OF JURISDICTION: CIVIL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Dissents in Appellate Division	10	6	2	0	0	18
Permission of Court of Appeals	27	24	7	2	0	60
Permission of Appellate Division	5	4	0	0	0	9
Constitutional Question	2	3	0	0	0	5
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	1	1	1	0	14	17[1]
Totals	**45**	**38**	**10**	**2**	**14**	**109**

BASIS OF JURISDICTION: CRIMINAL APPEALS

	TYPE OF DISPOSITION					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Permission of Court of Appeals Judge	34	14		0	0	49
Permission of Appellate Division Justice	12	4	0	1	0	17
Other	0	0	-	0	0	1[2]
Totals	**46**	**18**	**2**	**1**	**0**	**67**

[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 500.17).
[2]People v Darrel K. Harris, capital appeal

APPENDIX 4

COMPARATIVE STATISTICAL ANALYSIS FOR APPEALS DECIDED IN 2002

ALL APPEALS - % CIVIL AND CRIMINAL

	1998	1999	2000		
Civil	63% (124 of 198)	70% (146 of 208)	60% (102 of 170)	76% (134 of 176)	62% (109 of 176)
Criminal	37% (74 of 198)	30% (62 of 208)	40% (68 of 170)	24% (42 of 176)	38% (67 of 176)

CIVIL APPEALS - TYPE OF DISPOSITION

	1998	1999	2000	2001	2002
Affirmed	40%	45%	49%	40%	40%
Reversed	37%	37%	30%	37%	37%
Modified	6%	9%	7%	7%	8%
Dismissed after Argument	1%	1%		1%	2%
Other (e.g. judicial suspension; Rule 500.17 certified question)	16%	8%	14%	15%	13%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	1998	1999	2000	2001	2002
Affirmed	62%	76%	69%	69%	69%
Reversed	30%	15%	20%	29%	28%
Modified	1%	8%	7%	2%	1.5%
Dismissed	7%	1%	4%		1.5%

CIVIL APPEALS - JURISDICTIONAL PREDICATES

	1998	1999	2000		
Appellate Division Dissents	11% (13 of 124)	9% (13 of 146)	9% (9 of 102)	11% (14 of 134)	16.5% (18 of 109)
Court of Appeals Leave Grants	45% (56 of 124)	63% (93 of 146)	56% (57 of 102)	47% (63 of 134)	55% (60 of 109)
Appellate Division Leave Grants	16% (20 of 124)	13% (19 of 146)	12% (13 of 102)	19% (26 of 134)	8.25% (9 of 109)
Constitutional Question	8% (10 of 124)	4% (6 of 146)	9% (9 of 102)	6% (8 of 134)	4.5% (5 of 109)
Stipulation for Judgment Absolute	1% (1 of 124)	1% (1 of 146)			
CPLR 5601(d)	2% (3 of 124)	2% (3 of 146)		2% (3 of 134)	3% (3 of 109)
Supreme Court Remand	1% (1 of 124)				
Judiciary Law § 44	4%[1] (5 of 124)	3%[1] (4 of 146)	5%[1] (5 of 102)	4%[1] (5 of 134)	8.25%[1] (9 of 109)
Certified Question from Federal Court (Rule 500.17)	12%[2] (15 of 124)	5%[2] (7 of 146)	9%[2] (9 of 102)	11%[2] (15 of 134)	4.5%[2] (5 of 109)
Other					

[1] Includes judicial suspension matters
[2] Includes decisions accepting/declining certification

APPENDIX 6

CRIMINAL APPEALS - JURISDICTIONAL PREDICATES

	1998	1999	2000		
Permission of Court of Appeals Judge	72% (53 of 74)	76% (47 of 62)	81% (55 of 68)	74% (31 of 42)	73.1% (49 of 67)
Permission of Appellate Division Justice	28% (21 of 74)	24% (15 of 62)	18% (12 of 68)	26% (11 of 42)	25.4% (17 of 67)
Other			1% (1 of 68)		1.5% (1of 67)

[1] People v Darrel K. Harris, capital appeal

MOTION STATISTICS (1998 - 2002)

Motions Undecided as of January 1, 2002 - 119

Motion Numbers Used in 2002 - 1381

Motions Undecided as of December 31, 2002 - 109

Motion Dispositions During 2002 - 1352

	1998	1999	2000	2001	2002
Motion Numbers Used for Calendar Year	1513	1505	1461	1439	1381
Motions Decided for Calendar Year	1550	1522	1393	1474	1352
Motions for leave to appeal	1202*	1209*	1088*	1115*	1013*
granted	91	94	54	72	71
denied	867	822	809	824	724
dismissed	238	288	223	215	213
withdrawn	6	5	2	4	5
Motions to dismiss appeals	11	15	4	5	10
granted	5	10	2	3	2
denied	6	5	2	2	8
dismissed	0	0	0	0	0
withdrawn	0	0	0	0	0
Sua Sponte and Court's own motion dismissals	119	110	107	102	100
TOTAL DISMISSAL OF APPEALS	124	120	109	105	102
Motions for reargument of appeal	8	9	8	20	11
granted	0	0	0	0	0
Motions for reargument of motion	82	71	56	64	52
granted	0	0	0	1	3
Motions for extension of time to move for reargument	1	1	0	0	0
granted	0	1	0	0	0
Motions for assignment of counsel	55	40	37	48	40
granted	51	40	37	45	37
Legal Aid	15	13	13	17	10
denied	4	0	0	3	2
dismissed	0	0	0	0	1

APPENDIX 7

APPENDIX 7 (continued)

	1998	1999	2000	2001	2002
Motions to waive rule compliance	4	2	3	4	2
granted	0	1	2	2	1
Motions for poor person status	61	80	71	64	53
granted	2	1	1	1	0
denied	1	0	0	0	0
dismissed	58	79	70	63	53
Motions to vacate dismissal/preclusion	4	0	5	1	1
granted	3	0	2	1	0
Motions for calendar preference	7	6	6	4	3
granted	0	2	0	1	1
Motions for amicus curiae status	88	87	59	110	112
granted	71	69	50	94	91
Motions for Executive Law § 71 Order (AG)	1	0	5	1	3
Motions for leave to intervene	0	3	0	1	1
granted	0	2	0	1	0
Motions to stay/vacate stay	39	29	26	23	21
granted	6	0	1	2	1
denied	3	0	3	2	4
dismissed	29	29	22	19	16
withdrawn	1	0	0	0	0
Motions for CPLR 460.30 extension	23	33	38	32	37
granted	21	27	28	26	34
Motions to strike appendix or brief	7	3	5	0	8
granted	0	2	0	0	2
Motions to amend remittiur	2	2	1	2	0
granted	0	0	0	0	0
Motions for miscellaneous relief	23	18	25	20	14
granted	2	3	5	2	1
denied	14	12	14	14	9
dismissed	7	3	4	3	3
withdrawn	0	0	2	1	1
Withdrawals/substitution of counsel	2	0	1	1	0
granted	2	0	1	1	0
denied	0	0	0	0	0

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

CRIMINAL LEAVE APPLICATIONS ENTERTAINED BY COURT OF APPEALS JUDGES

	1998	1999	2000		
TOTAL APPLICATIONS ASSIGNED:	2953	2815	2920	2827	2605
TOTAL APPLICATIONS DECIDED:	2982[1]	2799[1]	2863[1]	2840[1]	2724[1]
TOTAL APPLICATIONS GRANTED:	57	44	51	43	46
TOTAL APPLICATIONS DENIED:	2709	2512	2579	2604	2493
TOTAL APPLICATIONS DISMISSED:	209	229	221	187	179
TOTAL APPLICATIONS WITHDRAWN:	7	14	12	6	6
TOTAL PEOPLE'S APPLICATIONS:	67	54	68	62	59
(a) GRANTED:	5	5	7	10	9
(b) DENIED:	59	42	54	49	45
(c) DISMISSED:	1	1	3	1	4
(d) WITHDRAWN:	2	6	4	2	
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	451[2]	402	448[2]	404	388[3]
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	9	6	8	6	7

[1] Includes some applications assigned in previous year.

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

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

APPENDIX 9

2002

THRESHOLD REVIEW OF SUBJECT MATTER JURISDICTION BY THE COURT OF APPEALS

SSD (sua sponte dismissal) - Rule 500.3

	1998	1999	2000		
Total Number of Inquiry Letters Sent	99	106	108	91	94
Appeals Dismissed on Motion	11	12	3	3	11
Appeals Dismissed on Consent	0	1	2	2	0
Appeals Withdrawn or Discontinued on Stipulation	1	4	5	5	3
Dismissed by Court sua sponte	71	57	65	64	55
Transferred sua sponte to Appellate Division	1	3	4	2	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)	7	10	7	6	9
Jurisdiction Retained - appeals decided	3	4	0	2	0
Inquiries Pending	5	15	22	9	

COMPARATIVE ANALYSIS OF OFFICE FOR PROFESSIONAL MATTERS STATISTICS

TOPIC	1998	1999	2000		
Attorneys Admitted (OCA)[1]	7339	7725	7194	7440	8006
Certificates of Admission	235	71	164	150	82
Clerkship Certificates	9	7	12	4	10
Petitions for Waiver	479[2]	163	149	144	170[3]
Written Inquiries	257	193	116	150	132
Disciplinary Orders/Name Changes	1689	966[4]	842[4]	954	1636

[1] The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (see Judiciary Law § 68-a).

[2] After the May 27, 1998 effective date of the Rule changes, 41 petitions were either denied or dismissed as academic or abandoned, and 13 petitions were withdrawn.

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

[4] Includes orders involving violation of the attorney registration requirements (Judiciary Law § 468-a).

APPENDIX 11

NONJUDICIAL STAFF

Acri, Gabriel - Senior Law Clerk to Judge Ciparick

Aiardo, Suzanne - Chief Motion Clerk

Alexander, Jr., Carroll B. - Court Building Guard

Ali, Vivian - Principal Stenographer, Court of Appeals

Amyot, Leah M. Soule - Principal Law Clerk to Judge Levine (resigned 12/4/02)

Andrews, Barbara J. - Secretary to Judge Smith

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

Beachel, Sue E. - Secretary to Judge Wesley

Beard, Dorothy - Secretary to Chief Judge Kaye

Bernstein, Jonathan M. - Court Attorney, Court of Appeals

Bohannon, Lisa Herriman - Principal Stenographer, Court of Appeals

Bohannon, Randy A. - Senior Court Building Guard

Byrne, Cynthia D. - Clerical Assistant, Court of Appeals

Calacone, Stephen F. - Clerical Research Aide

Call, Gregory A. - Senior Law Clerk to Chief Judge Kaye

Cambria, Elizabeth Brace - Principal Law Clerk to Judge Levine; Principal Court Attorney, Court of Appeals

Cannataro, Anthony - Principal Law Clerk to Judge Ciparick

Carney-Cole, Kathryn M. - Law Clerk to Judge Wesley

Carro, Christine - Secretary to Judge Ciparick

Carroll, Frederic J. - Supervising Court Attendant, Court of Appeals (retired 8/23/02)

Chaudhry, Zainab A. - Principal Law Clerk to Judge Wesley (resigned 9/25/02)

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

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

Conklin, Elmer - Clerical Assistant, Court of Appeals

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

Connair, George P. - Senior Services Aide (retired 9/20/02)

Cortelli, Terrence James - Senior Court Attorney, Court of Appeals

Costello, James A. - Assistant Deputy Clerk, Court of Appeals; Principal Law Clerk to Judge Levine

Davis, Heather - Senior Court Attorney, Court of Appeals

DellAquila, Lisa - Law Clerk to Judge Rosenblatt; Court Attorney, Court of Appeals

Diebel, Beth A. - Senior Court Attorney, Court of Appeals

DiLeva, Terry J. - Prisoner Applications Clerk

Dimino, Michael R. - Senior Law Clerk to Judge Rosenblatt

Donnelly, William E. - Principal Custodial Aide

Dragonette, John M. - Senior Court Building Guard

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

Eddy, Margery Corbin - Principal Law Clerk to Judge Graffeo; Senior Court Attorney, Court of Appeals

Emigh, Brian J. - Building Manager

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

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

Faulkner, Cedric K. - Court Attendant, Court of Appeals

Fitzpatrick, J. Brian - Director, Court of Appeals Management and Operations

Fitzpatrick, Rosemarie - Assistant Secretary to Chief Judge Kaye

Fitzpatrick, William J. - Assistant Printer, Court of Appeals

Fix-Mossman, Lori E. - Principal Stenographer, Court of Appeals

Fludd, Christopher - Senior Court Building Guard

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

Gilbert, Marianne - Principal Stenographer, Court of Appeals

Goldstein, Scott A. - Security Attendant, Court of Appeals

Graver, Molly - Senior Court Attorney, Court of Appeals

Green, Kevin A. - Law Clerk to Judge Smith

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

Heffron, Elaine J. - Secretary to Judge Graffeo

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

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

Jackson, Deidre - Principal Law Clerk to Judge Smith

James, Ta-Tanisha D. - Principal Law Clerk to Judge Smith (resigned 9/16/02)

Joyce, Jean - Principal Law Clerk to Chief Judge Kaye

Kearns, Ronald J. - First Assistant Building Superintendent

Kehn, Patricia Ann - Principal Stenographer, Court of Appeals

Kleemann, Sarah W. - Principal PC Analyst

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

LaVergne, M. Pierce - Senior Court Attorney, Court of Appeals (resigned 8/15/02)

Lawrence, Bryan D. - Local Area Network Administrator

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

Lee, Tiffany H. - Principal Law Clerk to Judge Wesley (resigned 8/3/02)

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

Lerner, Matthew S. - Principal Court Attorney, Court of Appeals (resigned 8/15/02)

Loffredo, Carmel M. - Secretary to Judge Levine (retired 10/2/02)

MacPhee, Concetta J. - Principal Assistant Building Superintendent

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

Markus, David Evan - Senior Law Clerk to Judge Rosenblatt

Marshall, Shannon D. - Court Building Guard

Martinez, Cristina Baiata - Principal Law Clerk to Judge Ciparick (Child Care Leave)

Mayo, Michael J. - Deputy Building Superintendent

McAllister, Ryan T. - Law Clerk to Judge Wesley

McClymonds, James T. - Principal Law Clerk to Judge Levine

McCormick, Cynthia A. - Principal Court Analyst, Court of Appeals

McCoy, Marjorie S. - Deputy Clerk of the Court of Appeals

McGrath, Paul J. - Chief Court Attorney, Court of Appeals

McManus, John T. - Senior Law Clerk to Judge Graffeo (resigned 7/19/02)

McMillen, Donna J. - Secretary to the Clerk, Court of Appeals

Merrill, Tammy L. - Principal Custodial Aide

Miller, Meredith R. - Senior Court Attorney, Court of Appeals (resigned 8/5/02)

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

Morales, Emily - Senior Court Attorney, Court of Appeals

Morris, Matthew J. - Senior Law Clerk to Chief Judge Kaye

Muller, Joseph J. - Assistant Building Superintendent I

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

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

Novak, David W. - Principal Court Attorney, Court of Appeals (resigned 8/15/02)

O'Connor, Michael A. - Court Building Guard (resigned 3/9/02)

O'Friel, Jennifer A. - Law Clerk to Judge Ciparick

Paglia, Paul J. - Senior Court Building Guard

Pepper, Francis W. - Principal Custodial Aide

Ragonese, Carmela - Senior Custodial Aide

Ravida, Tina - Senior Custodial Aide

Reyes, Michael - Law Clerk to Judge Smith

Ronan, Sean D. - Senior Court Attorney, Court of Appeals

Ross, Lisa J. - Court Attorney, Court of Appeals

Roth, Jaime I. - Court Attorney, Court of Appeals

Schweitzer, Lisa M. - Senior Law Clerk to Chief Judge Kaye

Sherwin, Stephen P. - Court Attorney, Court of Appeals

Shufelt, Sr., Theodore J. - Assistant Building Superintendent I

Somerville, Robert - Senior Court Building Guard

Spencer, Gary H. - Public Information Officer

Stock, Kimberly A. - Court Attorney, Court of Appeals

Strnad, Martin F. - Assistant Deputy Clerk, Court of Appeals (retired 8/29/02)

Tacy, Laurene L. - Assistant Deputy Clerk, Court of Appeals (retired 9/26/02)

Taylor, William K. - Senior Law Clerk to Judge Wesley

Tierney, Inez M. - Secretary to Judge Rosenblatt

Torre, Joseph R. - Senior Court Building Guard (retired 9/30/02)

Torres, Gabriel - Senior Law Clerk to Judge Rosenblatt

Wager, Charles C. - First Assistant Building Superintendent (resigned 10/17/02)

Wasielewski, John P. - Chief Security Attendant, Court of Appeals

Welch, Joseph H. - Court Building Guard