

2000

ANNUAL REPORT OF THE

CLERK OF THE COURT

TO THE

JUDGES OF THE COURT OF APPEALS

OF THE STATE OF NEW YORK

Stuart M. Cohen
Clerk of the Court
Court of Appeals

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*State of New York,
Court of Appeals,*



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March, 2001

I am indeed delighted to have received the year 2000 Annual Report of the Clerk of the Court to the Judges of the Court of Appeals. Following tradition, one of our members writes a forwarding letter to express appreciation for the excellent work done by our Court of Appeals staff. Thank you for giving me the opportunity to do so this year.

This is the mid-point of my fourteen-year term, having completed seven at the end of the year 2000. Time passes so very quickly when one is immersed in the wonderful work of the Court, surrounded by chambers' and clerk's staff that give of themselves so tirelessly to ensure that our jurisprudence is reasonable, sound and enduring. This marvelous support is buttressed by the dedicated building and security staffs whose primary function appears to be to care for the well-being of the colleagues, our court personnel and our beautiful home, Court of Appeals Hall.

But, absent from Court of Appeals Hall this year is Judge Joseph W. Bellacosa, who retired in August of 2000. We miss him, his intellect, wit and wisdom and congratulate him for a job very well done. We welcome our newest member, Judge Victoria A. Graffeo, and wish her many years of success on the Court.

The 2000 annual report chronicles our work of the past year, examines our docket and the ever efficient operation of our administrative offices. It highlights significant opinions – *each year moving into new and varied areas*. One very significant trend is the increase in legal questions certified to us from federal courts. As Stuart Cohen noted, in the year 2000, the Court received nine and accepted seven certified questions from the Second Circuit. It is now commonplace to hear at least one or more certified questions each session, which demonstrates the respect and cooperation that this Court has garnered from the federal courts. We welcome the certifications and look forward to a continuing relationship with our sister courts.

It is exciting at Court of Appeals Hall, the excitement continues and the public and the law continue to be very well served. Thank you to all our employees for their continued good work and dedication. I speak on behalf of all my colleagues in expressing our most sincere gratitude and appreciation.

Carmen Beauchamp Ciparick
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2000

**ANNUAL REPORT OF THE
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Introduction

In addition to the expected millennial introspection, several notable events occurring in the year 2000 caused the Judges and staff of the Court of Appeals especially to consider our past and anticipate our future. The year brought the deaths of three distinguished public servants and former members of the Court: Chief Judge Lawrence H. Cooke, Associate Judge Fritz W. Alexander and Associate Judge Adrian P. Burke, each having made significant contributions to the work of the Court. Also in 2000, Senior Associate Judge Joseph W. Bellacosa left the Court after more than 20 years of dedicated service as a Judge of the Court of Appeals and, before that, as the Clerk of the Court. Judge Victoria A. Graffeo was designated to fill the vacancy occasioned by Judge Bellacosa's departure.

During 2000, the Judges determined that renovation and expansion of Court of Appeals Hall could no longer be postponed. The history and structure of the Courthouse, enshrined in documents, blueprints, oral tradition, teak and marble, were mined to guide development of the design plan. At the same time, Judges and staff immersed themselves in the task of projecting the Court's needs far into the twenty-first century.

The daily work of the Court proceeded at an efficient pace. The Court maintained the currency of its docket, and the staff provided exemplary service to litigants, counsel and the public. It is my pleasure to present this record of the Court's accomplishments during Y2K.

The report is divided into four parts. The first offers a narrative, statistical and graphic overview of matters filed with and decided by the Court in 2000. The second describes various functions of the Clerk's Office and summarizes the administrative accomplishments of the year. The third highlights selected decisions of 2000. 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 the 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 entertain oral argument and write opinions or memoranda setting forth the reasons for their decisions.

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 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 also fulfill many other judicial and professional responsibilities during the Home Chambers sessions.

In 2000, the Court and its Judges expeditiously disposed of some 4,400 matters: 170 appeals, 1393 motions and 2863 criminal leave applications. A detailed analysis of the Court's work follows.

A. Capital Case Matters

1. 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 list of tasks completed in compliance with the statute – or to effectuate this Court's review of capital appeals – follows:

- Pursuant to CPL 400.27(12)(f), an order delegating to the Appellate Division the task of formulating rules establishing uniform procedures for appeals from pretrial findings of mental retardation in capital cases (see 22 NYCRR Part 540);
- Pursuant to CPL 400.27(15), an order approving a rule and adopting a form for the jury's use, during the sentencing phase of a capital trial, to record the findings and determinations of sentence (see 22 NYCRR 218.2);
- Pursuant to Judiciary Law § 211-a, an order approving rules governing the establishment of a uniform capital case database (see 22 NYCRR 218.7, 510.18) and adopting a capital case data report form that trial court clerks must complete in those cases the statute specifies. The Legislature intends these data to assist the Court of Appeals in determining whether a particular sentence of death is disproportionate or excessive. Later orders adopted certain changes to the capital case data report form and Court rules governing access to the database;

- Pursuant to CPL 460.40(3), an order approving rules governing stays of execution in capital cases (see 22 NYCRR 218.4, 510.4, 510.5);
- Pursuant to Judiciary Law § 35-b(6)(b), an order approving rules governing notice to the Capital Defender Office ("CDO") in capital cases (see 22 NYCRR 218.3, 510.16);
- Pursuant to Judiciary Law § 35-b(4)(b)(iv), approval of minimum standards promulgated by the CDO for lead and associate counsel in capital cases;
- Pursuant to NY Constitution, article VI, § 28, an order promulgating standards for capital appellate and State post-conviction counsel (see 22 NYCRR Part 515);
- Pursuant to Judiciary Law § 35-b(5)(a), orders approving capital counsel fee schedules and, later, revised fee schedules for the four Judicial Departments after considering reports of the Departmental Screening Panels and public comment;
- An order promulgating Rules of the Court of Appeals in Capital Cases (22 NYCRR Part 510). These Rules were amended in 1999, and again in 2000, to incorporate lessons learned from the management of the first capital appeals filed with the Court. The Court has also developed internal procedures for managing capital appeals;
- An order approving Uniform Rules for the Trial Courts in Capital Cases (22 NYCRR Part 218), which consolidated the various rules of this Court affecting trial court responsibilities and procedures in capital cases;
- Pursuant to Judiciary Law § 35-b(9), development of capital case payment guidelines for assigned appellate counsel, an assigned counsel claim form and applicable case log sheets;
- An order amending Rule 510.8(a) of the Rules of the Court of Appeals in Capital Cases to provide for the issuance, where necessary, of more than one Initial Capital Appeal Management Order in a capital appeal; and
- An order deleting language in Rule 510.18(b) concerning capital case data reports.

2. 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 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).

In the almost two and one-half years since the notice of appeal in People v Darrel K. Harris was filed, the Judges and the Clerk's Office staff have handled a variety of novel and complex procedural and case management issues raised both by parties to the capital appeals and by superior court clerks charged with insuring the accuracy and completeness of the records of the capital proceedings. A Principal Court Attorney has been assigned to analyze and report to the Court concerning many of the issues raised by capital appeals and motions.

The Court has issued an Initial Capital Appeal Management Order (see 22 NYCRR 510.8[a]) in each of the capital appeals. In these orders, the Court assigned counsel and set 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.

In July 1999, the Capital Defender Office filed a 31-volume record on appeal in People v Darrel K. Harris containing 20,822 pages. After the CDO filed appellant Harris's Preliminary Appeal Statement (see 22 NYCRR 510.9) and the Court granted the CDO's motion to consolidate with the capital appeal appellant Harris's appeal from the trial court's order settling the record, the Court issued a Final Capital Appeal Management Order (see 22 NYCRR 510.8[b]) in November 1999. That order set a briefing schedule for the parties and for amici curiae, set a deadline for the People's filing of Grand Jury testimony or evidence, required the parties to file periodic progress reports and directed the parties and those seeking amicus status not to brief at this time issues concerning the proportionality or excessiveness of the sentence (see CPL 470.30[3][b]). Appellant Harris's 779-page opening brief was filed in October 2000. In December 2000, the Court granted four motions to file briefs amicus curiae in the Harris capital appeal.

Also in December 2000, the CDO filed capital appellant James F. Cahill, III's 43-volume record on appeal, containing 27,567 pages. At the end of the year 2000, the remaining four capital appeals were in the record-preparation stage.

3. Counsel In Capital Matters

The death penalty statute recognizes various resources for the assignment of counsel to capital defendants, including the Capital Defender Office, 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 NY Constitution, article VI, § 28 to promulgate standards for capital appellate and State post-conviction counsel, which were approved by the Court of Appeals in May 1998.

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 2000, Screening Panels had designated only five attorneys as qualified to serve as capital appellate counsel. Vacancies on the Screening Panels had impeded their work but, by the end of the year, the affected Departments reported that those vacancies had been filled.

The death penalty statute also vests the Court of Appeals with responsibility to approve the rates at which counsel will be compensated in capital cases. In September 1997, at the Court's direction, the Clerk asked the four Departmental Screening Panels for responses to questions concerning their experience with compensating counsel under the capital counsel fee schedules the Court approved in November 1996. In reply, three of four Departmental Screening Panels proposed reductions in the hourly rate of compensation for lead and associate counsel. Following a period of public comment, in December 1998 the Court issued an order approving reduced capital counsel fee schedules for the four Judicial Departments and directing 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." By that date, the Screening Panels had each asked for an extension of time in which to comply with this directive. At the end of 2000, the Court had not received responses from all Screening Panels.

Finally, in April 1999, a proceeding challenging the Court's 1998 reduction of capital counsel fees was commenced in State Supreme Court. In October 1999, Supreme Court, Albany County, denied the petition and dismissed the proceeding. Petitioners appealed to the Appellate Division, Third Department, which affirmed Supreme Court's judgment in June 2000 (see Matter of New York State Assn. of Criminal Defense Attorneys v. Kaye, 269 AD2d 14). After the Appellate Division, Third Department, denied petitioners' motion for leave to appeal to the Court of Appeals, petitioners moved the Court of Appeals for leave to appeal and, by separate motion, sought the disqualification of Chief Judge Kaye and Judges Smith, Levine, Ciparick and Wesley. In December 2000, the Court of Appeals denied petitioners' motion insofar as it sought disqualification of Judges Smith, Levine, Ciparick and Wesley, and dismissed as academic the motion insofar as it sought disqualification of Chief Judge Kaye, in a Per Curiam writing addressing the Court's rationale for denying the disqualification motion (see Matter of New York State Assn. of Criminal Defense Attorneys v. Kaye, 95 NY2d 556). At the same time, the Court of Appeals, with Chief Judge Kaye taking no part, granted petitioners' motion for leave to appeal. Argument is scheduled for April 25, 2001.

4. Future Costs and Requests

Until and throughout 2000, the Court performed its capital administrative tasks and managed its capital caseload without a budgetary increase for capital case purposes. In 2000, the Court determined to hire an additional law clerk for each Chambers to assist in the capital appeals work. The new law clerks will begin employment in the summer of 2001. This Court's experience, as well as that of other States, convinced it that adequate staff and resources are essential to effective management and disposition of capital appeals. The Court will continue to review its personnel and fiscal requirements in this regard.

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 for an assigned appeal, the reporting Judge becomes responsible for preparing the Court's opinion in the case. If the majority of the Court disagrees with the recommended disposition of the appeal, one of the Judges taking the majority position assumes responsibility for the proposed opinion. Draft writings are circulated to all Judges during the Court's Home Chambers session and, after further deliberation and discussion of the proposed opinions, 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 expeditiously 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, for example, be placed on SSM track if it involves issues raised in a normal-coursed appeal already scheduled for argument, to enable the Court to consider both cases together. As with normal-coursed appeals, SSM appeals are assigned on a random basis to an individual Judge for reporting purposes, and are fully conferenced and determined by the entire Court.

1. Calendar and Currency

In 2000, 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 was approximately six and one-half months, about the same as in 1998 and 1999. Also in 2000, the average period from readiness (all papers served and filed) to calendaring was approximately one and one-half months, again about the same as in the previous two years. The average time from argument or submission to disposition of an appeal decided in the normal course was 39 days; for all appeals, the average time from argument or submission to disposition was 37 days.

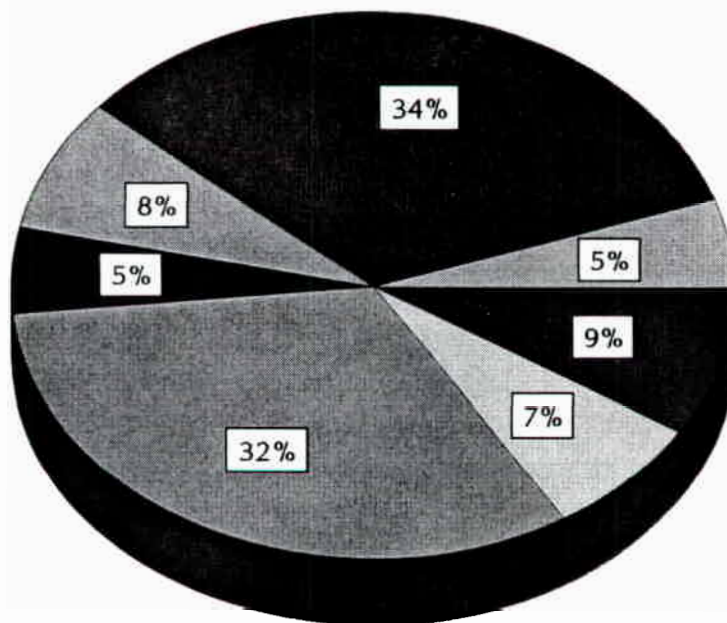
The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release to the public of a decision in a normal-coursed appeal decided in 2000 (including SSM appeals tracked to normal course) was 217 days. For all appeals, including those decided pursuant to 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 165 days. Thus, by every measure, the Court maintained its exceptional currency in calendaring and deciding appeals in 2000.

2. Filings

The 2000 statistics reflect a continuing downward trend in the number of appeals and motions filed in the Court of Appeals. Two hundred ninety-seven notices of appeal and orders granting leave to appeal were filed in 2000 (345 were filed in 1999). Two hundred twenty-nine filings were civil matters (compared to 282 in 1999), and 68 were criminal matters (compared to 63 in 1999). The Appellate Division Departments issued 38 of the orders granting leave to appeal that were filed in 2000 (24 were civil, 14 were criminal). Of these orders, the First Department issued 28 (22 civil and 6 criminal).

During 2000, 1461 motions were filed, a 2.9 per cent decrease from the 1505 filed in 1999. Two thousand nine hundred and twenty applications for leave to appeal in criminal cases were assigned to individual Judges of the Court in 2000, an increase of 105 over those filed in 1999. On average, given the departure of Judge Bellacosa in August 2000, the six remaining Judges were each assigned 460 applications during the year.

Appeals Decided in 2000 - Jurisdictional Predicates



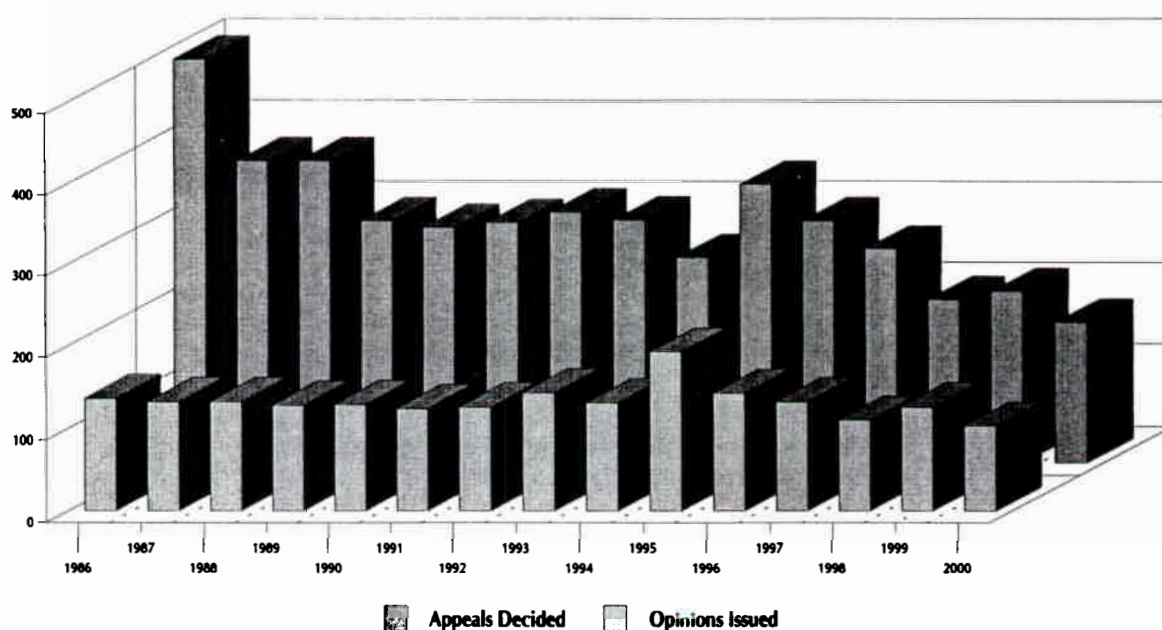
-  Dissents in Appellate Division
-  Permission of Court of Appeals
-  Permission of Appellate Division
-  Constitutional Question
-  Permission of Court of Appeals Judge
-  Permission of Appellate Division Justice
-  Other

3. Dispositions

(a) Appeals and Writings

The Court decided 170 appeals in 2000 (102 civil and 68 criminal). Of these appeals, 150 were decided unanimously. The Court issued 97 majority opinions, six Per Curiam opinions and 39 memoranda. Thirteen dissenting opinions and three concurring opinions were written. The chart on the previous page analyzes these appeals by jurisdictional predicate. The chart below tracks appeals decided and majority opinions issued for the fifteen years since Laws of 1986, chapter 300 expanded the civil certiorari jurisdiction of the Court.

Appeals Decided and Majority Opinions Issued



Opinions issued includes signed majority opinions and opinions Per Curiam

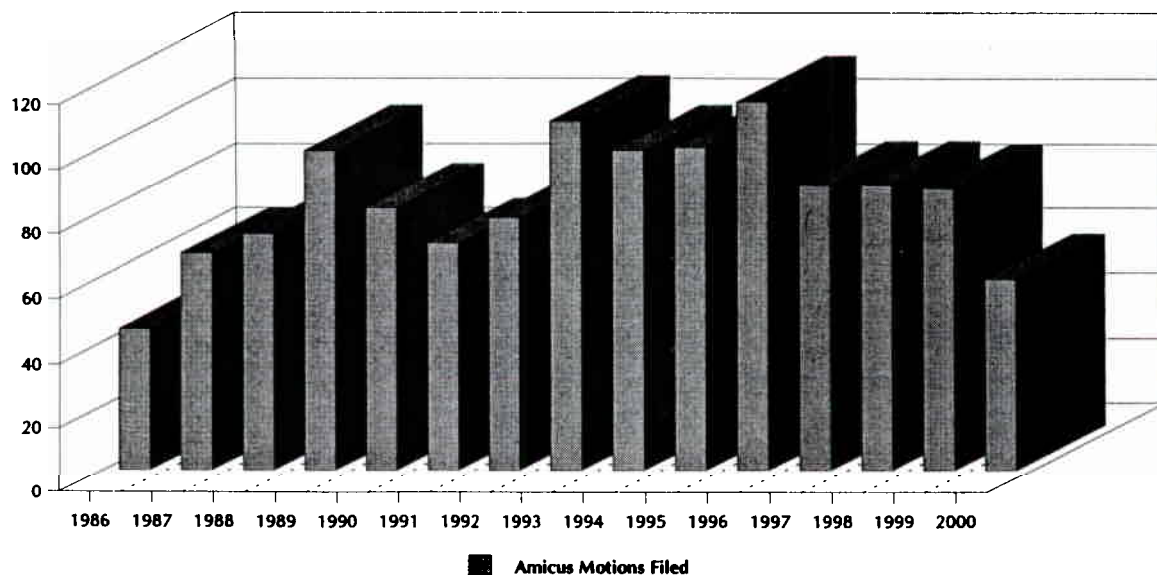
(b) Motions

The Court decided 1393 motions in 2000 – 129 fewer than in 1999. 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 55 days, while the average period of time from return date to disposition for all motions was 48 days.

Of the 1086 motions for leave to appeal in civil cases decided in 2000, the Court granted 5% (down from 7.8% in 1999), denied 74.5% (up from 68.3% in 1999), and dismissed 20.5% (down from 23.9% in 1999) for jurisdictional defects. In all, the 54 grants of civil motions for leave to appeal in 2000 represent a dramatic decrease from the 94 such motions granted in 1999. The issues most frequently raised on successful motions in 2000 were limitations of actions, negligence and indemnification. Other issues included civil rights, parents and children, and real property taxation.

The Court marks with concern the substantial decline in the number of motions pursuant to Rule 500.11(e) for amicus curiae relief in 2000. Only 59 such motions were filed, as compared to 87 in 1999. Of the 59 motions submitted in 2000, the Court granted 50. Of particular note, only four motions to file amicus curiae briefs in the Court's first appeal under the 1995 capital punishment statute, People v Darrel K. Harris, were filed by the deadline set in the Final Capital Appeal Management Order issued in that case. The chart below tracks the number of motions for amicus curiae relief filed since the passage of chapter 300 in 1985.

Amicus Curiae Motions Filed, 1986-2000



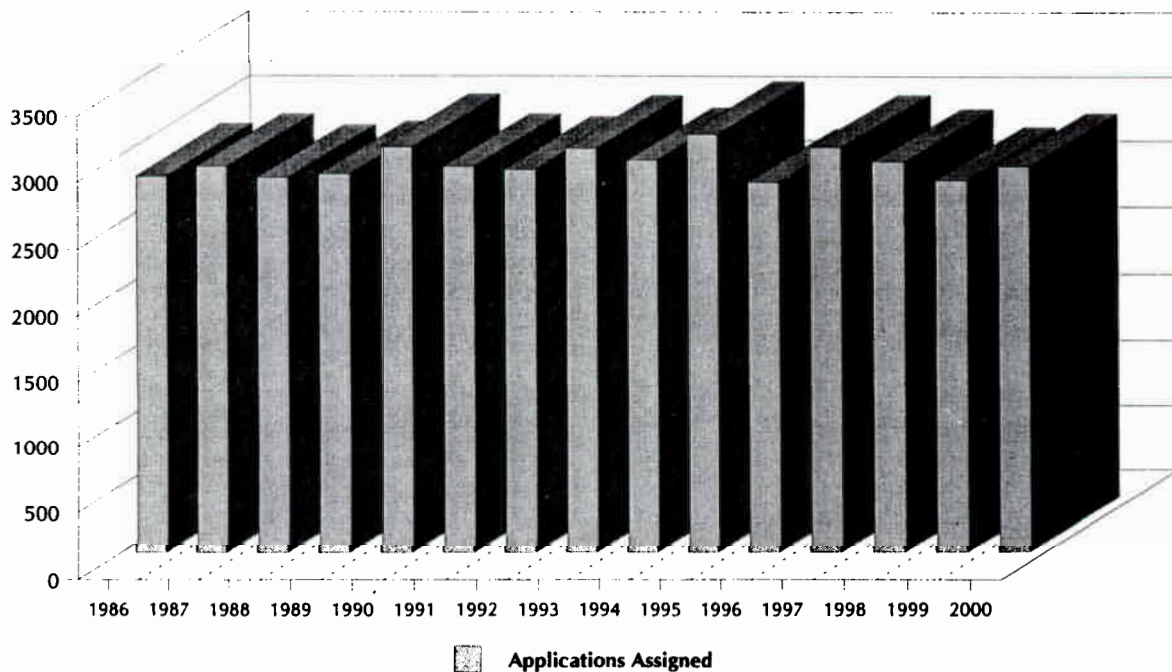
Given that the Court hears the majority of appeals by its own permission, and that the questions presented are usually novel and of Statewide importance, the Court encourages appropriate requests for permission to file amicus curiae submissions. Such motions are overwhelmingly granted.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 51 of the 2863 applications for leave to appeal in criminal cases decided in 2000 – an increase from the 44 granted in 1999. Two hundred and twenty-one applications were dismissed for lack of jurisdiction, and 12 were withdrawn. Seven of 68 applications filed by the People were granted. The charts below depict the number of criminal leave applications assigned and granted in each of the last fifteen years.

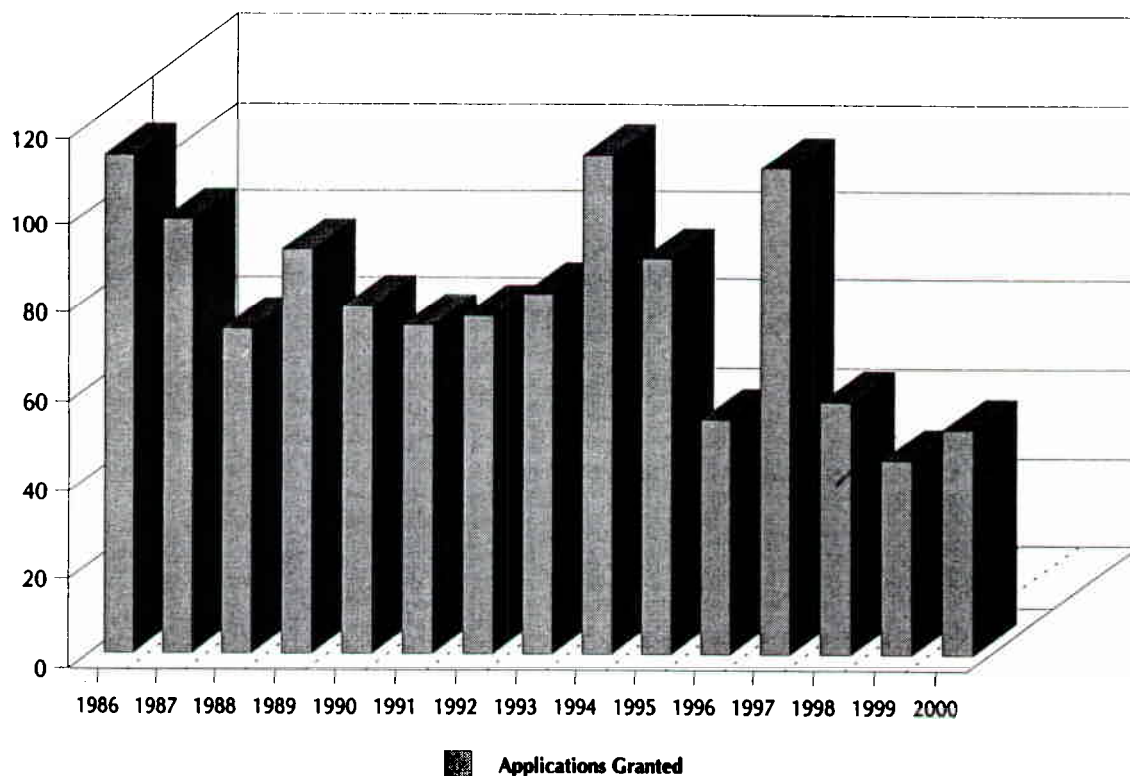
Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court during Home Chambers sessions. In 2000, on average, 69 days elapsed from assignment to Judges to disposition of applications for leave to appeal 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.

Criminal Leave Applications Assigned to Court of Appeals Judges, 1986-2000



Criminal Leave Applications Granted by Court of Appeals Judges, 1986-2000

1997 figure includes grants of 54 separate applications handled as a single appeal



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

In 2000, the Court reviewed two determinations of the State Commission on Judicial Conduct. The Court accepted the sanction of removal determined by the Commission in both cases. The Court dismissed one request for review for lack of subject matter jurisdiction. Finally, the Court ordered two suspensions of Judges with pay.

(e) Rule 500.17 Certifications

In 1985, New York State 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 following 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 45 days. The average period from acceptance of a certification to disposition is six months.

In 2000, the Court answered one certified question from the United States Court of Appeals for the Second Circuit that remained pending for review on the merits at the end of 1999, Messenger v Gruner + Jahr Print. & Publ. (94 NY2d 709). Also in 2000, the Court received nine and accepted seven certified questions from the Second Circuit. The Court declined to accept the question certified in Tunick v Safir (94 NY2d 709), and the certification request in Rosner v Montgomery (subsequently accepted) remained pending at the end of 2000. All seven of the certified questions accepted in 2000 remained pending at the end of the year.

In November 2000, the Federal-State Judicial Council and Fordham Law School sponsored a Continuing Legal Education program entitled "A Tale of Two Systems: The State and Federal Courts in New York," which included a discussion of the Rule 500.17 certification process. The program also marked Fordham Law Review's publication of an article by Chief Judge Judith S. Kaye and her former law clerk, Kenneth I. Weissman, entitled "Interactive Judicial Federalism: Certified Questions in New York" (LXIX Fordham L Rev 373 [2000]).

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 possible lack of subject matter jurisdiction. This review usually occurs the same day a jurisdictional statement is filed, and written notice to counsel of any potential impediment follows immediately. 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 2000, 108 appeals were subject to Rule 500.3 inquiry, and all but seven were withdrawn, dismissed sua sponte or on motion, or transferred to the Appellate Division (twenty-two inquiries were pending at year's end). This sua sponte dismissal (SSD) screening process is valuable to the public, the Court and the Bar 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 its sua sponte merits (SSM) procedure, the Court decides appeals expeditiously on written submissions without oral argument. Of the 297 appeals filed in 2000, 17 (5.7%) were initially selected to receive sua sponte merits consideration. Of the 170 appeals decided in 2000, 11 (6.5%) were decided upon SSM review. The percentage of appeals decided upon SSM review or receiving SSM consideration has been about the same for the past four years.

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 2000 was 127 days. This compares with an average of 217 days for appeals heard in the normal course.

Three of the 17 appeals selected in 2000 for SSM consideration were pending at the end of the year. Three were administratively normal-coursed at the direction of the Clerk. The remaining 11 were submitted to the Court for review. In addition to these 11 appeals, two appeals, initially selected in 1999 for SSM consideration, but still pending administratively as of December 31, 1999, also were assigned to the Court in 2000. Thus, 13 SSM appeals – seven criminal cases and six civil cases – were assigned to the Court in 2000. Eleven (84.6%) of the 13 appeals assigned as SSMs in 2000 were decided on an SSM basis. The other two appeals (15.4%) were directed to full briefing and oral argument.

Of the 11 appeals decided on SSM submissions in 2000, one case was decided in an opinion, seven cases were decided in memoranda and three were decided in decision list entries. All 13 decisions were unanimous. There were eight affirmances, one reversal, one modification and one dismissal.

D. Court Rules

Effective April 19, 2000, the Court of Appeals amended Part 520, its Rules for the Admission of Attorneys and Counselors at Law, to correct an error in language resulting from its 1998 restructuring of Rule 520.11 (Admissions Pro Hac Vice).

The Court did not amend its Rules of Practice (22 NYCRR part 500) during 2000. The Rules of the Court of Appeals in Capital Cases (22 NYCRR part 510) were amended in two regards. Effective April 19, 2000, the Court added language to section 510.8(a) to reflect that more than one Initial Capital Appeal Management Order may issue in a capital appeal. Also effective April 19, 2000, the Court amended section 510.18(b) by deleting language suggesting that the uniform Capital Case Data Report may be released to nonparties upon application to the Court.

In 2000, pursuant to recent amendments to the Court's Rules, the first companion filings on CD-ROM were received. The New York State Defenders Association filed, in CD-ROM format, a copy of its brief in People v Roger Stokes. Also in 2000, the Capital Defender Office filed a CD-ROM copy of its opening brief in People v Darrel K. Harris, the Court's first capital appeal under the 1995 death penalty statute. The Rules permit, by stipulation of the parties, or require by order of the Court, filings on CD-ROM in addition to the mandatory paper copies of records, appendices and briefs.

II. Administrative Functions and Accomplishments

A. Case Management

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Prisoner Applications Clerk, a Principal Court Attorney, 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 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 staff also regularly participate in programs designed to educate the Bar about the Court's practice.

B. Public Information

During 2000, the Court's Internet web site logged more than 4,000,000 "hits" and was visited by over 200 visitors a day. The comprehensive web site posts information about the Court, its Judges, history and other news, as well as the Court's latest decision lists and opinions, published to the site within hours of the official hand-down time. The site provides essential assistance concerning the Court's practice – including its Rules, civil and criminal jurisdictional outlines, session calendars, and a form for use by pro se litigants. The web site also provides links to other judiciary-related web sites. The address of the Court of Appeals web site is: <http://www.courts.state.ny.us/ctapps>.

The 2000 Law Day celebration outside Court of Appeals Hall focused on the theme of "Democracy and Diversity," highlighting the crucial role that bar associations play in assuring equal access to the legal profession and to the justice system. The Court's web site devotes a page to the 2000 Law Day celebration and related materials on "Democracy and Diversity." The web site also highlights other special events in the Court of Appeals calendar.

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 web site and are available in print at Court of Appeals Hall. The office also arranges for live television coverage of oral arguments at the Court.

The office provides information concerning the work and history of New York's highest court to all segments of the public – from school children to members of the Bar. Throughout the year, the Public Information Officer and other members of the Clerk's staff conduct tours of the historic Courtroom for visitors. The Public Information Office maintains a list of subscribers to the Court's "hard copy" slip opinion service and handles requests from the public for individual slip opinions. During 2000, the Public Information Officer worked with fiscal officers and with the Librarian to establish a procedure that

would permit video tapes of oral arguments to be sold to the public once again. At present, oral argument tapes from April 1998 onward are available only for on-site viewing at Albany Law School's Government Law Center.

C. 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 Court's office prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship. Additionally, the Court Attorney drafts reports to the Court on matters relating to (1) attorney admission and disciplinary cases, (2) petitions for waivers 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.

Since 1998, the number of petitions for waiver of the Rules for Admission continued its dramatic decrease. The decline is attributable to the Court's 1998 rule change which, in part, permits approved law schools to certify graduates who have minor program irregularities to sit for the New York bar examination. Before the rule change, an applicant with such program irregularities could sit for the bar examination only with a waiver granted by order of the Court. The office continues to work on a database created in 1998 for archiving and reviewing filed petitions for waiver of the Court's admission Rules, and to update a database and the complementary manuals created in 1998 for disciplinary motions.

The Court Attorney for Professional Matters was selected to serve as a Reporter for the New York State Judicial Institute on Professionalism's Convocation on the Face of the Profession held, in collaboration with the New York State Bar Association, in the Court of Appeals Courtroom and the State Bar Center on November 13 and 14, 2000.

Beginning in April 1999, the Court created a Continuing Legal Education (CLE) Committee consisting of the Court Attorney for Professional Matters, the Chief Motion Clerk, the Chief Court Attorney and the Deputy Chief Court Attorney. In 2000, the Committee selected the Deputy Chief Court Attorney to serve as its chair and added two current law clerks to Judges of the Court as members. The Office for Professional Matters coordinates the Committee's CLE schedule and notifies personnel of classes to be held. The Office also completes paperwork necessary to insure that the rules of the Office of Court Administration and the CLE Board are followed and that attorneys receive proper CLE credit for their attendance. To that end, the Office maintains three interactive

databases tracking the CLE classes the Court offers, the Court attorneys eligible to attend classes, and the number of CLE credits individually earned.

During 2000, under the auspices of the Office of Court Administration, the Continuing Legal Education Committee presented both live and video Continuing Legal Education lectures open to the legal staff of the Court, including Judges' law clerks, Clerk's Office attorneys, and attorneys from the Law Reporting Bureau and State Board of Law Examiners. Additionally, the Committee sponsored a CLE class in the Spring of 2000 in which law clerks from the Appellate Division, Third Department, participated. Many attorneys on the Clerk's Office staff and from the Law Reporting Bureau taught CLE accredited classes, as have Associate Judge Wesley, former Senior Associate Judge Joseph W. Bellacosa, and retired Supreme Court (Third Judicial District) Justice Harold J. Hughes. In all, during 2000, the CLE Committee sponsored 29 presentations offering 39 hours of Continuing Legal Education credits.

D. Central Legal Research Staff

The Central Legal Research Staff prepares draft reports on civil motions, certified questions and selected appeals under the supervision of individual Judges and the Clerk of the Court for the full Court's review and deliberation. During 2000, Central Staff attorneys completed 1084 motion reports, 90 SSD reports, eight certified question reports and 11 SSM reports. Throughout 2000, 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 2000, Central Staff again revised and updated the civil practice jurisdictional outline for the Court's internal use. Several members of Central Staff prepared a comprehensive analytical and historical report for the Court's internal use discussing appeals on constitutional grounds pursuant to article VI, § 3(b)(1) of the New York Constitution and CPLR 5601(b)(1). Finally, under the principal supervision of the Deputy Chief Court Attorney, Central Staff updated and expanded, for the Court's internal use, a report analyzing the Court's certiorari jurisdiction.

Attorneys usually join the Central Legal Research Staff directly following law school graduation. This year, staff attorneys represent Albany, Brooklyn, SUNY at Buffalo, Columbia University, Cornell University, Hofstra University, New York, New York University, CUNY at Queens, Pace University and Touro College law schools. Staff attorneys hired for 2001 will represent Albany, SUNY at Buffalo, Cornell University, CUNY at Queens and Pace University law schools.

E. Library

The Court of Appeals law library supports the legal information needs of the Court and its staff. The Librarian 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 relevant sources of law. The Librarian 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 2000 – the Court acquired newly-published works falling within the Court's collection development policy, replacing seldom-used and superseded materials. The Librarian and her assistants monitored mergers in the publishing industry, revising title maintenance and accounting procedures as necessary. The catalog database was updated, and book catalogs were generated for use within Court of Appeals Hall and in Home Chambers.

In 2000, the library staff continued to add material to the full-text, searchable database of the Court's internal reports on motions and appeals. Where appropriate, the reports were also transmitted electronically to the Law Reporting Bureau to expedite the work of its legal editors. Working with the Continuing Legal Education Committee, the Librarian facilitated the creation of a database of Office of Court Administration CLE tapes.

Throughout 2000, the Librarian continued to provide CLE programs in Legal Research, Legislative Intent and Database Searching to Judges' law clerks and Clerk's Office attorneys. The Librarian also coordinated CLE training given by Lexis and Westlaw in Court of Appeals Hall.

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 2000. When Archives requests the resumption of such transfers, all documents scheduled for transfer will be sent.

At the request of the State Library, the Librarian continued to ship the depository copy of records and briefs to CRS, Inc., which creates microfiche copy of each document. CRS, Inc. soon will be posting the Court's briefs onto an Internet web site (<http://www.briefserve.com>). Although still in its infancy, this project promises to provide full-text search access to these documents. The Court and the legal community will benefit from the enhanced access the web site will provide.

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

During 2000, the Librarian continued to serve on the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System. She also attended the Fall 2000 Court Historical Societies Conference, held in New Orleans.

F. 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. Their responsibilities include purchasing, inventory control, fiscal cost recording and reporting, preparation of payroll documents, processing of vouchers, counseling employees on, and processing applications for, various benefit programs and development of the Court's annual budget request.

A supplies manager is responsible for distribution of supplies. He also assists in 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.

G. 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.

1. Expenditures

The work of the Court and all its ancillary agencies was performed within the 2000-2001 fiscal year budget appropriation of \$11,740,625. This figure included all judicial and staff salaries (personal services costs) and all other cost factors (non-personal services costs), including maintenance of Court of Appeals Hall.

2. Budget Request

The total request for fiscal year 2001-2002 for the Court and its ancillary agencies is \$12,725,244, an increase of 8.3% over the current year's appropriation.

The 2001-2002 personal services request of \$10,096,953 reflects an increase of \$795,204, or 8.5%, over the current year's appropriation. This request includes funding for all judicial and nonjudicial positions as well as salary increases for all eligible nonjudicial positions, temporary services for the addition of five security staff and overtime services. Thus, the personal service request of \$10,096,953 includes adjustments in personal service regular (\$701,114), personal service temporary (\$86,632) and personal service overtime (\$7,458).

The 2001-2002 non-personal services request of \$2,628,291 reflects an increase of \$189,415, or 7.7% more than the current year's adjusted appropriation. The requested nonpersonal service appropriation of \$2,628,291 includes adjustments in Court Administration (\$86,456), of which \$79,199 is a specific request to replace computer equipment, Legal Reference (\$88,937), Building Maintenance Operations (\$14,068) and a \$46 decrease in the Law Reporting Bureau's requested appropriation.

3. Revenues

In calendar year 2000, the Court reported filing fees of \$250 for each of 91 civil appeals. The \$22,750 realized was remitted to the State Treasury, Office of the State Comptroller and Office of Court Administration pursuant to the Court Facilities Legislation (L 1987, ch 825). Additional revenues were realized through the slip opinion distribution service (\$9,608) (which has seen a substantial decrease in subscriptions since the launch of the Court's Internet web site, on which the Court's decision lists and opinions are posted), and miscellaneous collections (\$3,106.75). For calendar 2000, revenue collections totaled \$35,464.75.

H. Computer Operations

The two-person Information Systems Department, which consists of a Principal PC Analyst and a LAN Administrator, oversees all aspects of the Court's computer operations.

Due to extensive upgrading of equipment and replacement of obsolete hardware and software during the previous two years, the advent of the year 2000, with its projected computer-related problems, was uneventful. Moreover, the comprehensive nature of the previous years' activities meant the Department experienced little extra activity during 2000. For the first time since its inception, the IS Department was able to concentrate on routine maintenance and long-range planning. Routine maintenance included replacing existing antivirus software with a more powerful version, upgrading all file servers, adding to the network a research program allowing access to an internal resource materials database and adding two research programs available via network from CD towers. A study of stand-alone database usage and needs led to the selection and installation of new

database software, and 14 people were trained in its use. No other software training was required during 2000, although training is always available to individual staff as needed.

The IS Department continued its successful "House Calls to Home Chambers" program of scheduled maintenance visits to the six Judges' Chambers located outside of Albany. The staff made 25 separate visits, updating computers, printers, network equipment and software located in the Home Chambers.

The IS Department maintains the Court of Appeals Internet web site (<http://www.courts.state.ny.us/ctapps>), insuring that its content is current and accessible. In cooperation with the Office of Court Administration technology staff, the Department facilitated a live Internet broadcast of Chief Judge Kaye's "2000 State of the Judiciary" address, with a live "chat room" question and answer session the following day. In 2000, the Department also designed and maintained a Court of Appeals Intranet (an internal Internet-type system) available via browser to all Court employees, no matter their location. The Intranet dispenses a wide variety of work-related information to employees, including the Court calendar, human resources material, phone lists and directories. The IS Department also provides a Help Desk for computer technical support. Approximately 500 calls (not including the House Calls program) are answered each year. Additional technical support is available to employees on the Intranet.

I. Court of Appeals Hall

The Building Manager, Deputy Building Superintendent and their staff are responsible for the excellent condition and beautiful appearance of Court of Appeals Hall and its grounds. The Building Manager and Deputy Building Superintendent also coordinate all work by outside contractors, arrange for transportation of appeal records and other materials between Court of Appeals Hall and the Judges' Home Chambers, and supervise the security services provided by the Court's building guards.

The Building Manager's staff recycled 27,760 pounds of white paper, as well as other solid waste materials, in 2000. The building maintenance staff also provided invaluable assistance in preparing for the Court's 2000 Law Day celebration, held on the steps of Court of Appeals Hall, and other special events that occurred throughout the year.

Last renovated in the late 1950s, Court of Appeals Hall is no longer adequate to house the Court's judicial and non-judicial staff. During 1999, the Court worked with the Office of Court Administration and the Dormitory Authority of the State of New York to award a contract for a comprehensive analysis of the Court's programmatic needs. The DeWolff Partnership, of Rochester, was designated Project Architect. During 2000, the Clerk, Deputy Clerk, Building Manager and Assistant Building Superintendent met regularly with the design development team to plan the renovation and expansion project,

which will renovate approximately 60,000 square feet and add approximately 33,000 square feet of space to Court of Appeals Hall. The Judges of the Court and all department heads participated in the development of the design plan. Construction is anticipated to begin during the summer of 2001, and should conclude in 2003. Court of Appeals Hall will remain open for business throughout the construction process. The Judiciary's Fiscal Year 2000-2001 budget included a line item for the renovation and expansion of Court of Appeals Hall, as does its 2001-2002 budget request. Also in anticipation of this project, members of the Building Manager's staff began an inventory of all furniture and equipment in Court of Appeals Hall during 2000.

J. Security Services

In August 2000, the Court established a Security Department, hiring five professionally-trained court officers to augment the security provided the Court by its building guards. Supervised by the Chief Security Attendant, the four Security Attendants perform a variety of functions, including screening all visitors and packages entering Court of Appeals Hall and conducting regular patrols of the Courthouse and its immediate surroundings.

K. Fire and Safety

During 2000, the Fire and Safety Committee continued to monitor building safety requirements. In addition to conducting two successful fire drills, the Committee arranged for 16 staff members to receive Community First Aid with CPR training. The Court purchased a cardiac automatic external defibrillator for the protection of staff and visitors, and the Security Attendants are trained to administer emergency first aid to ill or injured staff or visitors. The Clerk acknowledges the presence, professionalism and expertise of the State Police officers assigned to Court of Appeals Hall during 2000.

L. Personnel

The following personnel changes occurred during 2000:

APPOINTMENTS:

Robert Somerville was employed as Court Building Guard in January 2000.

John P. Wasielewski was employed as Chief Security Attendant, Court of Appeals in May 2000.

Matthew L. Gerber was employed as Security Attendant, Court of Appeals in August 2000. *

Laurence Farrell was employed as Security Attendant, Court of Appeals in August 2000.

James R. Morrissey, Jr. was employed as Security Attendant, Court of Appeals in August 2000.

Travis R. Moore was employed as Security Attendant, Court of Appeals in August 2000.

Tammy L. Haas was employed as Custodial Aide in December 2000.

PROMOTIONS AND TRANSFERS:

J. Brian Fitzpatrick was promoted to Director, Court of Appeals Management and Operations in 2000, retroactive to October 1999.

Marianne Gilbert was promoted to Principal Stenographer in January 2000.

Vivian Ali was promoted to Senior Stenographer in June 2000.

Lisa Herriman was promoted to Senior Stenographer in June 2000.

Cynthia A. McCormick was transferred from Secretary to Judge Bellacosa to Principal Court Analyst in September 2000.

RETIREMENTS:

Mildred A. Salvinski, Custodial Aide, retired on November 9, 2000, after 28 years and nine months of service.

RESIGNATIONS:

Kenneth A. Hallenbeck, Senior Custodial Aide, resigned (while on a leave of absence) on January 7, 2000

Patricia A. Voerg, Secretary to Judge Bellacosa, resigned (while on a leave of absence) on June 30, 2000.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Elizabeth C. Brace, Margery Corbin Eddy, M. Pierce LaVergne, Meredith R. Miller and Pavani Yalamanchili were appointed Court Attorneys in August 2000.

PROMOTIONS:

Jesse Ashdown, Jenny L. Chung, Wendy E. Deer, Ronald S. Lanza, Matthew S. Lerner and David W. Novak were promoted from Court Attorneys to Senior Court Attorneys in August 2000 and Leah M. Soule was promoted from Senior Court Attorney to Principal Court Attorney in August 2000.

COMPLETIONS OF CLERKSHIP:

Principal Court Attorneys Julia Smead Bielawski and James A. Costello, and Senior Court Attorneys Zainab A. Chaudhry, J. Matthew Donohue, Vaughn E. James and Barbara Comninos Kruzansky, completed their clerkships in August 2000. James A. Costello is now Principal Law Clerk to Judge Levine and Zainab A. Chaudhry is now Principal Law Clerk to Judge Wesley.

ACKNOWLEDGMENT

Each year, the members of the Clerk's Office staff assist the production of this Report by providing numerical data, narrative reports, and editing and proofreading services. I thank all of them, and mention specially Mary Ellen Cadalso, who compiled many of the detailed appendices, William Fitzpatrick, who produced the copies, Lisa Connelly, Hope Engel and Paul McGrath, who provided proofreading services, and Marjorie McCoy, whose editorial work was invaluable.

Throughout 2000, the Clerk's Office staff and the Building Manager's staff worked to ensure the efficient and courteous running of the Court. I thank each staff member for providing the Bar and the public exemplary service. A complete list of non-judicial personnel appears in Appendix 11.

III. 2000: Year in Review

This section presents a sampling of significant decisions the Court of Appeals handed down in 2000, highlighting the range of constitutional, statutory and common law issues that reach the Court each year.

Constitutional Law

People v David W. (95 NY2d 130)

Defendant, a convicted sex offender, challenged the procedures used to classify him as a "sexually violent predator" under the Sex Offender Registration Act (SORA). Defendant maintained that as a sex offender on probation, he was never notified that his risk level was being determined and received no opportunity to present objections. Applying the three-pronged due process analysis in Mathews v Eldridge (424 US 319), the Court held that defendant had a constitutional due process right to notice and an opportunity to be heard before being classified as a sexually violent predator under SORA. The Court concluded that (1) defendant's liberty interest in not being stigmatized as a sexually violent predator was substantial, (2) the procedures used by the State in classifying defendant did not adequately guard against an erroneous deprivation of his liberty interest, and (3) the fiscal and administrative burdens of requiring notice and an opportunity to be heard were not prohibitive. The Court further concluded that the review procedures afforded to defendant provided no meaningful way for him to voice his objections, and that judicial review was no substitute.

Garden Homes Woodlands Co. v Town of Dover (95 NY2d 516)

After a hearing, defendant Town of Dover imposed a special assessment on property owned by plaintiff Garden Homes Woodlands Co., a Connecticut-based company. Unaware of the hearing, plaintiff challenged the assessment, arguing that the Town's notice by publication failed to comport with due process requirements. Agreeing with plaintiff, the Court held that where an act of government substantially affects the interest of a property owner, and where the owner's name and address are known, due process requires that actual notice be given. Because plaintiff's property interest was substantially affected by the assessment, and plaintiff's name and address were known, the Town was required to provide actual, not constructive, notice. Although the Town complied with Town Law § 239, which provides only for notice by publication, the Court concluded that compliance with this statute under the circumstances presented was insufficient to satisfy due process.

City of New York v State of New York (94 NY2d 577)

The City of New York has, for over three decades, imposed a tax on nonresident commuters who work in the City. In 1999, the Legislature attempted to rescind the tax for State resident commuters while retaining the tax for out-of-State commuters. Anticipating challenges to the statute, the Legislature added a provision that if a court declares the new law void, the entire tax authorization is repealed. The City of New York, the State of Connecticut and other taxpayers brought separate suits challenging the validity of the 1999 enactment. The City's challenge sought to undo the entire 1999 enactment and preserve the tax in its pre-1999 form on the ground that the statute was enacted in violation of the home rule provisions of the State Constitution. The other suit, brought by residents of New Jersey and Connecticut and by the State of Connecticut, sought termination of the commuter tax on the ground that the taxing scheme as amended in 1999 violated the Constitution. The Court rejected the City's argument that the 1999 amendment violated the home rule message requirement of the New York Constitution. The Court determined that no home rule message was required for the 1999 enactment repealing the commuter tax for in-State residents because it addressed a substantial State concern in terms of giving relief to in-State commuters who lived outside New York City and its repeal provision bore a reasonable relationship to that concern. As for the challenge brought by non-State entities, the Court determined that the remaining scheme imposing tax on non-residents of the State violated the Privileges and Immunities Clause and the Commerce Clause of the Federal Constitution. Thus, the commuter tax was repealed in its entirety.

Insurance

Levin v Intercontinental Cas. Ins. Co. (95 NY2d 523)

The New York State Superintendent of Insurance, acting as liquidator of an insolvent insurance carrier, sued Intercontinental Casualty Insurance Co. to recover funds allegedly owed to the insolvent carrier under a Quota Share Reinsurance Agreement. After Intercontinental moved to dismiss the suit on documentary evidence and Statute of Limitations grounds, the Superintendent sought an order compelling Intercontinental to post a bond in accordance with Insurance Law § 1213(c)(1), which requires an unauthorized foreign or alien carrier to post a bond before filing "any pleading in any proceeding against it." Intercontinental argued that it was not required to post a bond because it filed a motion, not a pleading. In holding that Intercontinental must post the bond, the Court of Appeals recognized that the goal of section 1213(c)(1) is to assure that funds are available in New York to satisfy judgments against unauthorized foreign or alien carriers. The Court explained that if Intercontinental's motion to dismiss was not considered a pleading under section 1213(c)(1), a carrier could "wage extensive, costly motion practice, and yet avoid the bond requirement by simply advancing a host of defenses before interposing a formal answer."

Westview Assocs. v Guaranty Natl. Ins. Co. (95 NY2d 334)

In this case, the Court determined that an insurer had a duty to defend its insured in a suit brought on behalf of a child injured by exposure to lead paint in an apartment. In so deciding, the Court was called upon to construe two policies, the applicable excess policy, which contained an incorporation provision as to the underlying policy's exclusion for lead paint, and the umbrella policy, which provided primary coverage for injuries not covered in the underlying policy and which did not contain an incorporation provision as to the exclusions of the underlying policy. The Court reasoned that the insurer was incorrect in its argument that the exclusion for lead paint in the underlying policy was incorporated into the umbrella policy. Such a conclusion would render mere surplusage the umbrella policy's specific exclusions for injuries related to alcohol, asbestos and pollution. Insofar as nothing in the umbrella policy's definition of pollution indicated that lead paint was included, at the very least there was an ambiguity as to whether the pollution exclusion included lead paint, and this ambiguity should be construed against the insurer. Accordingly, the insurer had a duty to defend its insured.

Death Penalty

Matter of Francois v Dolan (95 NY2d 33)

Presented with a writ of mandamus to compel County Court to entertain a capital defendant's offer to plead guilty to all counts of an indictment charging him with capital murder, the Court concluded that mandamus did not lie as defendant had no clear unqualified statutory right to plead guilty under those circumstances. Notwithstanding general provisions giving criminal defendants the absolute right to plead guilty to an entire indictment upon arraignment and at any time before trial, the Court held that a subsequently enacted and more particular provision, CPL 250.40(1), providing for a 120-day period in which the District Attorney may file a notice of intent to seek the death penalty, must be given precedence. Accordingly, until the close of the statutory period, either by the filing of the notice of intent, the announcement of an intention not to seek death or the expiration of the 120-day period, a capital defendant has no unqualified right to plead guilty to an entire indictment.

People v Couser (94 NY2d 631)

John Lee Couser, while in a Rochester jail cell awaiting trial, was accused of ordering fellow gang members to go to Syracuse and kill a man who was expected to testify against him. Couser was charged with capital murder under a provision of the death penalty statute, Penal Law § 125.27(1)(a)(vii), which makes a defendant who "commanded another person to cause the death of the victim or intended victim" liable for first degree murder as an accomplice. Rejecting Couser's claim that the word "commanded" is unconstitutionally vague, the Court of Appeals held that it is "a commonly understood term" and that, "under a standard due process appraisal, the commonly accepted meaning of 'command' for ordinary legal and constitutional purposes is 'to direct authoritatively.'"

Civil Procedure

LaMarca v Pak-Mor Mfg. Co. (95 NY2d 210)

The Court of Appeals here addressed a challenge to New York's long-arm jurisdiction. Plaintiff, a New York resident, sued defendant, a Texas corporation, alleging that he was injured when he fell from a sanitation truck equipped with defendant's loading device. Defendant moved to dismiss for lack of personal jurisdiction. The Court of Appeals held that defendant's contacts with New York satisfied both the long-arm statute and the Due Process Clause. Defendant derived substantial revenue from interstate commerce and the circumstances surrounding its sale of the rear loader "gave it reason to expect that its acts in connection with the manufacture of the rear loader would have consequences in this State." The Court also concluded that due process was satisfied because Pak-Mor "forged ties" with New York and took purposeful action to sell its products here.

Britt v Legal Aid Socy., Inc. (95 NY2d 443)

Plaintiff, a criminal defendant who served prison time before his conviction was vacated and criminal charges against him dismissed, sued his former attorneys to recover damages for malpractice. The former attorneys argued that the plaintiff's action was time-barred because it had not been brought within the applicable three-year Statute of Limitations (CPLR 214[6]). According to the attorneys, the clock began to run when plaintiff requested new representation in 1991. Plaintiff's guilty plea was vacated in 1994 and the charges against him were dismissed in 1996, but he did not commence his action until 1997. The Court agreed with plaintiff that his cause of action against defendants could not accrue until he was able to assert the element of his innocence. The Court further determined that a criminal legal malpractice plaintiff cannot assert innocence while the criminal charges remain pending. The Court concluded that plaintiff's cause of action did not accrue against defendants until 1996 when the indictment against him was dismissed. Thus, plaintiff's malpractice action was timely.

Andon v 302-304 Mott St. Assocs. (94 NY2d 740)

At issue here was whether, in an action for damages resulting from alleged lead-paint injuries to an infant plaintiff, the plaintiff-mother can be compelled to submit to an IQ examination in compliance with defendants' discovery demand. Recognizing that discovery determinations are discretionary and that the Appellate Division may substitute its own discretion for that of the trial court, the Court held that the Appellate Division did not abuse its discretion as a matter of law in denying defendants' motion. The Appellate Division considered defendants' need for the information, the lack of a sufficient scientific basis for their request, the speculative nature of the information sought and the burden of subjecting the plaintiff-mother to an IQ test. Although the Appellate Division stated that its decision was "made as a matter of law and not in the exercise of discretion," the Court held that it was not bound by that characterization and that the decision reflected a discretionary balancing of interests.

Criminal Law and Procedure

People v Hernandez (94 NY2d 552)

The Court of Appeals held that while the absence of trial Judges during readbacks of trial testimony is disfavored, in this case the trial Judge's absence did not rise to the level of a "mode of proceedings" error requiring reversal. The Court determined that all substantive rulings regarding the readbacks were made by the trial Judge and no delegation of judicial authority occurred. Also, the Judge retained supervision and control of the proceedings by remaining immediately available to rule on any issue.

People v Maragh (94 NY2d 569)

Michael Maragh was convicted of criminally negligent homicide after two nurses on the jury presented their own professional opinions to other deliberating jurors about the cause of the victim's death, which had been vigorously contested at the trial. The views expressed during deliberations by the nurse-jurors undercut testimony by a defense expert that the victim died of an air embolism rather than blunt force trauma. The Court of Appeals ordered a new trial due to juror misconduct, agreeing with the trial Judge that the nurses's opinions injected into the jury deliberations nonrecord evidence that had not been subject to cross-examination at trial.

People v Casey (95 NY2d 354)

In a prosecution for criminal contempt arising from a violation of a temporary order of protection, the Court held that, to the extent that the allegedly defective information would have qualified as a misdemeanor complaint, it was error to conclude that defendant waived his right to be prosecuted by information when he waived the reading of his procedural rights. In addition, the Court held that the failure to annex the order of protection to the information did not constitute a jurisdictional defect under CPL 100.40(1)(c), and thus did not require dismissal of the conviction. Because defendant asserted the hearsay defect in the information for the first time on appeal, and longstanding case law provided that any hearsay defect in an accusatory instrument was waived by failure to raise the issue in a pre-trial motion, defendant failed to preserve any alleged hearsay violation for appellate review.

People v Nappo (94 NY2d 564)

In this case, the Court determined that defendants who failed to pay taxes on motor fuel could not be said to have committed a larceny against the State of New York. The Court reasoned that although defendants were under a duty to pay taxes on the importation and distribution of the fuel, the State was not an "owner" of the taxes prior to their remittance. Accordingly, defendants could not have stolen the tax money from its owner and, therefore, did not commit larceny. Analytically distinct is the case of a seller, who collects sales taxes, as such a party holds the money in trust for the State. Defendants in this case were required to pay import and distribution tax on the fuel, but their tax

liability did not depend upon collection of taxes from customers. They did not, therefore, hold the monies in trust for the State.

People v Evans (94 NY2d 499)

Defendant was tried twice and ultimately convicted of armed robbery. His first trial resulted in a hung jury. At the outset of his second trial before a new Judge, Evans argued that the law of the case doctrine required the new Judge to adhere to the Sandoval ruling from the first trial, which concerned the extent to which the defendant, if he chose to testify, could be questioned about his prior convictions. The Court of Appeals acknowledged that the law of the case doctrine is "appropriate in criminal cases," but "does not contemplate that every trial ruling is binding on retrial." Reasoning that Sandoval determinations are closely analogous to evidentiary rulings, which are not binding on successor Judges, the Court held that the new Judge was free to issue his own Sandoval ruling.

People v Samms (95 NY2d 52)

After a jury found defendant guilty of robbery and burglary, the prosecutor sought to have him sentenced as a second violent felony offender. The alleged predicate felony, however, occurred after the commission of the charged crime. At the sentencing hearing, defendant failed to bring this fact to the court's attention. Accordingly, defendant was sentenced as a second felony offender. On appeal, defendant argued for the first time that the enhanced sentence was unauthorized because he had not been convicted of the predicate before he committed the charged offense. The prosecutor argued that defendant's claim was unpreserved. The Court held that preservation was not required in this context because the trial court's "lack of sentencing authority was manifest." On the merits, the Court agreed with defendant and remitted the case to the trial court for resentencing.

People v Darling (95 NY2d 530)

In connection with a drug trafficking investigation, the police obtained an eavesdropping warrant to monitor the telephone line at a named address. The warrant specified the telephone number to be tapped, which was the number assigned to the only telephone line leading to that address. While installing the wiretap, an investigator discovered that the number had been changed. Nevertheless, he attached the wiretap to the line after confirming that the new telephone number was listed under the same name as the specified number. Defendant argued for suppression of all evidence flowing from the wiretap, claiming that, by tapping the unspecified number, the investigator did not strictly comply with New York's electronic surveillance law. The Court of Appeals held that strict compliance does not "entail hypertechnical or strained obedience, nor is common sense its enemy." The Court determined that the number change did not create confusion, and there was no possibility for misdirection. Accordingly, it denied suppression.

People v Foley (94 NY2d 668)

In this case, a State Trooper had logged onto a sex chat room on the Internet, posing as a fifteen-year-old girl named "Aimee." Defendant began corresponding with "Aimee" and sent along with his transmissions pictures of what appeared to be children engaging in sexual acts with adults. Defendant was in the process of arranging a meeting with "Aimee" when he was arrested. The Court rejected defendant's contention that the statute was unconstitutionally overbroad because it exposed individuals to criminal liability who unintentionally address a minor through sexually oriented communication. The Court recognized that Penal Law § 235.22 is not directed only at the transmission of certain types of communication over the Internet, noting that the second prong of the statute prohibited conduct – the importuning, invitation, or inducement of a minor to engage in sexual acts – as opposed to mere speech. The Court further held that Penal Law § 235.22 is not unconstitutionally vague, the speech-conduct sought to be prohibited by Penal Law § 235.22 did not merit First Amendment protection, and the statute did not violate the Commerce Clause. The Court also upheld the constitutionality of Penal Law § 263.15, which prohibits promoting a sexual performance by a child.

People v Johnson (95 NY2d 368)

In this case, the Court was asked to determine whether acts of violence committed in the presence of children against their mother supported a defendant's convictions for endangering the welfare of a child under Penal Law § 260.10(1) when none of the harmful conduct was specifically directed at the children. Recognizing the well-documented adverse effects of children's exposure to domestic violence, the Court concluded that the statute was written broadly enough to encompass such indirect conduct because it imposes criminal liability for awareness of the mere "likelihood" of harm to a child.

People v Wood (95 NY2d 509)

Defendant's ex-wife obtained two separate orders of protection directing him to have "no contact whatsoever" with her. One order was issued by City Court and the other by Family Court. At issue was whether defendant's prosecution for criminal contempt in the first degree under Penal Law § 215.51(c) was barred by the Double Jeopardy Clause because he was previously prosecuted for contempt under Family Court Act article 8 for the same acts of harassment. Noting that this unique double jeopardy situation had its genesis in the parallel family offense jurisdiction of Family Court and the criminal courts, the Court applied the traditional test under Blockburger v United States (284 US 299, 304) for determining whether the prosecutions were for the same offense. The Court concluded that the contempt provision of Family Court Act article 8 was a lesser included offense of first degree criminal contempt and, thus, that defendant's second prosecution was barred. The Court further noted that the fact was not determinative that each prosecution was based on the violation of a different order of protection based on the same conduct because both orders had the same purpose.

People v Edwards (95 NY2d 486)

Clarifying the rule of People v Darden (34 NY2d 177), the Court of Appeals held that where information from a confidential informant is necessary to establish probable cause to arrest, the trial court is required, upon the request of the defendant, to examine the informant in a closed proceeding (without defendant or his counsel present) to verify the informant's existence and knowledge. A Darden hearing is not required, however, if the People demonstrate that the informant is legitimately unavailable to appear at the proceeding.

People v Johnson, People v Sharper and People v Reyes (94 NY2d 600)

These appeals resolved when potential jurors who express doubt as to their ability to be impartial must be excused upon challenges for cause. In Johnson and Sharper a prospective juror indicated he would tend to favor a police officer's testimony, and in Reyes two prospective jurors said it would be difficult for them to be open-minded. In all three cases defendants challenged the prospective jurors for cause and their challenges were denied. The Court of Appeals held the challenges for cause should have been granted, and ordered new trials. In the words of the Court, "nothing is more basic to the criminal process than the right of an accused to a trial by an impartial jury." When potential jurors themselves state they question their ability to be fair, trial Judges should either elicit some unequivocal assurance of impartiality or excuse them from the case.

Matter of Silmon v Travis (95 NY2d 470)

For killing his wife, petitioner was convicted after an Alford plea (meaning that, while pleading guilty, he was not required to admit to the crime), and sentenced to prison. Petitioner was later denied parole largely because he did not express any remorse or insight. He challenged the denial, arguing that after an Alford plea, it was irrational to require him to express remorse. The Court of Appeals disagreed. In the eyes of the law, petitioner was convicted of the brutal killing of his wife. Alford pleas are no different from other guilty pleas; it would otherwise be unconscionable for a court to sentence an individual to a term of imprisonment. Petitioner's personal refusal to admit carrying out the crime at the plea stage did not constrain the Parole Board from determining, within a reasonable probability, whether petitioner is ready to rejoin the community.

Commercial Law and Corporations

Credit Agricole Indosuez v Rossiyskiy Kredit Bank (94 NY2d 541)

In an action brought to recover on unpaid debt, the Court held that the unsecured creditor plaintiff was not entitled to preliminary injunctive relief pursuant to CPLR 6301 as the action was for a sum of money only and not for equitable relief. The Court declined to liberalize and expand the provisional remedies available under CPLR 6301 in response to the increased globalization of capital markets, noting the profound effects

the availability of injunctive relief would have on world-wide commerce and that any changes in the law were best addressed by the Legislature. Additionally, the Court held that an unsecured creditor could not assert a cause of action alleging breach of fiduciary duty with a request for a permanent injunction, as that cause of action would be purely incidental to, and for the purpose of, enforcing the primary relief sought – a money judgment. In so doing, the Court rejected a proposed application of the "trust fund doctrine" – usually applied to impose liability on corporate directors for the wrongful dissipation of the assets of an insolvent corporation – to actions brought by a simple contract creditor.

Monreal v Fleet Bank (95 NY2d 204)

Plaintiff, a physician, maintained a checking account with the defendant bank. For several years, his bookkeeper purportedly embezzled money by forging plaintiff's name on his checks or altering the names of payees. Plaintiff sued the bank for negligently processing the checks. Under UCC 4-406(4), after a bank makes a statement of account available to its customer, the customer has one year to assert claims against the bank for negligently paying the checks bearing alterations or forged signatures of the customer. The bank argued that the first statement of account started the clock for all future claims arising from a single wrongdoer's repeated actions. Plaintiff, on the other hand, argued that each statement of account carried a one-year period of its own. The Court of Appeals explained that unlike other provisions in UCC 4-406, which specifically stated that limitations periods began with the "first item and statement," UCC 4-406(4) omitted the term "first." Thus, the Court held that each statement carried its own one-year period.

Pinnacle Consultants v Leucadia Natl. Corp. (94 NY2d 426)

In this shareholder derivative action, the Court of Appeals held that a stockholder in a publicly-held corporation who abstained from voting on a merger was not estopped from bringing a derivative suit to challenge the merger. In addition, the Court held that the statutory prohibition against circular voting under section 612 of the Business Corporation Law applies only to corporations and not to partnerships.

Biondi v Beekman Hill House Apt. Corp. (94 NY2d 659)

Plaintiff, a former president of a cooperative board, sought indemnification for punitive damages imposed after a Federal jury found that he had racially discriminated against a proposed tenant and retaliated against a shareholder. The Court held that public policy prohibits indemnification for punitive damages. The Court also held that Business Corporation Law § 721 bars indemnification where, as here, the underlying judgment establishes that plaintiff acted in bad faith. Reading Business Corporation Law sections 721 and 722 together, the Court explained that the key to indemnification is a director's good faith toward the corporation and that a judgment against the director, standing alone, may not be dispositive of whether the director acted in good faith. In this case, however, the Federal judgment was dispositive. By denying a proposed tenant's sublease

application on the basis of race, Biondi acted in bad faith and knowingly exposed the corporation to liability under the civil rights laws.

Domestic Relations

Grunfeld v Grunfeld (94 NY2d 696)

In this divorce action, the Court held that it was error to base on the same projected annual professional earnings both an equitable distribution award of one half of the value of defendant's law license and defendant's obligation to pay maintenance. The Court explained that the value of a professional license as an asset of the marital partnership is a form of human capital dependent upon the future labor of the licensee and, thus, is totally indistinguishable and has no existence separate from the projected professional earnings from which it is derived. Thus, the Court held that in ordering that plaintiff receive both undiminished maintenance and the full distributive award of one half the value of defendant's law license, the Appellate Division improperly double-counted defendant's income inasmuch as both awards were derived from defendant's future projected earnings from his law practice.

Labor Law

Truelove v Northeast Capital & Advisory (95 NY2d 220)

In an action against plaintiff's former employer, an investment banking firm, to recover the unpaid balance of a bonus payable in quarterly installments, the Court rejected plaintiff's assertion that because the bonus constituted "wages" within the meaning of Labor Law § 190(1), defendant violated Labor Law § 193 by enforcing an express condition in the bonus plan predicated payment of each quarterly installment on continued employment. The Court held that the Labor Law's definition of wages – i.e., the "earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission or other basis" – excluded incentive compensation based on factors falling outside the scope of the employee's actual work, namely (1) that the bonus was not predicated upon plaintiff's own personal productivity nor did it give plaintiff a contractual right to bonus payments based upon his productivity, (2) the declaration of the bonus pool was dependent solely upon the employer's overall financial success, and (3) plaintiff's share in the bonus pool was entirely discretionary and subject to the non-reviewable determination of his employer.

Cammon v City of New York (95 NY2d 583)

In this admiralty and labor law action, the Court determined that Federal maritime law did not preempt State Labor Law § 240(1). Plaintiff was injured while working on a raft that was floating on the river but anchored to a pier. Plaintiff sued New York City as well as the general contractor hired by the City to repair the pier. Defendants moved for

summary judgment dismissing the complaint on the ground that Federal maritime law preempts New York law. Specifically, defendants argued that because the New York Labor Law imposes strict liability upon owners and contractors in certain qualifying situations and because maritime law does not generally impose liability without actual proof of negligence, Federal law should supercede plaintiff's State Labor Law claims. The Court held that local regulations that do not affect vessel operations, but rather govern liability issues with respect to landowners within the State, have no extraterritorial effect. The Court also held that the concept of strict liability is not antithetical to fundamental characteristics of maritime law. The Court so concluded by emphasizing the State's compelling interest in protecting the health and safety of its workers, noting that application of State law in this context would not "'unduly interfere[] with the Federal interest in maintaining the free flow of maritime commerce.'"

Matter of City of Watertown v State of N. Y. Pub. Empl. Relations Bd. (95 NY2d 73)

The Watertown Patrolmen's Benevolent Association sought to collectively bargain the procedures for reviewing the City's determination that officers injured in the line of duty were fit to return to work. The Court of Appeals held that the procedures were a term and condition of employment subject to mandatory bargaining, noting New York State's strong and sweeping presumption in favor of collective bargaining under the Taylor Law.

Attorney and Client

Darby & Darby v VSI Intl. (95 NY2d 308)

Defendant VSI retained plaintiff law firm to represent it in a Florida patent infringement suit. Plaintiff later sued defendants for unpaid legal fees and defendants counterclaimed alleging legal malpractice. At issue was whether plaintiff had a duty to advise defendants of possible coverage for patent infringement claims under the "advertising liability" clause of their general liability insurance policy. While acknowledging that lawyers should familiarize themselves with current legal developments, the Court held that plaintiff had no duty to advise defendants of a then-novel theory of patent insurance coverage that was rejected by New York and Florida courts at the time of plaintiff's representation.

Education

Matter of Beau II. (95 NY2d 234)

School officials brought this Family Court proceeding to determine if Beau, a child identified as having a disability under the Individuals with Disabilities Education Act (IDEA), is a person in need of supervision (PINS). At issue was whether the mere filing of a PINS proceeding, which resulted in supervised probation of the child, constituted a

change in the child's educational placement, thereby triggering the procedural protections of the IDEA. The Court held that whether a change in placement has occurred must be determined on a case-by-case basis. If the change is substantive and materially alters the student's educational program, then the protections of the IDEA are triggered. Here, the Court concluded that the probation disposition of the PINS proceeding did not change Beau's educational program, but sought to enforce it.

Media Law

Messenger v Gruner + Jahr Print. & Publ. (94 NY2d 436)

Plaintiff, a 14-year-old model, sued Young and Modern magazine under sections 50 and 51 of the Civil Rights Law, alleging that the magazine had invaded her privacy by using her picture without consent to illustrate a column about teenage sex. Plaintiff argued that the column falsely implied that she had engaged in promiscuous behavior. Answering a certified question from the United States Court of Appeals for the Second Circuit, the New York Court of Appeals held that plaintiff's suit was barred by the "newsworthiness" doctrine: the column concerned a matter of public interest, and New York does not recognize a cause of action for false implications created by the use of photographs to illustrate newsworthy articles.

Tort Law

Smith-Hunter v Harvey (95 NY2d 191)

After plaintiff entered the reception area of defendant's law office to ask that a car blocking her car be moved, defendant signed a criminal information charging her with trespass. The prosecutor failed to pursue the criminal charges and the proceedings were dismissed on speedy trial grounds. Plaintiff then sued defendant-lawyer, seeking damages for malicious prosecution. One of the requirements for a malicious prosecution action is that the prosecution terminate "favorably" to the accused. At issue was whether a speedy trial dismissal could be considered a favorable termination. The Court of Appeals concluded it could, explaining that the law should not require one who is falsely and maliciously accused to proceed to trial and establish innocence as a prerequisite to recovery. A favorable termination, in other words, requires only that the criminal proceeding finally conclude in a manner not inconsistent with innocence.

Social Services

Matter of Shah; Matter of Shah v DeBuono (95 NY2d 148)

The Court of Appeals ruled that an engineer from New Jersey, who is in a coma and hospitalized in New York, is eligible for New York Medicaid benefits as a New York

resident. It also ruled that his wife, acting as his guardian, could transfer his assets to herself, for purposes of Medicaid planning, and execute a "spousal refusal" to pay his medical expenses. The Court said the case "is less about the rights of the community spouse ... than it is about the rights of the institutionalized spouse to be the subject of Medicaid planning" through a guardian.

Brukhman v Giuliani (94 NY2d 387)

New York City welfare recipients challenged State and city policies for the Work Experience Program (WEP), which use the minimum wage rate to determine the number of hours they must work to qualify for continued public assistance benefits. Based on a State constitutional provision that laborers "in the employ of a contractor engaged in the performance of any public work" must be paid "the rate of wages prevailing in the same trade or occupation," the WEP participants argued they were entitled to work fewer hours based on the higher wages of city employees in similar jobs. The Court of Appeals ruled the prevailing wage provision does not apply to WEP participants because they "are not 'in the employ' of anyone" and are "not engaged in 'public work.'"

Matter of Marzec v DeBuono (95 NY2d 262)

In this matter, the Court of Appeals clarified the income standards for providing Medicaid assistance to "medically needy" individuals who themselves support dependent family members. The State regulations set forth a scheme whereby certain types and amounts of income are disregarded in calculating whether such an applicant is eligible for the Medicaid program. This Court determined that the State regulations looked to the "Federal guidelines" which did not authorize a disregard of income needed to support a spouse who is not 65 years of age, blind or disabled. The Court held that Medicaid regulations governing eligibility for benefits did not authorize a reduction in the applicant's income in an amount necessary to meet the needs of an ineligible spouse.

Judges and Courts

Matter of New York State Assoc. of Criminal Defense Lawyers v Kaye
(95 NY2d 556)

In a suit challenging an administrative order of the Court of Appeals which reduced the fees paid to assigned counsel in capital cases, plaintiffs named as respondents five current Judges who approved the order. When their suit was dismissed by lower courts, plaintiffs filed a motion for leave to appeal and a separate motion to disqualify the five Judges from participating in a review of their own administrative action. The Chief Judge recused herself, as she often does in appeals involving judicial administration, but the Court held the Rule of Necessity "compels participation" by the remaining Judges. Citing decisions rejecting disqualification in similar circumstances by high courts in seven other States, the Court said automatic disqualification of Court of Appeals Judges whenever their administrative powers are challenged would undermine the rule-making process and

would leave fundamental questions about the Court and its powers in the hands of substitute Judges. It said no traditional basis for conflict exists since the plaintiffs did not allege the Judges had any pecuniary or personal interest in the matter, nor any personal bias or prejudice. The Court concluded, "The constitutional provision for the designation of substitute Judges is not to be used as a vehicle to force removal of the constitutionally appointed members of this Court by naming them as parties when challenging administrative actions of the Court." By separate order, the Court granted plaintiffs leave to appeal.

IV. Appendices

APPENDICES

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3. **Summary of Total Appeals Decided in 2000 by Jurisdictional Predicate**
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 - All Appeals - % Civil and Criminal**
 - Civil Appeals - Type of Disposition**
 - Criminal Appeals - Type of Disposition**
5. **Civil Appeals - Jurisdictional Predicates**
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SSD (Sua Sponte Dismissal) - Rule 500.3
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APPENDIX 1

JUDGES OF THE COURT OF APPEALS

**COURT OF APPEALS
20 EAGLE STREET
ALBANY, NEW YORK 12207-1095**

**Hon. Judith S. Kaye
Chief Judge of the Court of Appeals
230 Park Avenue, Suite 826
New York, New York 10169-0007
Telephone: (212) 661-6787**

**Hon. George Bundy Smith
Senior Associate Judge of the Court of Appeals
61 Broadway - 29th Floor
Room 2900
New York, New York 10006-2704
Telephone: (212) 363-5990**

**Hon. Richard C. Wesley
Associate Judge of the Court of Appeals
Livingston County Government Center
6 Court Street
Geneseo, New York 14454-1030
Telephone: (716) 243-7910**

**Hon. Howard A. Levine
Associate Judge of the Court of Appeals
County Judicial Building
612 State Street, 2nd Floor
Schenectady, New York 12305-2113
Telephone: (518) 388-4497**

**Hon. Albert M. Rosenblatt
Associate Judge of the Court of Appeals
10 Market Street, 2nd Floor
Poughkeepsie, New York 12601-3228
Telephone: (914) 486-6444**

**Hon. Carmen Beauchamp Ciparick
Associate Judge of the Court of Appeals
Chanin Building
122 East 42nd Street, Suite 3700
New York, New York 10168-0002
Telephone: (212) 661-2144**

**Hon. Victoria A. Graffeo
Associate Judge of the Court of Appeals
Albany County Courthouse
Suite 310
Albany, New York 12207-1011
Telephone: (518) 487-5330**

APPENDIX 2

PERTINENT CLERK'S OFFICE TELEPHONE NUMBERS

Court of Appeals Switchboard: (518) 455-7700

Questions Concerning Motions:

Suzanne Aiardo, Esq. (518) 455-7705

Questions Concerning Criminal Leave Applications:

Terry DiLeva (518) 455-7784

Questions Concerning Civil and Criminal Appeals:

Laurene Tacy, Esq. (518) 455-7701

Martin Strnad, Esq. (518) 455-7702

Hope Engel, Esq. (518) 455-7703

Questions Concerning Attorney Admission and Discipline:

Hope Engel, Esq. (518) 455-7703

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 2000 BY JURISDICTIONAL PREDICATE

January 1, 2000 through December 31, 2000

BASIS OF JURISDICTION: ALL APPEALS

TYPE OF DISPOSITION

	Affirmance	Reversal	Modification	Dismissal	Other	Total
Dissent in Appellate Division.....	9	0	0	0	0	9
Permission of Court of Appeals or Judge thereof.....	64	36	10	2	0	112
Permission of Appellate Division or Justice thereof.....	19	4	1	1	0	25
Constitutional Question.....	4	4	1	0	0	9
Stipulation for Judgment Absolute.....	0	0	0	0	0	0
Other.....	1	0	0	0	14	15*
Totals.....	97	44	12	3	14	170

BASIS OF JURISDICTION: CIVIL APPEALS

TYPE OF DISPOSITION

	Affirmance	Reversal	Modification	Dismissal	Other	Total
Dissent in Appellate Division.....	9	0	0	0	0	9
Permission of Court of Appeals.....	28	24	5	0	0	57
Permission of Appellate Division.....	9	3	1	0	0	13
Constitutional Question.....	4	4	1	0	0	9
Stipulation for Judgment Absolute.....	0	0	0	0	0	0
Other.....	0	0	0	0	14	14*
Totals.....	50	31	7	0	14	102

BASIS OF JURISDICTION: CRIMINAL APPEALS

TYPE OF DISPOSITION

	Affirmance	Reversal	Modification	Dismissal	Other	Total
Permission of Court of Appeals Judge.....	36	12	5	2	--	55
Permission of Appellate Division Justice.....	10	1	0	1	--	12
Other.....	1	0	0	0	--	1
Totals.....	47	13	5	3	--	68

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

APPENDIX 3

APPENDIX 4

COMPARATIVE STATISTICAL ANALYSIS FOR APPEALS DECIDED IN 2000

ALL APPEALS - % CIVIL AND CRIMINAL

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Civil	59% (174 of 295)	73% (190 of 260)	63% (124 of 198)	70% (146 of 208)	60% (102 of 170)
Criminal	41% (121 of 295)	27% (70 of 260)	37% (74 of 198)	30% (62 of 208)	40% (68 of 170)

CIVIL APPEALS - TYPE OF DISPOSITION

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Affirmed	52%	47%	40%	45%	49%
Reversed	32%	37%	37%	37%	30%
Modified	10%	5%	6%	9%	7%
Dismissed after Argument	-	2%	1%	1%	-
Other (e.g. judicial suspension; Rule 500.17 certified question)	6%	9%	16%	8%	14%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Affirmed	63%	67%	62%	76%	69%
Reversed	24%	21%	30%	15%	20%
Modified	9%	3%	1%	8%	7%
Dismissed	4%	9%	7%	1%	4%

CIVIL APPEALS - JURISDICTIONAL PREDICATES

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Appellate Division Dissents	10% (18 of 174)	12% (22 of 190)	11% (13 of 124)	9% (13 of 146)	9% (9 of 102)
Court of Appeals Leave Grants	60% (104 of 174)	59% (112 of 190)	45% (56 of 124)	63% (93 of 146)	56% (57 of 102)
Appellate Division Leave Grants	14% (25 of 174)	12% (23 of 190)	16% (20 of 124)	13% (19 of 146)	12% (13 of 102)
Constitutional Question	7% (12 of 174)	7% (14 of 190)	8% (10 of 124)	4% (6 of 146)	9% (9 of 102)
Stipulation for Judgment Absolute	1% (1 of 174)	-	1% (1 of 124)	1% (1 of 146)	-
CPLR 5601(d)	1% (2 of 174)	1% (2 of 190)	2% (3 of 124)	2% (3 of 146)	-
Supreme Court Remand	-	-	1% (1 of 124)	-	-
Judiciary Law § 44	5%* (9 of 174)	7% (13 of 190)	4%* (5 of 124)	3%* (4 of 146)	5%* (5 of 102)
Certified Question from Federal Court (Rule 500.17)	2% (3 of 174)	2% (4 of 190)	12%** (15 of 124)	5%** (7 of 146)	9%** (9 of 102)
Other	-	-	-	-	-

* Includes judicial suspension matters

** Includes decisions accepting/declining certification

APPENDIX 6

CRIMINAL APPEALS - JURISDICTIONAL PREDICATES

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Permission of Court of Appeals Judge	74% (89 of 121)	70% (49 of 70)	72% (53 of 74)	76% (47 of 62)	81% (55 of 68)
Permission of Appellate Division Justice	26% (32 of 121)	30% (21 of 70)	28% (21 of 74)	24% (15 of 62)	18% (12 of 68)
Other*					1% (1 of 68)

*Remand from United States Supreme Court

MOTION STATISTICS (1996 - 2000)

Motions Undecided as of January 1, 2000 - 71
 Motion Numbers Used in 2000 - 1461
 Motions Undecided as of December 31, 2000 - 74
 Motion Dispositions During 2000 - 1393

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Motion Numbers Used for Calendar Year	1785	1583	1513	1505	1461
Motions Decided for Calendar Year	1778	1628	1550	1522	1393
Mos. for leave to appeal	1309*	1215*	1202*	1209*	1088*
granted	126	96	91	94	54
denied	903	853	867	822	809
dismissed	275	261	238	288	223
withdrawn	5	5	6	5	2
Mos. to dismiss appeals	15	15	11	15	4
granted	11	10	5	10	2
denied	3	4	6	5	2
dismissed	0	0	0	0	0
withdrawn	1	1	0	0	0
Sua sponte and Court's own motion dismissals	148	163	119	110	107
TOTAL DISMISSALS OF APPEALS	159	173	124	120	109
Mos. for reargument of appeal	26	28	8	9	8
granted	2	0	0	0	0
Mos. for reargument of motion	89	88	82	71	56
granted	5	2	0	0	0
Mos. for extension of time to move for reargument	2	0	1	1	0
granted	1	0	0	1	0
Mos. for assignment of counsel	59	54	55	40	37
granted	57	54	51	40	37
Legal Aid	36	27	15	13	13
denied	2	0	4	0	0
dismissed	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.

APPENDIX 7

APPENDIX 7 (continued)

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Mos. to waive rule compliance granted	1 0	6 1	4 0	2 1	3 2
Mos. for poor person status granted denied dismissed	69 3 0 66	61 0 0 61	61 2 1 58	80 1 0 79	71 1 0 70
Mos. to vacate dismissal/preclusion granted	5 0	4 1	4 3	0 0	5 2
Mos. for calendar preference granted	8 1	6 1	7 0	6 2	6 0
Mos. for amicus curiae status granted	114 92	88 68	88 71	87 69	59 50
Mos. for Exec. Law § 71 order (AG)	0	2	1	0	5
Mos. for leave to intervene granted	0 0	3 1	0 0	3 2	0 0
Mos. to stay/vacate stay granted denied dismissed withdrawn	37 0 4 32 1	50 5 5 39 1	39 6 3 29 1	29 0 0 29 0	26 1 3 22 0
Mos. for CPL 460.30 extension granted	25 21	28 22	23 21	33 27	38 28
Mos. to strike appdx or brief granted	8 2	9 3	7 0	3 2	5 0
Mos. to amend remittitur granted	4 1	2 2	2 0	2 0	1 0
Mos. for miscellaneous relief granted denied dismissed withdrawn	27 1 21 3 2	28 5 17 6 0	23 2 14 7 0	18 3 12 3 0	25 5 14 4 2
Withdrawals/substitution of counsel grant denied	0 0 0	2 2 0	2 2 0	0 0 0	1 1 0

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

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
TOTAL APPLICATIONS ASSIGNED:	2797	3064	2953	2815	2920
TOTAL APPLICATIONS DECIDED:	3018*	2944*	2982*	2799*	2863*
TOTAL APPLICATIONS GRANTED:	53	110**	57	44	51
TOTAL APPLICATIONS DENIED:	2711	2587	2709	2512	2579
TOTAL APPLICATIONS DISMISSED:	241	238	209	229	221
TOTAL APPLICATIONS WITHDRAWN:	13	9	7	14	12
TOTAL PEOPLE'S APPLICATIONS:	112	63	67	54	68
(a) GRANTED:	13	8	5	5	7
(b) DENIED:	90	51	59	42	54
(c) DISMISSED:	1	1	1	1	3
(d) WITHDRAWN:	8	3	2	6	4
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	400	438	451***	402	448***
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	8	16	9	6	8

*Includes some applications assigned in previous year.

**Includes grants of 54 separate applications handled as a single appeal below and handled as a single appeal in this Court.

***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.

APPENDIX 9

2000

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

SSD (sua sponte dismissal) - Rule 500.3

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Total Number of Inquiry Letters Sent	166	139	99	106	108
Appeals Dismissed on Motion	17	14	11	12	3
Appeals Dismissed on Consent	3	4	0	1	2
Appeals Withdrawn or Discontinued on Stipulation	1	2	1	4	5
Dismissed by Court <u>sua sponte</u>	90	92	71	57	65
Transferred <u>sua sponte</u> to Appellate Division	6	6	1	3	4
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)	17	6	7	10	7
Jurisdiction Retained - appeals decided	2	5	3	4	0
Inquiries Pending	30	10	5	15	22

OFFICE FOR PROFESSIONAL MATTERS STATISTICS (1996 - 2000)

<u>TOPIC</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Attorneys Admitted (OCA) ¹	6913	7087	7339	7725	7194
Certificates of Admission	243	226	235	171	164
Clerkship Certificates	3	5	9	7	12
Petitions for Waiver	456	463	479 ²	163	149
Written Inquiries	218	224	257	193	116
Disciplinary Orders/Name Changes	1078	848	1689	966 ³	842 ³

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

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 orders involving multiple attorneys' violations of the registration requirements (see Judiciary Law § 468-a).

APPENDIX 11
NONJUDICIAL STAFF

Aiardo, Suzanne - Chief Motion Clerk
Ali, Vivian - Senior Stenographer, Court of Appeals
Andrews, Barbara J. - Secretary to Judge Smith
Ashdown, Jesse - Senior Court Attorney, Court of Appeals
Asiello, John P. - Assistant Consultation Clerk, Court of Appeals
Beachel, Sue E. - Secretary to Judge Wesley
Bielawski, Julia S. - Principal Court Attorney, Court of Appeals (resigned 8/31/00)
Betha, Laury A. - Law Clerk to Judge Smith (resigned 12/14/00)
Bohannon, Randy A. - Court Building Guard
Brace, Elizabeth C. - Court Attorney, Court of Appeals
Cadalso, Mary Ellen - Secretary, Court of Appeals
Calacone, Stephen F. - Clerical Research Aide
Cannataro, Anthony - Law Clerk to Judge Ciparick
Carro, Christine - Secretary to Judge Ciparick
Carroll, Frederic J. - Supervising Court Attendant, Court of Appeals
Chaudhry, Zainab A. - Principal Law Clerk to Judge Wesley
Chung, Jenny L. - Senior Court Attorney, Court of Appeals
Cleary, Lisa M. - Principal Stenographer, Court of Appeals
Cohen, Stuart M. - Clerk of the Court of Appeals
Cohn, David M. - Senior Law Clerk to Chief Judge Kaye
Conklin, Elmer - Clerical Assistant, Court of Appeals

APPENDIX 11 (Continued)

Conley, Paul F. - Senior Clerical Assistant, Court of Appeals
Connair, George P. - Senior Services Aide
Connelly, Lisa M. - Principal Court Attorney, Court of Appeals
Costello, James A. - Principal Law Clerk to Judge Levine
Deer, Wendy E. - Senior Court Attorney, Court of Appeals
DiLeva, Terry J. - Prisoner Applications Clerk
Donohue, J. Matthew - Senior Court Attorney, Court of Appeals (resigned 8/24/00)
Donnelly, William E. - Senior Custodial Aide
Dragonette, John M. - Court Building Guard
Duthiers, Erika - Principal Law Clerk to Judge Smith (resigned 9/23/00)
Eddy, Margery Corbin - Court Attorney, Court of Appeals
Emigh, Brian J. - Building Manager
Engel, Hope B. - Court Attorney for Professional Matters
Farrell, Laurence - 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 - Principal Stenographer, Court of Appeals
Fitzpatrick, William J. - Assistant Printer, Court of Appeals
Fix-Mossman, Lori E. - Principal Stenographer, Court of Appeals
Fludd, Christopher - Senior Court Building Guard
Friedman, Kathryn Bryk - Senior Law Clerk to Judge Wesley (resigned 8/17/00)
Garvey, Michael J. - Senior Law Clerk to Judge Rosenblatt
Gerber, Matthew L. - Security Attendant, Court of Appeals

APPENDIX 11 (Continued)

Gilbert, Marianne - Principal Stenographer, Court of Appeals
Groff, Janice L. - Principal Stenographer, Court of Appeals
Haas, Tammy E. - Custodial Aide
Hallenbeck, Kenneth A. - Senior Custodial Aide (resigned 1/7/00)
Herrington, June A. - Principal Stenographer, Court of Appeals
Harvey, Joanne M. - Principal Law Clerk to Judge Bellacosa (resigned 9/1/00)
Heffron, Elaine J. - Secretary to Judge Graffeo
Herriman, Lisa - Senior Stenographer, Court of Appeals
Heyman, Amy - Secretary to Chief Judge Kaye
Jackson, Deidre - Law Clerk to Judge Smith
James, Ta-Tanisha D. - Law Clerk to Judge Smith
James, Vaughn E. - Senior Court Attorney, Court of Appeals (resigned 8/17/00)
Joyce, Jean - Law Clerk to Chief Judge Kaye
Karmel, Jonathan B. - Senior Law Clerk to Judge Levine (resigned 8/14/00)
Kehn, Patricia Ann - Principal Stenographer, Court of Appeals
Kleemann, Sarah W. - Principal PC Analyst
Klein, Andrew W. - Consultation Clerk, Court of Appeals
Kruzansky, Barbara Comninos - Senior Court Attorney, Court of Appeals (resigned 8/17/00)
Lagios, James P. - Senior Law Clerk to Judge Rosenblatt
Lanza, Ronald S. - Senior Court Attorney, Court of Appeals
Laubscher, Jay C. - Principal Law Clerk to Judge Ciparick (Resigned 12/1/00)
Lawrence, Bryan D. - Local Area Network Administrator
LaVergne, M. Pierce - Court Attorney, Court of Appeals

APPENDIX 11 (Continued)

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

Lee, Tiffany H. - Principal Law Clerk to Judge Wesley

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

Lerner, Matthew S. - Senior Court Attorney, Court of Appeals

Loffredo, Carmel M. - Secretary to Judge Levine

MacPhee, Concetta J. - Senior Assistant Building Superintendent

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

Martinez, Cristina Baia - Senior Law Clerk to Judge Ciparick

Mayo, Michael J. - Deputy Building Superintendent

McClymonds, James T. - Deputy Chief Court Attorney, Court of Appeals

McCormick, Cynthia A. - Secretary to Judge Bellacosa; Principal Court Analyst

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

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

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

McManus, John T. - Law Clerk to Judge Graffeo

Miller, Meredith R. - Court Attorney, Court of Appeals

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

Morrissey, Jr., James R. - Security Attendant, Court of Appeals

Muller, Joseph J. - Assistant Building Superintendent

Murray, Elizabeth F. - Law Librarian, Court of Appeals

Novak, David W. - Senior Court Attorney, Court of Appeals

Paglia, Paul J. - Court Building Guard

Pam, Aaron R. - Senior Law Clerk to Judge Smith (resigned 8/14/00)

APPENDIX 11 (Continued)

Parker, Amy - Senior Law Clerk to Judge Levine
Pepper, Francis W. - Senior Custodial Aide
Ragonese, Carmela - Custodial Aide
Ravida, Tina - Custodial Aide
Salvinski, Mildred A. - Custodial Assistant (retired 11/9/00)
Sanderson, Ralph W. - Assistant Building Superintendent
Schechter, Jennifer G. - Principal Law Clerk to Chief Judge Kaye
Shufelt Sr., Theodore J. - Assistant Building Superintendent
Somerville, Robert - Court Building Guard
Soule, Leah M. - Principal Court Attorney, Court of Appeals
Spencer, Gary H. - Public Information Officer
Strnad, Martin F. - Assistant Deputy Clerk, Court of Appeals
Tacy, Laurene L. - Assistant Deputy Clerk, Court of Appeals
Tierney, Inez M. - Secretary to Judge Rosenblatt
Torre, Joseph R. - Court Building Guard
Troisi, Kimberly A. - Principal Law Clerk to Judge Bellacosa (resigned 7/24/00)
Voerg, Patricia Mullery - Secretary to Judge Bellacosa (resigned 6/30/00)
Wager, Charles C. - First Assistant Building Superintendent
Wasielewski, John P. - Chief Security Attendant, Court of Appeals
Weissman, Kenneth I. - Principal Law Clerk to Chief Judge Kaye (resigned 8/14/00)
Welch, Ann M. - Custodial Aide
Yalamanchili, Pavani - Court Attorney, Court of Appeals