

2001

ANNUAL REPORT OF THE

CLERK OF THE COURT

TO THE

JUDGES OF THE COURT OF APPEALS

OF THE STATE OF NEW YORK

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Clerk of the Court
Court of Appeals

CONTENTS

A Special Tribute	i
Introduction	1
I. The Work of the Court	2
A. Capital Case Matters	3
1. Capital Appeals Pending	3
2. Administrative and Rulemaking Responsibilities	4
3. Counsel in Capital Matters	5
4. Future Costs and Requests	7
B. The Court's Docket	7
1. Calendar and Currency	7
2. Filings	8
3. Dispositions	8
(a) Appeals and Writings	8
(b) Motions	9
(c) CPL 460.20 Applications	10
(d) Review of Determinations of the State Commission on Judicial Conduct	12
(e) Rule 500.17 Certifications	12
C. <u>Sua Sponte</u> Monitoring of Subject Matter Jurisdiction and Merits Evaluation of Appeals (Rule 500.3 and Rule 500.4)	13
1. Rule 500.3 (Jurisdiction)	13

2. Rule 500.4 (Merits)	13
D. Court Rules	14
II. Administrative Functions and Accomplishments	14
A. Court of Appeals Hall	14
B. Case Management	15
C. Public Information	15
D. Office for Professional Matters	16
E. Central Legal Research Staff	17
F. Library	18
G. Continuing Legal Education Committee	19
H. Management and Operations	20
I. Budget and Finance	20
1. Expenditures	20
2. Budget Requests	20
3. Revenues	21
J. Computer Operations	21
K. Security Services	22
L. Fire and Safety	22
M. Personnel	23
III. 2001: Year in Review	27
IV. Appendices	42

*State of New York,
Court of Appeals,*



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Albany, New York 12207*

A SPECIAL TRIBUTE

The Court in recent years has prefaced the Annual Report with a letter from the Chief Judge or one of the Associate Judges, highlighting particular events of the year. In that the transcendent event of 2001 occurred on September 11, the Court has determined that this Report should be prefaced by a special tribute:

- * To the men and women of the New York State Unified Court System who kept the courts functioning throughout, barely missing a beat in their service to the public and showing the world the high value we place on American justice;
- * To the many members of our court family who lost loved ones;
- * To our valiant court officers who selflessly raced to the World Trade Center to assist in the rescue effort; and
- * Most especially, to Captain William Harry Thompson, Senior Court Officer Thomas Jurgens and Senior Court Officer Mitchel Wallace, who made the ultimate sacrifice at Ground Zero.

By our own daily commitment to justice, we keep alive the memory of those who lost their lives, and give enduring meaning to their sacrifice.

The Judges of the Court
March 2002

2001

**ANNUAL REPORT OF THE
CLERK OF THE COURT
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Introduction

2001 was the year changes long in the works became manifest. Construction fences appeared around Court of Appeals Hall as contractors prepared to excavate foundations for the new additions to the Court's historic home, poising the Court for the challenges of the new century.

2001 was also the year of sudden, violent change. The events of September 11th occasioned immediate enhancements to Court security, as well as new and creative methods for communicating with counsel and litigants in New York City in the aftermath of the disaster. I express my deep appreciation to the Clerk's Office staff for their outstanding efforts during this time, and to counsel and litigants for their extraordinary responsibility in the days following September 11th.

The Annual Report is divided into four parts. The first part offers a narrative, statistical and graphic overview of matters filed with and decided by the Court in 2001. The second describes various functions of the Clerk's Office and summarizes the administrative accomplishments of the year. The third part highlights selected decisions of 2001. The fourth consists of appendices with detailed statistics and other information.

I. The Work of the Court

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

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

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

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

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

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

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

In August of each year, the Court holds a special Election Session to consider expedited motions for leave to appeal and appeals as of right in cases concerning the September primaries. Earlier each year, in conjunction with the Appellate Division Departments, the Court of Appeals publishes a timetable for appellate review of primary election-related matters. The Court reviews primary election motions and appeals on the Appellate Division record and briefs, and hears oral argument of motions for leave to appeal. When an appeal lies as of right or *certiorari* is granted, oral argument of the appeal is usually scheduled for the same day. Election appeals are decided expeditiously, often the same or following day.

In 2001, the Court and its Judges disposed of almost 4,500 matters: 176 appeals, 1474 motions and 2,840 criminal leave applications. A detailed analysis of the Court's work follows.

A. Capital Case Matters

1. Capital Appeals Pending

The State Constitution and the death penalty statute provide a direct appeal to the Court of Appeals from a judgment of conviction and capital sentence. The first notice of appeal in a capital case 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 three and one-half years since the first notice of capital appeal in People v Darrel K. Harris, the Judges and the Clerk's Office staff have handled a variety of novel and complex procedural and case management issues raised 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.

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 (CDO) 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, 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. The People filed their 1181-page brief in October 2001. Also that month, the Attorney General filed his brief in support of the constitutionality of the statute. The appellant's reply brief is due in April 2002. Oral argument of the matter is scheduled for May 6, 2002.

In December 2000, the CDO filed capital appellant James F. Cahill, III's 43-volume record on appeal, containing 27,567 pages. The Court issued a Final Capital Appeal Management Order in February 2001 setting the briefing schedule for the parties and amici.

In December 2001, the CDO filed capital appellant Stephen LaValle's 76-volume record on appeal, containing 41,801 pages.

2. Administrative and Rulemaking Responsibilities

The 1995 death penalty statute created significant responsibilities for the Court of Appeals, requiring substantial judicial and staff time and other resources in order to meet these obligations in a timely manner. A list of tasks completed since 1995 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 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 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.

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 (22 NYCRR 515.2).

A private attorney may seek appointment as lead or associate counsel on a capital appeal by submitting to the CDO an application, on the form approved by the Administrative Board of the Courts and available from the CDO, with the required documentation and attachments. The CDO reviews each application and delivers all completed applications to the appropriate Departmental Screening Panel, together with a statement concerning the attorney's completion of the requisite training and the CDO's recommendation whether the attorney is qualified for appointment. Each Screening Panel designates those attorneys deemed qualified for appointment as capital appellate counsel and reports these designations to the Court of Appeals. The Court incorporates the names of the attorneys so designated into a roster of capital appellate attorneys and, thereafter, in its discretion, may assign attorneys from this roster to capital appeals. Through 2001, Screening Panels had designated fifteen attorneys as qualified to serve as capital appellate or State post-conviction counsel.

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 1999, a proceeding challenging the Court's 1998 determination to reduce capital counsel fees originally approved in 1997 was commenced in State Supreme Court. In October 1999, Supreme Court, Albany County, denied the petition and dismissed the proceeding. The Appellate Division, Third Department, affirmed Supreme Court's judgment in June 2000, and thereafter 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 (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. Thereafter, in June 2001, the Court issued a per curiam opinion on the merits, affirming the denial of the petition and the dismissal of the proceeding (96 NY2d 512; see infra, at 28).

The Court of Appeals' December 1998 order approving reduced capital counsel fee schedules for the four Judicial Departments also directed the Departmental Screening Panels to submit to the Chief Judge, by December 31, 1999, reports "relating the experiences under the original and revised uniform capital counsel fee schedules." This inquiry was deferred pending resolution of the Governor's appeal in Mahoney v Pataki, argued in March 2002, which concerns the Court's authority to include in the capital counsel fee schedules payment for "reasonably necessary" legal and paralegal assistance to lead and associate counsel in capital cases.

4. Future Costs and Requests

Until and throughout 2000, the Court performed its administrative tasks and managed its 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 began employment in the summer of 2001 in preparation for the May 2002 argument in People v Darrel K. Harris. This Court's experience, as well as that of other states, demonstrated that adequate staff and resources are essential to effective management and disposition of capital appeals, with voluminous records and scores of issues raised. 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, the Judge taking the majority position who is seated immediately to the right of the reporting Judge assumes responsibility for the proposed opinion, thus maintaining randomness in the distribution of writings for the Court. Draft writings are circulated to all Judges during the Court's Home Chambers session and, after further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next Albany session of the Court.

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

1. Calendar and Currency

In 2001, 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 2000. Also in 2001, the average period from readiness (all papers served and filed) to calendaring was approximately one and one-half months, again about the same as last year. 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 2001 (including SSM appeals tracked to normal course) was 193 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 157 days. Thus, by every measure, the Court maintained its exceptional currency in calendaring and deciding appeals in 2001.

2. Filings

Two hundred eighty-six notices of appeal and orders granting leave to appeal were filed in 2001 (297 were filed in 2000). Two hundred and eighteen filings were civil matters (compared to 229 in 2000), and 68 were criminal matters (the same as in 2000). The Appellate Division Departments issued 37 of the orders granting leave to appeal filed in 2001 (26 were civil, 11 were criminal). Of these orders, the First Department issued 24 (20 civil and 4 criminal).

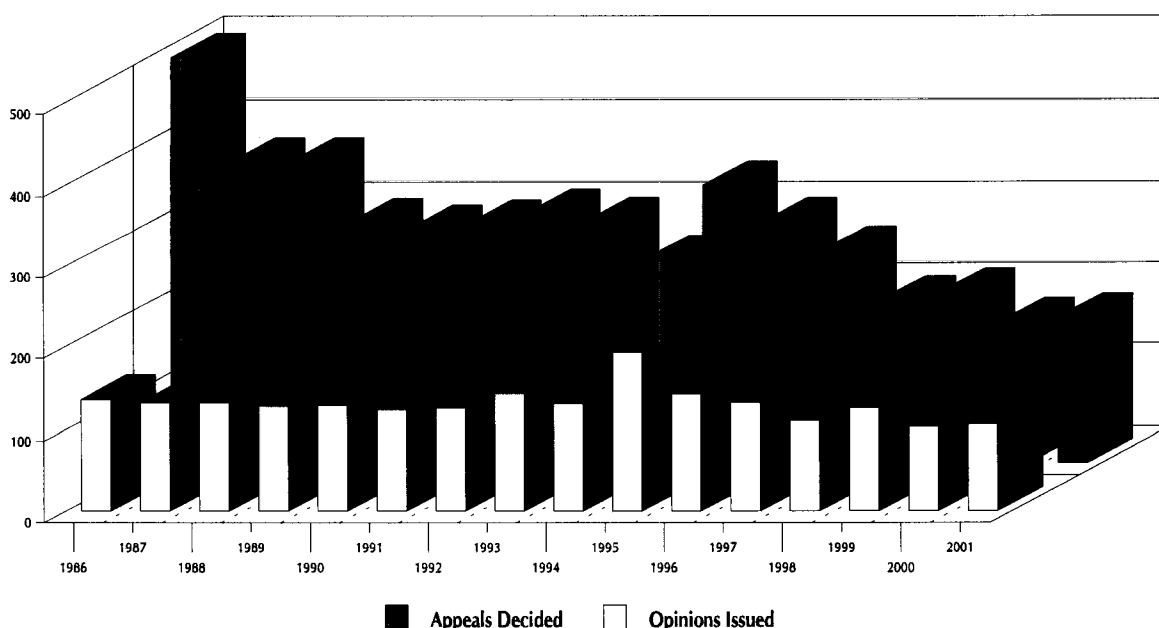
During 2001, 1,439 motions were filed. In 2000, 1,461 motions were filed. Two thousand eight hundred and twenty-seven applications for leave to appeal in criminal cases were assigned to individual Judges of the Court in 2001, 93 fewer than in 2000. On average, the Judges were each assigned 404 such applications during the year.

3. Dispositions

(a) Appeals and Writings

The Court decided 176 appeals in 2001 (134 civil and 42 criminal, compared to 102 civil and 68 criminal in 2000). Of these appeals, 161 were decided unanimously. The Court issued 100 majority opinions, six per curiam opinions and 39 memoranda. Thirteen dissenting opinions and five concurring opinions were written. The chart on the next page tracks appeals decided and majority opinions issued since Laws of 1985, 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

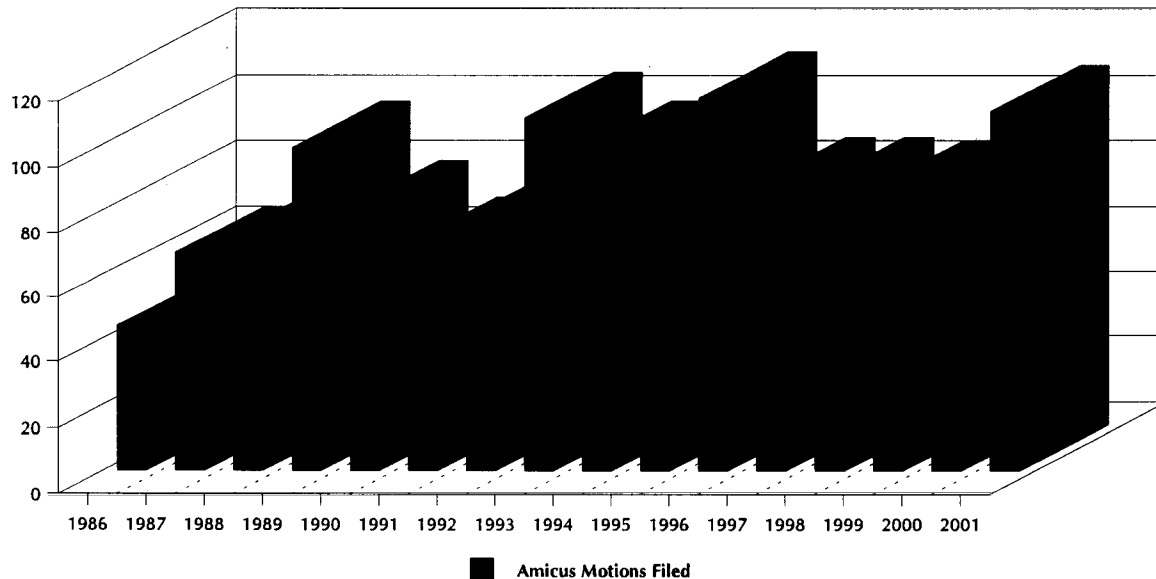
The Court decided 1,474 motions in 2001 -- 81 more than in 2000. Each motion was decided upon submitted papers and an individual Judge's written report, reviewed and voted upon by the full Court. The average period of time from return date to disposition for civil motions for leave to appeal was 58 days, while the average period of time from return date to disposition for all motions was 50 days.

Of the 1,111 motions for leave to appeal in civil cases decided in 2001, the Court granted 6.5% (up from 5% in 2000), denied 74.2% (down from 74.5% in 2000), and dismissed 19.3% (down from 20.5% in 2000) for jurisdictional defects. The 72 grants of civil motions for leave to appeal in 2001 represent a marked increase from the 54 such grants in 2000. As is frequently the case, negligence and insurance matters topped the list of subject categories for motions granted. Reinsurance, exclusions from coverage, and the insurer's obligation to defend were among insurance topics. Negligence issues ranged from whether constructive notice of hazardous lead paint conditions in leased premises could be imputed to landlords to whether an HMO could be vicariously liable for the malpractice of its member physicians.

The 2000 Annual Report noted the Court's concern regarding the substantial decline in motions pursuant to Rule 500.11(e) for amicus curiae relief during 2000. That trend was soundly reversed in 2001, which saw the filing of 110 motions for amicus curiae relief. Ninety-four of

these motions were granted. 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, 1986-2001



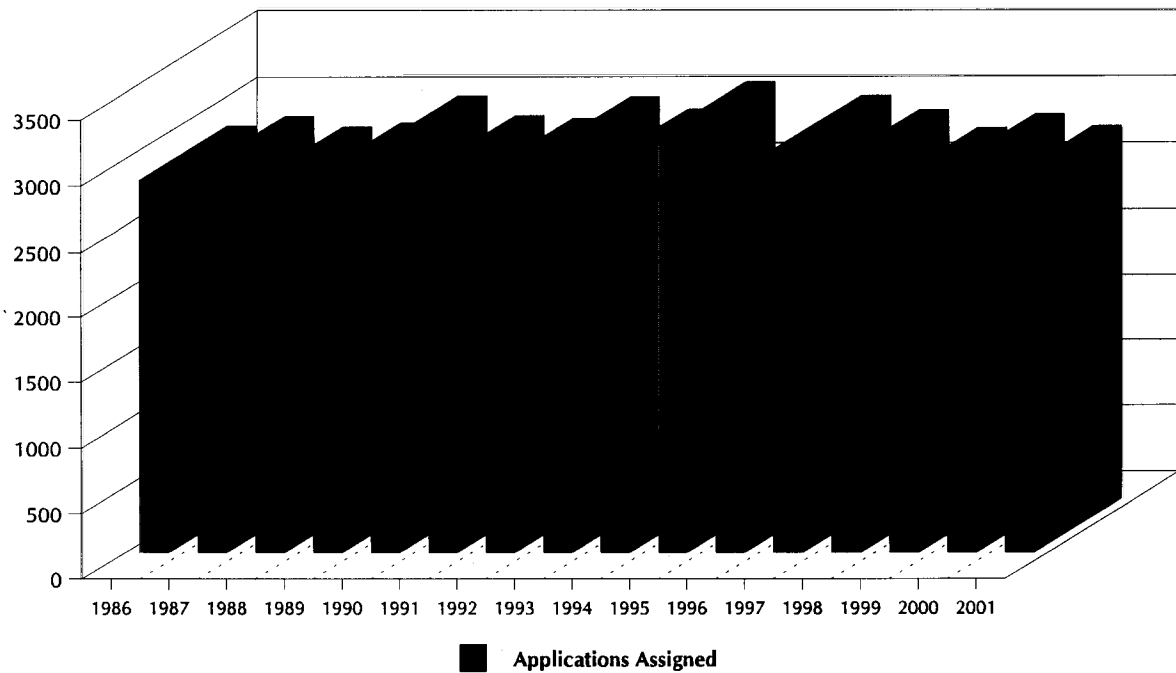
Given that the Court hears the majority of appeals by its own permission, and that the questions presented are usually novel and of Statewide importance, the Court encourages appropriate requests for permission to file amicus curiae submissions.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 43 of the 2,840 applications for leave to appeal in criminal cases decided in 2001 -- a decrease from the 51 granted in 2000. One hundred and eighty-seven applications were dismissed for lack of jurisdiction, and six were withdrawn. Ten of 62 applications filed by the People were granted. The charts on the next page depict the number of criminal leave applications assigned and granted in each of the last sixteen years.

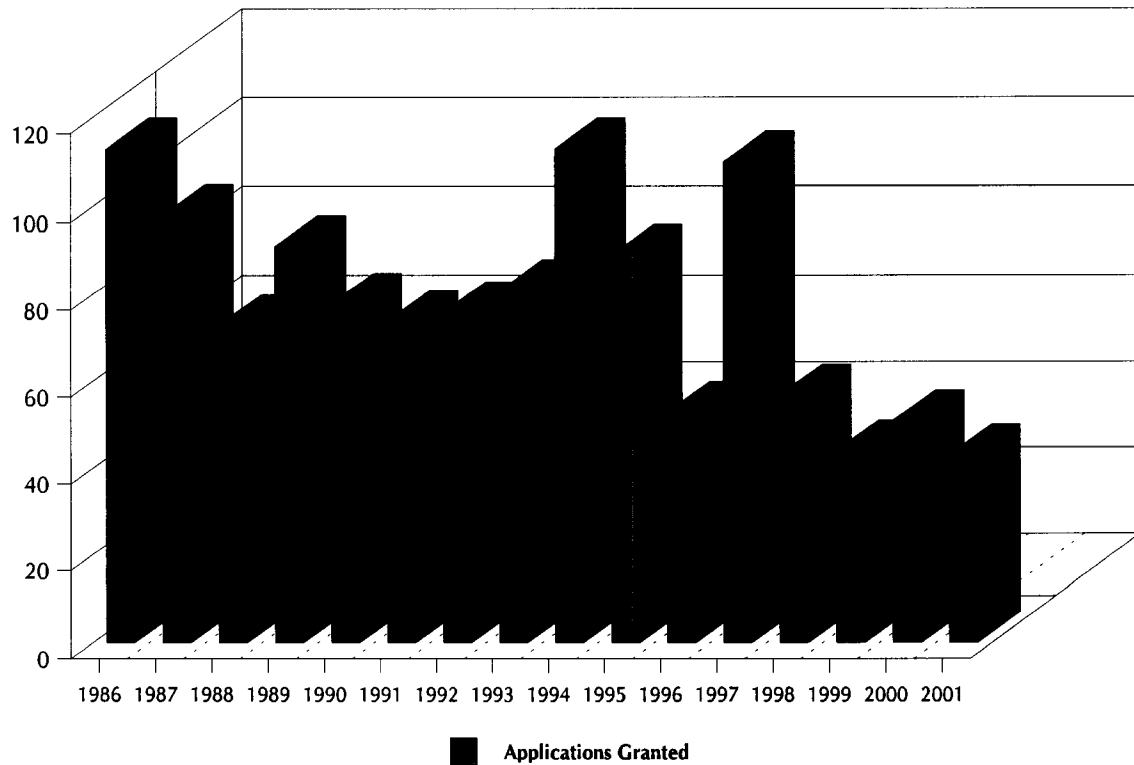
Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court during Home Chambers sessions. In 2001, on average, 68 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments.

Criminal Leave Applications Assigned to Court of Appeals Judges, 1986-2001



Criminal Leave Applications Granted by Court of Appeals Judges, 1986-2001

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 2001, the Court reviewed two determinations of the State Commission on Judicial Conduct. The Court accepted the sanction of removal determined by the Commission in one case and the sanction of censure determined in the other case. The Court ordered three suspensions of Judges with pay.

(e) Rule 500.17 Certifications

In 1985, in the interest of promoting comity and judicial efficiency among court systems,* 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 41 days. The average period from acceptance of a certification to disposition is six months.

*In recent years, as an additional aid to comity and judicial economy, the Chief Judge of the New York Court of Appeals and the Chief Judge of the Court of Appeals for the Second Circuit reactivated the New York State-Federal Judicial Council. Chaired by Associate Judge Howard A. Levine, the Council addresses issues of mutual concern, and has sponsored a number of educational programs. During 2001, the Council presented a Continuing Legal Education program at Fordham Law School titled "A Tale of Two Systems: The State and Federal Courts in New York: Current Issues Concerning Expert Testimony." The Council also sponsored a program for State and Federal trial and appellate judges titled "Post-conviction Review: Two Sides of the Street." Judge Levine and the Deputy Clerk developed, and participated in presenting, the State portion of this program.

Seven cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2000. In 2001, the Court accepted five cases involving questions certified by that court. Of these, two cases remained pending at the end of 2001. In all, the Court disposed of ten cases involving certified questions in 2001. The Court answered questions certified in nine cases. In one of these, the Court declined to answer, as unnecessary, one of the two questions certified (see Shaffer v Schenectady City School Dist., 96 NY2d 271). After tracking the tenth case to Rule 500.4 review, the Court determined that the certified question should not be answered, given the circumstances of the case. Due to a change in legal position by the defendant, the question no longer presented a live controversy (see Gelb v Board of Elections of the City of New York, 96 NY2d 748).

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 2001, 91 appeals were subject to Rule 500.3 inquiry, and all but six were withdrawn, dismissed sua sponte or on motion, or transferred to the Appellate Division (nine 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 286 appeals filed in 2001, 29 (10.1%) were initially selected to receive sua sponte merits consideration. Of the 176 appeals decided in 2001, 15 (8.5%) were decided upon SSM review.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the external disposition of an SSM decided in 2001 was 139 days. This compares with an average of 193 days for appeals heard in the normal course.

Seven of the 29 appeals selected in 2001 for SSM consideration were pending administratively at the end of the year. Four were administratively normal-coursed at the direction of the Clerk. The remaining 18 were submitted to the Court for review. In addition to these 18 appeals, three appeals, initially selected in 2000 for SSM consideration but still pending administratively as of December 31, 2000, were assigned to the Court in 2001. Thus, 21 SSM appeals -- four criminal cases and 17 civil cases -- were assigned to the Court for SSM consideration in 2001. Fifteen (71.4%) of the 21 appeals assigned as SSMs in 2001 were decided on an SSM basis. Two (9.5%) were directed to full briefing and oral argument, and four (19.1%) SSMs assigned in 2001 remained pending on December 31, 2001.

Of the 15 appeals decided on SSM submissions in 2001, 13 were decided in memoranda and two were decided in decision list entries. All 15 decisions were unanimous. There were six affirmances, six reversals, two modifications and one determination not to answer a Rule 500.17 certified question.

D. Court Rules

The Court did not amend its Rules during 2001.

II. Administrative Functions and Accomplishments

A. Court of Appeals Hall

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

During 2001, the Clerk, Deputy Clerk, Building Manager and Deputy Building Superintendent met regularly with the design development team to plan the project. The Judges of the Court and all department heads participated in the development of the design plan. Also in anticipation of this project, the Principal Court Analyst and members of the Building Manager's staff completed an inventory of all furniture and equipment in Court of Appeals Hall during 2001. Construction began in earnest in November 2001, and is expected to conclude in 2003. Although the Court staff will move to temporary quarters during 2002, the Courtroom will remain open for oral argument throughout the construction process.

B. Case Management

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

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

C. Public Information

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

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

During 2001, the Public Information Officer arranged with Albany Law School's Government Law Center and with the local public television station, WMHT, to ensure continued videotaping of oral arguments before the Court and preservation of the tapes for legal, educational and historical research. Videotapes of all arguments in the archive, including previously unavailable tapes from April 1998 through December 2001, can now be ordered from the Government Law Center by calling (518) 445-2329.

The Court's Internet web site averaged nearly 15,000 hits per month during the year. The comprehensive web site posts information about the Court, its Judges, history and other news, as well as more than a year's worth of Court of Appeals decisions. The latest decisions are posted within minutes after their official release. The web site provides helpful information about the Court's practice -- including its Rules, civil and criminal jurisdictional outlines, session calendars, and a form for use by pro se litigants -- and it provides links to other judiciary-related web sites. The text and webcast of Chief Judge Kaye's 2002 State of the Judiciary address is posted on the home page, and the text of prior speeches can be reached through the "Court News" link. The web site address is: <http://www.courts.state.ny.us/ctapps>.

D. Office for Professional Matters

The Court Attorney for Professional Matters manages the Office for Professional Matters, supported by a secretary. The office has access, via computer terminal, to information on each attorney admitted to practice in the State. The Court's records complement the official registry of attorneys maintained by the Office of Court Administration, which answers public inquiries about the status of attorneys. The Office prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship. Additionally, the Court Attorney for Professional Matters drafts preliminary 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. The Court did not amend any of these Rules in 2001.

The number of petitions for waiver of the Rules for Admission continued its dramatic decrease since 1998. This decrease can be attributed 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 its internal database, created in 1998 for archiving and reviewing filed petitions for waiver of the Court's Rules of Admission, and to update the database and complementary manuals also created in 1998 to facilitate work on 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 at the State Bar Center in November 2000. The Court Attorney and her secretary participated in preparing the 1,024-page transcription of the Convocation for both the Institute's internal use and its Journal of Proceedings, published in Fall 2001.

The Court Attorney for Professional Matters continues to serve on the New York State Bar Association's Committee on Legal Education and Admission to the Bar. Additionally, in 2001 the Court Attorney for Professional Matters was selected to serve on the State Bar's Special Committee on Multi-Jurisdictional Practice.

E. Central Legal Research Staff

Under the supervision of individual Judges and the Clerk of the Court, the Central Legal Research Staff prepares draft reports on motions (predominantly motions for leave to appeal in civil cases), certified questions and selected appeals for the full Court's review and deliberation. During 2001, Central Staff attorneys completed 1,128 motion reports, 81 SSD reports, five certified question reports and 12 SSM reports. Throughout 2001, 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 2001, under the supervision of the then-Deputy Chief Court Attorney, Central Staff again revised and updated the civil practice jurisdictional outline for both internal and external use. The former Deputy Chief Court Attorney also revised a document collecting entries used in motion and SSD dispositions.

Attorneys usually join the Central Legal Research Staff directly following law school graduation. In 2001, staff attorneys represented Albany, Brooklyn, SUNY at Buffalo, Cornell, Harvard, Hofstra, New York, New York University, CUNY at Queens, Pace, Syracuse and Touro law schools. Staff attorneys hired for 2002 will represent Albany, Brooklyn, SUNY at Buffalo, Miami and Touro law schools.

F. Library

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

Collection development in the Conference Room library and in the Home Chambers libraries continued throughout 2001. Newly-published works falling within the Court's collection development policy were acquired, replacing seldom-used and superseded materials. Current Awareness Bulletins listing the contents of recent law reviews were issued each session, and the Election Law Digest was updated and distributed prior to the Election Session.

The creation of specialized full-text databases has allowed desktop access to the vast collection of the Court's internal documents. In 2001, the library staff continued to maintain and augment the 21 in-house ISYS databases. Other ISYS databases are in the planning stage. A major achievement during 2001 was the successful transitioning of the ISYS databases from a network application to a web-based system. Also successful was the electronic imaging of all Bill Jackets acquired by the Court in the past ten years. These Bill Jacket files are added to ISYS:web, transmitted to the Law Reporting Bureau for its internal use and transmitted to Office of Court Administration for inclusion in its LION information system. The library staff similarly facilitates the work of the Law Reporting Bureau on the opinions of the Court. As each decision list is released, the library staff merges documents from several in-house databases, adds these documents to the ISYS Reports database and transmits them electronically to Law Reporting Bureau legal editors.

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

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 2001. At the request of the State Library, the Court continued to ship the depository copy of records and briefs to CRS, Inc., which creates a microfiche copy of each document. This program facilitates widespread dissemination of the Court's records and briefs and fulfills a disaster preparedness function for the Court, the State Library and the Archives.

In 2001, the library staff created a Corel Presentation program on "Constitutional, Statutory and Regulatory Intent and Common Law Derivation." The Chief Legal Reference Attorney also developed a one-hour interactive presentation on "ISYS:web Databases." These

programs, certified under the Office of Court Administration's Continuing Legal Education (CLE) regulations, were offered to Judges' law clerks and Clerk's Office attorneys in September 2001. The Chief Legal Reference Attorney also coordinated Lexis and Westlaw CLE training in Court of Appeals Hall.

In 2001, the Chief Legal Reference Attorney served on the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System, was appointed to the Court's CLE Committee, and was elected to the Board of the American Association of Law Libraries of Upstate New York.

G. Continuing Legal Education Committee

In April 1999, the Court created a Continuing Legal Education (CLE) Committee to coordinate professional training, under the auspices of the Office of Court Administration, for Court of Appeals and Law Reporting Bureau attorneys. In 2001, the membership of the original Committee changed when the terms of the Chief Motion Clerk and the Court Attorney for Professional Matters expired. The current Committee is chaired by a Principal Court Attorney on the Central Legal Research Staff. Other members include Judges' law clerks, the Chief Court Attorney, the Chief Legal Reference Attorney and a Senior Legal Editor from the Law Reporting Bureau. Initially organized and administered by the secretary to the Office for Professional Matters, a Central Legal Research Staff secretary now manages the Committee's CLE schedule and notifies staff of classes to be held. The secretary also completes paperwork necessary to insure that the rules of the Office of Court Administration and its 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 2001, the CLE Committee provided both live and video presentations to Court of Appeals lawyers, including Judges' law clerks, Clerk's Office attorneys and attorneys from the Law Reporting Bureau. Many of these attorneys taught accredited CLE classes. Chief Judge Kaye presented a class on Certified Questions and Associate Judge Rosenblatt conducted a legal writing course. The Committee also organized classes in ethics, legal research, capital appeals, criminal law and procedure, civil practice and other topics specially geared toward the work of Court of Appeals attorneys. In all, the Committee offered 22 courses, covering 29.5 CLE credit hours.

H. Management and Operations

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

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

I. Budget and Finance

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

1. Expenditures

The work of the Court and all its ancillary agencies was performed within the 2001-2002 fiscal year budget appropriation of \$12,725,244. This figure included all judicial and nonjudicial staff salaries (personal services costs) and all other cost factors (non-personal services costs), including in-house maintenance of Court of Appeals Hall.

2. Budget Requests

The total request for fiscal year 2002-2003 for the Court and its ancillary agencies is \$13,138,335, an increase of 3.2 percent over the current year's appropriation. The 2002-2003 personal services request of \$10,845,231 reflects an increase of \$748,278, or 7.4%, over the current year's appropriation. This request includes funding for all judicial and nonjudicial positions as well as funding for salary increases for all eligible nonjudicial employees in accordance with collective bargaining contracts and administrative provisions, temporary services and overtime services. In addition, the request includes annualization costs for new positions approved and partially funded in the personal services request for fiscal year 2001-2002. Thus, the personal services request of \$10,845,231 includes adjustments in personal services regular (\$994,975) and personal services temporary (-\$246,697).

The 2002-2003 non-personal services request of \$2,293,104 reflects a decrease of \$335,187, or 12.8% less than the current year's adjusted appropriation. The requested

nonpersonal services appropriation of \$2,293,104 includes adjustments in Travel (\$36,461), Court Administration (\$14,235) and Building Maintenance Operations (\$6,816) and decreases in Legal Reference (-\$157,343) due to a new fee structure for automated legal research and in the Law Reporting Bureau's requested appropriation (-\$235,356) reflecting contractual changes in printing expense.

The modest increase in the budget request for fiscal year 2002-2003 illustrates the Court's diligent attempt to perform its functions and those of its ancillary agencies economically and efficiently. The Court will continue to maximize opportunities for savings to limit increases in future budget requests.

3. Revenues

In calendar year 2001, the Court reported filing fees of \$250 for each of 84 civil appeals. The \$21,000 realized was reported to the State Treasury, Office of the State Comptroller and Office of Court Administration pursuant to the Court Facilities Legislation (L 1987, ch 825). Additional revenues were realized through the slip opinion distribution service (\$10,710) and miscellaneous collections (\$8,254.12). For calendar year 2001, revenue collections totaled \$39,964.12.

J. 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. The IS Department maintains the Court of Appeals Internet web site which offers immediate access to the latest decisions handed down by the Court and other pertinent information of interest to the public (<http://www.courts.state.ny.us/ctapps>). In cooperation with the Office of Court Administration (OCA) Information Technology staff, the Department successfully facilitated the second, live Internet webcast of Chief Judge Kaye's "2001 State of the Judiciary" address, with a question and answer session available via the web site the following day.

Also in 2001, the IS Department redesigned the Court of Appeals Intranet pages, adding many new pages and features. The Intranet dispenses a wide variety of current work-related information to employees, including the Court calendar, research databases, human resources material, forms, Court news, phone lists, and directories. The Court's Intranet is not available to the public.

The IS Department provides a Help Desk for computer technical support. Approximately 500 Help Desk calls are answered each year. Training for new software and hardware is provided as needed. Additional technical support is available to employees on the Intranet. During 2001, the IS Department continued its successful "House Calls to Home Chambers"

program of scheduled maintenance visits to the six Judges' Chambers located outside Albany. The staff made 22 separate visits, updating computers, printers, network equipment and software located in the Home Chambers, and setting up new workstations for new capital appeals clerks. There was one emergency visit due to water damage, and another to set up temporary Chambers following the September 11th tragedy. All other visits were routine.

Due to obsolescence, many of the Court's older computers required substantial hardware replacement and upgrade activity. All laptops used by Judges and their staffs and older desktop models used by many Clerk's Office staff were replaced with Office of Court Administration-specified models. Software was upgraded to Windows 2000 and WordPerfect 9. In all, 33 laptops and 25 desktop systems were replaced. The old equipment was recycled to other locations within OCA.

Finally, the IS Department developed technical standards for vendors bidding on the OCA contract to reproduce capital records on appeal in searchable form on CD-ROM. The huge volume of paper produced in capital cases makes this technology essential for efficient dissemination to, and use of the information by, the Judges and their staffs.

K. Security Services

Supervised by the Chief Security Attendant, four Security Attendants performed a variety of functions, including screening all visitors, mail and packages entering Court of Appeals Hall, and conducting regular patrols of the Courthouse and its immediate surroundings. During 2001, Security Unit members participated in various security training sessions, including evasive driving techniques and firearms requalification. Additionally, during 2001, supervision of the Court's Building Guards was transferred to the Chief Security Attendant, and the Building Guards received mandatory security guard training.

The Clerk acknowledges, with appreciation, the high professionalism of the State Police investigators assigned to Court of Appeals Hall during 2001.

L. Fire and Safety

The Fire and Safety Committee continued to monitor building safety requirements throughout the year. In addition to conducting a successful fire drill, the Committee arranged for 11 staff members to receive CPR recertification. Security attendants maintain first aid equipment and a cardiac automatic external defibrillator for the protection of staff and visitors, and are trained to administer emergency first aid to ill or injured staff or visitors.

M. Personnel

The Court was deeply touched by the death, on December 3, 2001, of Ralph Sanderson, Assistant Building Superintendent, and again offers its condolences to his wife, Deborah, his sons Christopher and Alexander, and all his family.

The following personnel changes occurred during 2001:

APPOINTMENTS:

Nicholas M. Natalizio was employed as Security Attendant, Court of Appeals in May 2001.

Michael A. O'Connor was employed as Court Building Guard in August 2001.

Andrea R. Ignazio was employed as Clerical Research Aide, Court of Appeals in November 2001.

PROMOTIONS AND TRANSFERS:

Rosemarie Fitzpatrick was promoted to Assistant Secretary to the Chief Judge in March 2001.

Vivian Ali was promoted to Principal Stenographer in June 2001.

Lisa Herriman was promoted to Principal Stenographer in June 2001.

Laurence Farrell was promoted to Senior Security Attendant in August 2001.

Matthew L. Gerber was promoted to Senior Security Attendant in August 2001.

Travis R. Moore was promoted to Senior Security Attendant in August 2001.

Randy A. Bohannon was promoted to Senior Court Building Guard in November 2001.

William E. Donnelly was promoted to Principal Custodial Aide in November 2001.

John M. Dragonette was promoted to Senior Court Building Guard in November 2001.

Concetta J. MacPhee was promoted to Principal Assistant Building Superintendent in November 2001.

Joseph J. Maier, Sr. was promoted to Principal Custodial Aide in November 2001.

Tammy L. Merrill was promoted to Principal Custodial Aide in November 2001.

Joseph J. Muller was promoted to Assistant Building Superintendent I in November 2001.

Paul J. Paglia was promoted to Senior Court Building Guard in November 2001.

Francis W. Pepper was promoted to Principal Custodial Aide in November 2001.

Carmela Ragonese was promoted to Senior Custodial Aide in November 2001.

Tina Ravida was promoted to Senior Custodial Aide in November 2001.

Ralph W. Sanderson was promoted to Assistant Building Superintendent I in November 2001.

Theodore J. Shufelt Sr. was promoted to Assistant Building Superintendent I in November 2001.

Robert Somerville was promoted to Senior Court Building Guard in November 2001.

Joseph R. Torre was promoted to Senior Court Building Guard in November 2001.

RETIREMENTS:

Ann M. Welch, Custodial Aide, retired on October 13, 2001, after 20 years and seven months of service.

Mary Ellen Cadalso, Secretary to Court of Appeals, retired on December 6, 2001, after 35 years and nine months of service.

RESIGNATIONS:

James R. Morrissey, Jr., Security Attendant, resigned on March 28, 2001.

Lisa M. Connelly, Principal Court Attorney, resigned on November 17, 2001.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Hope B. Engel was appointed Deputy Chief Court Attorney in July 2001, while retaining her position as Court Attorney for Professional Matters. Terrence James Cortelli, Heather A. Davis, Beth A. Diebel, Molly Graver, Emily Morales, Sean D. Ronan and Gabriel Torres were appointed Court Attorneys in August 2001.

PROMOTIONS:

Elizabeth Brace Cambria, Margery Corbin Eddy, Malcolm P. LaVergne and Meredith R. Miller were promoted from Court Attorney to Senior Court Attorney in August 2001. Jesse Ashdown, Matthew S. Lerner and David W. Novak were promoted from Senior Court Attorney to Principal Court Attorney in August 2001.

COMPLETION OF CLERKSHIP:

Deputy Chief Court Attorney James T. McClymonds completed his tenure in August 2001, having served on Central Staff for eight years. Senior Court Attorney Wendy E. Deer completed her clerkship in July 2001. Senior Court Attorneys Jenny L. Chung and Ronald S. Lanza, and Principal Court Attorney Leah Soule Amyot, completed their clerkships in August 2001. Principal Court Attorney Jesse Ashdown and Court Attorney Gabriel Torres completed their clerkships in December 2001. James T. McClymonds and Leah Soule Amyot are now Principal Law Clerks to Judge Levine. Gabriel Torres is now Law Clerk to Judge Rosenblatt.

RESIGNATIONS:

Pavani Yalamanchili, Court Attorney, resigned in May 2001.

ACKNOWLEDGMENT

Each year, the members of the Clerk's Office staff contribute to the production of this Report by providing numerical data, narrative reports, and editing and proofreading services. I thank all of them, and mention specially Andrea Ignazio, who compiled many of the detailed appendices, Paul McGrath, Hope Engel and Rosemarie Fitzpatrick, who provided proofreading services, Marjorie McCoy, whose editorial work was invaluable, and William Fitzpatrick, who oversaw production.

I acknowledge the retirement of Mary Ellen Cadalso, Secretary to the Court of Appeals, after nearly 36 years of service. Mary Ellen worked in many capacities and many locations during those years, including for Chief Judge Wachtler, Associate Judges Scileppi, Burke and Rabin, and for me. Mary Ellen played a major role in the yearly preparation of the Clerk's Annual Report. She was a loyal and skilled public servant who is missed by all.

Throughout 2001, and in the face of many new challenges, the Clerk's Office staff and the Building Manager's staff worked to assure the efficient and courteous running of the Court of Appeals. I thank each staff member for providing the Judges of the Court, the Bar and the public exemplary service. A complete list of nonjudicial personnel appears in Appendix 11.

III. 2001: Year in Review

This section presents a sampling of significant decisions the Court of Appeals handed down in 2001, highlighting the range of constitutional, statutory and common law issues that reach the Court each year.

State Constitution

Matter of Aliessa v Novella (96 NY2d 418)

In response to Federal welfare reform, the State Legislature enacted Social Services Law § 122, which terminated State-funded Medicaid payments for certain non-citizens permanently residing in the United States under color of law. Holding that "care for the needy is not a matter of legislative grace [but] constitutional mandate," the Court of Appeals struck down the statute as unconstitutional under the Welfare Clause of the State Constitution (Art XVII, § 1), because it imposed an overly burdensome eligibility requirement having nothing to do with need. The Court also held that the statute violated the Equal Protection Clauses of both the Federal and State Constitutions because the statute denied State Medicaid benefits to otherwise eligible persons based on their status as aliens.

People v Robinson (___ NY2d __; 2001 N.Y. Slip Op. 10091)

The Court of Appeals determined that New York would follow decision of the Supreme Court of the United States in Whren v United States (517 US 806), which held that a police officer having probable cause to believe that a traffic infraction had occurred could stop the driver of an automobile even though the officer's real motivation for the stop was to investigate some other matter. The Court stated: "In making that determination of probable cause, neither the primary motivation of the officer nor a determination of what a reasonable traffic officer would have done under the circumstances is relevant." In instances where police action is considered arbitrary and unconstitutional, the Court noted, a cause of action exists under the Equal Protection Clause and the Search and Seizure Clause of the State Constitution (Art I, § 11; Art I, § 12) (see People v Brown, 89 NY2d 172).

Government

Silver v Pataki (96 NY2d 532)

Mr. Silver, as Member and Speaker of the Assembly, brought this action against the Governor, challenging specific exercises of the Governor's line-item veto power in "non-appropriation" bills. The Court was called upon to determine only the threshold issue whether a legislator has the capacity and standing to bring such an action. The Court held that, as a Member of the Assembly, plaintiff has the capacity to sue because his responsibility as a

legislator necessarily includes a continuing concern for protecting the integrity of his votes and, thus, implies the power to challenge in court the effectiveness of a vote that was allegedly unconstitutionally nullified. However, no special capacity to sue is accorded by the plaintiff's status as Speaker; none of his specific responsibilities is broad enough to confer the implied authority to seek judicial review on behalf of the Assembly as a whole. Finally, the Court concluded that the alleged unconstitutional nullification of plaintiff's vote with the legislative majority was a concrete and particularized injury in fact sufficient to confer standing; it was not simply a lost political battle. The Court noted that the budgetary process is not always beyond the realm of judicial consideration and, in limited circumstances, the capacity and standing of an individual legislator to seek judicial redress is essential to protect the separation of powers.

Death Penalty

People v Edwards (96 NY2d 445)

At issue was the validity of a guilty plea entered pursuant to the plea provisions of New York's death penalty statute. After defendant's plea had been entered but before sentencing, this Court decided in Matter of Hynes v Tomei (92 NY2d 613, cert denied 527 US 1015) that the plea provisions created a two-tier penalty structure that impermissibly burdened capital defendants' Fifth and Sixth Amendment rights. The Court upheld defendant's plea, concluding that the plea was not rendered invalid merely because Hynes subsequently demonstrated that it rested on a faulty premise. In addition, the Court ruled that the infirmity identified in Hynes, standing alone, does not render invalid an otherwise valid guilty plea.

Matter of New York State Assn. of Criminal Defense Lawyers v Kaye (96 NY2d 512)

This CPLR article 78 proceeding sought to invalidate an administrative order of the Court of Appeals, issued pursuant to Judiciary Law § 35-b (5), reducing the rates of compensation for assigned counsel in capital cases. In an earlier opinion (95 NY2d 556), this Court had denied petitioners' motion to disqualify from determination of the appeal those Judges who had participated in the underlying administrative decision. Here, on the appeal from that administrative order, the Court assumed, without deciding, that the parties had standing to challenge the Court's order. On the merits, the Court determined that the Legislature delegated the ultimate rulemaking authority for capital counsel fee rates to the Court of Appeals, not the Departmental Screening Panels. Hence, the Court possessed the requisite authority to revise downward the First Department fee schedule, notwithstanding that its Departmental Screening Panel had deadlocked on a recommendation to the Court. The Court concluded, further, that its overall reduction of capital counsel fees was not arbitrary and capricious or inconsistent with legislative intent.

Human Rights

Levin v Yeshiva Univ. (96 NY2d 484)

Plaintiffs brought an action under the State and New York City Human Rights Laws claiming that defendant university's policy of offering housing priorities to married students discriminated on the basis of marital status and had a disparate impact on lesbians and gay men. Unlike its State counterpart, the New York City Human Rights Law prohibits housing policies or practices that have a disparate impact on the basis of sexual orientation. Analyzing the disparate impact doctrine as articulated in a series of Supreme Court of the United States decisions, the Court held that although the lower courts were correct that no violation of the State law's prohibition against marital status discrimination had occurred, plaintiffs had sufficiently pleaded a prima facie case of disparate impact under the City law.

Civil Procedure

Rangolan v County of Nassau (96 NY2d 42)

Under CPLR article 16, a joint tortfeasor's liability for noneconomic losses is limited to its proportionate share, provided that the tortfeasor is 50% or less at fault. The issue here, as certified by the United States Court of Appeals for the Second Circuit, was whether CPLR 1602(2)(iv) precludes apportionment where a joint tortfeasor's liability arises from a breach of a nondelegable duty. Giving effect to all the language of the statute, the Court held that CPLR 1602(2)(iv) is not an exception to apportionment under article 16, but a savings provision that preserves principles of vicarious liability. The provision ensures that a defendant is liable to the same extent as its delegate or employee, and that article 16 does not alter this liability. To construe the statute otherwise would undermine the legislative intent to benefit low-fault, "deep pocket" defendants by imposing joint and several liability whenever a defendant's liability is based on a nondelegable duty or respondeat superior.

Viruet v City of New York (97 NY2d 171)

The Court of Appeals ruled that plaintiffs could provide notice of intent to commence a personal injury action against The New York City Health and Hospitals Corporation (HHC) by serving a notice of claim upon the Corporation Counsel of the City of New York, rather than upon an officer or director of HHC.

Leader v Maroney, Ponzini & Spencer; Scarabaggio v Olympia & York Estates Co.; Hafkin v North Shore Univ. Hosp. (97 NY2d 95)

In this trio of cases, the Court was asked to determine the standards by which a court may exercise its discretion to extend a plaintiff's time to effectuate service pursuant to CPLR 306-b, which provides that an extension may be granted "upon good cause shown or in the interest of justice." The plaintiff in each of these cases attempted to rely on the interest of justice provision. Reviewing the plain language of the statute and the legislative history, the Court held that, unlike an extension request premised on good cause, a plaintiff need not establish reasonably diligent efforts at service as a threshold matter under the interest of justice standard. To hold otherwise,

the Court reasoned, would effectively merge the two separate standards into one. Courts may consider, however, a plaintiff's diligence in service along with any other relevant factor in making their interest of justice determinations, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of the extension request, and any prejudice to defendant. The Court concluded that the Appellate Division in all three cases applied the correct legal standard and did not abuse its discretion.

Buechel v Bain (___ NY2d __; 2001 N.Y. Slip Op. 10340)

The Court of Appeals held that two former partners in a law firm were barred by the doctrine of collateral estoppel from relitigating the validity of a fee arrangement determined illegal in an earlier action. In that earlier action, between the third partner and two inventors of prosthetic devices, the trial court had invalidated the fee arrangement. The Court ruled that the plaintiffs were in privity with that former partner and could not sit by idly while the fee agreement was under attack.

Criminal Law and Procedure

People v Kassebaum (95 NY2d 611)

Exploring the bounds of New York's territorial jurisdiction over the prosecution of criminal conduct under CPL 20.20, this Court held that a defendant who was offered a quantity of heroin and tested samples of the narcotic in a neighboring state was properly prosecuted in New York for attempted possession of a controlled substance in the first degree based on the significant conduct that occurred in this state. Defendant and the codefendants, who were all New York residents, were in New York when they raised the courier fee and formulated the plan to travel to Massachusetts to obtain more than seven pounds of heroin, with the intent to return to New York with the drugs and sell them in this state.

People v Stokes (95 NY2d 633)

Appellate counsel assigned to represent an indigent defendant requested to be relieved of the assignment on the ground that defendant's appeal was wholly frivolous. Under the Court's precedents, a request for permission to withdraw from representation on the ground that the appeal is frivolous must be accompanied by a brief addressing all issues appearing in the record that might possibly support the appeal. The Court determined that appellate counsel's six page, no-merit brief was not sufficient because counsel failed to raise and discuss at least three clearly arguable issues regarding trial error. Further, the brief contained numerous factual errors and applied the incorrect legal standard on the issues raised. Under these circumstances, the Court determined that rather than advocate on all potential grounds for reversal, counsel had improperly assumed the role of an advisor to the Court on the merits of the appeal and, thus, denied defendant effective assistance of counsel on the appeal.

People v Prescott (95 NY2d 655)

On a November night in 1998, the defendant, who was visibly inebriated, got into a neighbor's truck (unbeknownst to the neighbor) and attempted to start the vehicle. When

confronted by the neighbor, the defendant indicated that he had wanted to use the neighbor's truck to pull his own vehicle out of a nearby ditch. The defendant was charged with numerous offenses, including attempted driving while intoxicated and attempted aggravated unlicensed operation of a motor vehicle in the first degree. This Court concluded that although the criminal activities of driving while intoxicated and aggravated unlicensed operation appear to fit within the parameters of precedent allowing for recognition of the "attempt" of those crimes, based on the comprehensive nature of article 31 of the Vehicle and Traffic Law (VTL) it appeared that the Legislature did not contemplate criminal liability for attempted drunk driving. The VTL imposed specific penalties for offenses committed under article 31. Indeed, the Court found it difficult to ascertain what punishment could be imposed for the crime of attempted driving while intoxicated as the VTL did not provide for it. The Court noted that New York courts had long recognized an expansive definition of operation which permitted the attachment of criminal liability under the VTL to activity that was "close" to driving. Given this broad definition, it was understandable that the Legislature did not see the need to expand penal sanctions to include attempted drunk driving. For the same reasons, the Court concluded there could be no offense of attempted aggravated unlicensed operation of a motor vehicle in the first degree.

People v Brown (96 NY2d 80)

Police obtained a search warrant authorizing them to search for four specified items in addition to "any other property the possession of which would be considered contraband." While conducting the search, the officers found unregistered weapons for which defendant was charged. He sought suppression, arguing that the warrant authorizing the search was unconstitutional in that the "any other property" provision did not "particularly describ[e] the * * * things to be seized." The Court of Appeals held that the challenged provision violated the Fourth Amendment's particularity requirement, but could be severed from the remainder of the warrant. Accordingly, the entire search was not rendered invalid by the portion of the warrant that authorized a search for other undescribed contraband. The Court further held that the weapons need not be suppressed, as they were in plain view during the search for the four enumerated items.

People v Besser (96 NY2d 136)

This case represents the first decision of this Court interpreting the 1986 Organized Crime Control Act which created the crime of enterprise corruption in New York. The Court clarified the application of New York's statutory accomplice corroboration rule (CPL 60.22[1]) in an enterprise corruption prosecution, holding that separate corroboration of each pattern act underlying the enterprise corruption charge was not required, and accomplice testimony was sufficiently corroborated if independent evidence tended to connect defendants to the enterprise corruption offense as a whole.

People v Lee (96 NY2d 157)

Revisiting an issue it had not addressed for more than a decade, this Court considered the admissibility of expert testimony concerning the reliability of eyewitness identification in a criminal proceeding. Emphasizing that the admissibility and limits of expert testimony in a particular case lie within the sound discretion of the trial court, the Court held that expert

identification testimony should not be summarily excluded but may be admitted if the trial court concludes it would aid the jury in assessing the probative value of the identification evidence presented and is sufficiently accepted within the scientific community.

People v Primo (96 NY2d 351)

Defendant, charged with attempted murder, sought to show that someone else committed the crime. The trial court precluded defendant from introducing evidence that two months after the shooting, someone present at the shooting used the same gun in an unrelated crime. The Court of Appeals held that traditional evidentiary principles govern the admissibility of proof of third-party culpability, and that such proof may be admitted -- even without showing a "clear link" between the third party and the crime -- as long as the evidence is more probative than prejudicial.

People v Arnold (96 NY2d 358)

In this case, the Court of Appeals further defined what it means to be an impartial juror and what steps must be taken to insure that a juror is impartial. During voir dire in a case involving a defendant's assault of his ex-girlfriend, a potential juror volunteered that in college she had studied domestic violence and that serving as a juror in the case might be a problem for her. The Court concluded that it was reversible error to deny defense counsel's motion to excuse the juror without further exploration of her ability to be impartial. Even in the absence of an explicit statement by a potential juror that she could not follow the law and would be unfair, a juror's indication of possible predisposition can only be cured by an unequivocal assurance of impartiality.

People v DePallo (96 NY2d 437)

This case presented the Court the opportunity to clarify a defense attorney's responsibilities when confronted with a client intending to commit perjury. Unable to dissuade his client from testifying falsely, defense counsel disclosed the client's perjury in an ex parte appearance before the trial court. This Court rejected defendant's claim that he was denied the effective assistance of counsel because a defendant has no right to commit perjury and no right to counsel's assistance in the presentation of perjured testimony. The Court held that when an attorney is confronted with this problem at trial, revelation to the court may be a professionally responsible and appropriate response, particularly because the intent to commit a crime is not a protected confidence or secret. The Court determined that the lawyer's actions here properly balanced the duties he owed to the client and to the courts. The Court also held that defendant had no right to be present at the ex parte communication because the subject matter was procedural, in that it simply placed on the record matters that had already occurred.

People v McIntosh (96 NY2d 521)

The Court of Appeals was asked to determine the admissibility of evidence seized from a passenger on a bus after the police boarded his bus in furtherance of a drug interdiction operation and requested that all passengers produce their bus tickets and identification. Holding that the police officers' proffered basis for seeking this information -- that the bus had originated in New York City, a source city for narcotics -- was insufficient to support such an intrusion

under New York common law (see People v DeBour, 40 NY2d 210; People v Hollman, 79 NY2d 181), this Court determined that the subsequent seizure of the contraband from the passenger was unlawful and that the evidence should have been suppressed.

Trusts and Estates

Matter of Estates of Covert (97 NY 68)

A husband shot and killed his wife and, immediately thereafter, took his own life. The executor sought probate of the deceased couple's joint will, which bequeathed property to relatives of both the husband and the wife. The primary issue on this appeal concerned the potential application of the Riggs v Palmer (115 NY 506) doctrine to the testamentary interests of the husband's heirs and distributees. Acknowledging the continued validity of the Riggs doctrine, the Court held that the doctrine was inapplicable to void the gifts to the husband's family. As innocent distributees, the husband's family, which neither participated in nor had knowledge of the murder/suicide, was entitled to recover in accordance with the express terms of the will.

Domestic Relations

Matter of Clara C. v William L. (96 NY2d 244)

Petitioner Clara C. commenced this proceeding seeking a declaration of paternity and increased child support from respondent William L., the putative father of her son. At issue was whether William could invoke Family Court Act § 516 to bar Clara from seeking additional support because the parties had entered into a support agreement approved by Family Court without regard to the child's needs. Relying on the plain language of the statute, the Court concluded that a section 516 agreement is enforceable "only when" a court has reviewed the agreement and determined that adequate support for the child has been made. Because Family Court perfunctorily approved the agreement without any determination as to its adequacy, William could not rely on the agreement to bar the instant proceeding. Having determined that the agreement did not comply with the requirements of section 516, the Court refrained from considering the constitutionality of that section.

Matter of Luna v Dobson (97 NY 178)

Felicita Luna, a New York resident, twice went to the courts of Connecticut requesting a declaration that Dennis Dobson is the father of her child. As a result of a series of missteps by the Connecticut Attorney General, her champion in each matter, both proceedings were dismissed. Luna then brought this paternity action in New York, and the child's putative father sought to invoke one of the Connecticut proceedings as a total bar. Applying the Full Faith and Credit Clause, the Court looked to Connecticut law to determine that the earlier dismissal did not have preclusive effect on Luna's paternity petition. Given Connecticut's strong interest in the identification of a parent-child relationship and the unique nature of proof in that regard, the Court held that in this case -- where no adjudication of paternity occurred because of

governmental missteps -- Connecticut law would have deemed the paternity determination more important than the convenience afforded by finality, and would not have given the disciplinary dismissal preclusive effect. Thus, the Court concluded that Luna and her child deserve their day in court.

Labor Law

Patrolmen's Benevolent Assn. v City of New York (___ NY2d __; 2001 N.Y. Slip Op. 10344)

The Court of Appeals held that chapter 641 of the Laws of 1998, "which allows police and fire unions in any municipality with a local impasse resolution system to take their collective bargaining disputes to PERB," is constitutional. The Court further held that once a police or fire union opts to seek impasse resolution by the Public Employment Relations Board (PERB) and PERB declares an impasse, chapter 641 of the Laws of 1998 gives PERB exclusive jurisdiction to resolve the impasse.

Taxation

Tennessee Gas Pipeline Co. v Urbach (96 NY2d 124)

Tennessee Gas challenged the constitutionality of Tax Law § 189, which recaptures taxes on natural gas from end users in the state who buy gas directly from out-of-state producers and thereby avoid the taxes passed through by in-state utilities in the rates charged to customers under Tax Law §§ 186 and 186-a. The Court held that the import tax was a valid compensatory tax under the Commerce Clause, comparing the statutory scheme to permissible sales and use taxes. However, the Court concluded that the import tax was nevertheless facially unconstitutional because it ran afoul of the internal consistency test for determining "fair apportionment." Here, a double tax burden would be imposed on interstate commerce because the import tax contains no credit for taxes assessed on the purchase of gas out-of-state. The Court also held invalid the Legislature's attempt to include a savings clause in the enactment language providing a credit for any double taxation because that clause improperly required the Court to define the parameters of the credit and the manner in which it would be implemented, in violation of fundamental separation of powers principles.

Torts

Elliott v City of New York (95 NY2d 730)

This action involved a plaintiff who suffered injuries in a fall from bleachers at a New York City high school. The Court addressed whether defendant's violation of a provision of the New York City Administrative Code requiring protective guardrails on bleachers constituted negligence per se or served as some evidence of negligence. In concluding that the trial court erred in granting a directed verdict in favor of plaintiff based on defendant's violation

of the guardrail requirement, this Court held that the Administrative Code provision at issue was a municipal ordinance lacking the force and effect of a State statute and, as a result, the violation constituted only some evidence of negligence such that a directed verdict on liability was not warranted.

Chase Scientific Research v NIA Group; Gugliotta v Apollo Roland Brokerage (96 NY2d 20)

What is the meaning of a "professional?" Plaintiffs brought negligence and breach of contract claims against their insurers for failure to procure adequate insurance coverage. The insurers claimed the actions were time-barred under CPLR 214(6), which applies a three-year statute of limitations to all nonmedical malpractice -- meaning, negligence by a professional. The insurers urged that insurance agents and brokers were "professionals" within the meaning of CPLR 214(6) and, therefore, should have the benefit of the three-year statute instead of the six-year statute applicable to breach of contract actions. The Court of Appeals concluded that insurance agents and brokers were not "professionals" within the ambit of the statute, because they lacked the qualities that commonly exemplified the term: they were not required to engage in extensive specialized education and training; they were not bound by a standard of conduct subject to discipline; and they held no continuing duty to advise, guide or direct a client.

Hamilton v Beretta U.S.A. Corp. (96 NY2d 222)

In this landmark case certified from the United States Court of Appeals for the Second Circuit, plaintiffs sought to hold several handgun manufacturers liable for death or injury caused to persons by illegally obtained handguns. Plaintiffs asserted that the defendants distributed their products negligently so as to create and bolster an illegal, underground gun market. This Court held that, under long-standing precedent, the manufacturers did not owe plaintiffs a general duty to exercise reasonable care in the marketing and distribution of their handguns. The Court reasoned that imposition of such a duty would expose defendants to potentially limitless liability, which should not be imposed without a more tangible showing that the manufacturers were a direct link in the causal chain that resulted in plaintiffs' injuries and that the manufacturers were realistically in a position to prevent the wrongs. The Court also held that no duty could be imposed on any products liability theory. However, the Court stated that the doctrine of negligent entrustment might well support the extension of duty to manufacturers to avoid selling to certain distributors in circumstances where the manufacturer knows or has reason to know those distributors are engaging in substantial sales of guns into the illegal market on a consistent basis -- a showing not made here. No affirmative duty to investigate and identify corrupt dealers exists. Finally, the Court concluded that were liability found to exist, it could not be apportioned among the defendants on a market share basis because guns are not identical, fungible products and manufacturers' marketing techniques are not uniform.

Narducci v Manhasset Bay Assocs.; Capparelli v Zausmer Frisch Assocs. (96 NY2d 259)

These consolidated appeals examined the parameters of Labor Law § 240(1) liability for injuries caused by falling objects at work sites. Plaintiffs were each injured by falling objects, a pane of glass and a light fixture respectively, while working on ladders. Neither fell off the

ladder as a result of being struck. Relying on a line of cases for the proposition that Labor Law § 240(1) liability for falling objects arises only when the falling of the object is related to a significant risk inherent in the relative elevation at which materials or loads must be positioned or secured, the Court held that plaintiffs failed to establish that the objects fell, while they were being hoisted or secured, due to the absence or inadequacy of a safety device of the kind enumerated in the statute. It is not sufficient that a plaintiff establish that he was working at an elevation and that the injury might have been avoided by using a different type of elevating device. The Court determined that the hazard posed by working at an elevation is the danger of falling, while the danger of being struck by a falling object while working on an otherwise safe platform is a different risk arising from different construction practices.

532 Madison Ave. Gourmet Foods v Finlandia Ctr; 5th Ave. Chocolatiere v 540 Acquisition Co.; Goldberg Weprin & Ustin v Tishman Constr. Corp. (96 NY2d 280)

In these New York City construction-related disaster cases, the Court of Appeals was called upon to decide whether businesses in the area could recover from the landowner-tortfeasor for purely economic loss. Finding no satisfactory way geographically to distinguish among those who suffered purely economic loss, and recognizing that the class of such plaintiffs in New York City could hold tens of thousands, the Court limited the scope of the defendants' duty to those who, as a result of the events, suffered either personal injury or property damage. Because every person who maintained a business or residence in the heavily populated areas was exposed to similar economic loss during City-enforced street closure periods, it was also impossible for plaintiffs to establish a private right of action for public nuisance. The economic loss was common to the entire community, and plaintiffs' suffering was greater only in degree, not in kind.

Cantalino v Danner (96 NY2d 391)

Can a dismissal in the interest of justice be a "favorable termination" required for a later malicious prosecution action? The Court of Appeals answered yes. Plaintiff brought a malicious prosecution action against her husband's girlfriend, a police officer, based on an altercation with the girlfriend that led to assault, menacing, criminal weapons possession, criminal mischief and harassment charges against plaintiff. Criminal Court dismissed the charges against plaintiff in the interest of justice, holding that they were groundless, and plaintiff then sued for damages. Defendant argued that a dismissal of charges in the interest of justice cannot be a "favorable termination" of the criminal action. The Court of Appeals reversed and reinstated the malicious prosecution action, concluding that where criminal charges are dismissed in the interest of justice, each case must be carefully reviewed to determine whether the dismissal was inconsistent with the innocence of the accused. In this case, the trial court's finding that the criminal charges against plaintiff were groundless demonstrates that the proceeding was indeed a favorable termination for purposes of a later malicious prosecution claim.

State of New York v Green (96 NY2d 403)

Defendant Village at Lakeside, Inc. owned a trailer park where defendant Vanessa Green leased a trailer pad. Green owned and maintained a 275-gallon kerosene tank which fell, spilling kerosene on the ground. After bearing the cost of the cleanup, the State commenced this

Navigation Law article 12 action seeking, among other things, reimbursement from Lakeside as owner of the property on which the spill occurred. At issue was whether Lakeside was a "discharger" liable for the cleanup costs. While refusing to impose liability based solely on Lakeside's ownership of the land, the Court held that the language of Navigation Law §§ 172(8) and 181(1) was sufficiently broad to impose liability on landowners, such as Lakeside, which have both control over activities occurring on their property and reason to believe that petroleum products will be stored there.

Chapman v Silber; Stover v Robilotto (97 NY2d 9)

Here, the Court examined a widely-used Appellate Division rule requiring that before lead paint poisoning liability could attach, a landlord must first be actually aware that chipped or peeling paint in an apartment contained lead. Observing that such a standard left all plaintiffs except those whose landlords tested for the presence of lead in an impossible situation with respect to notice, the Court reintroduced the concept of constructive notice into such cases. Thus, when a landlord is aware of certain enumerated factors that usually accompany a hazardous lead paint condition, a jury could permissibly conclude that the landlord should have known that the chipped or peeling paint in an apartment contained lead.

Lightman v Flaum (97 NY2d 128)

In this action against two rabbis, plaintiff congregant sought money damages for defendants' alleged improper revelation of marital confidences. The issue before the Court was whether CPLR 4505, an evidentiary provision which renders confidences made to members of the clergy privileged and inadmissible in court in certain circumstances, provides a basis to subject members of the clergy to civil liability for the disclosure of confidential communications. In contrast to the other relationships protected by an evidentiary privilege, such as physician/patient and attorney/client, the Court observed that the relationship between congregant and cleric is not created, defined or regulated by the State. The Court concluded that in enacting CPLR 4505 the Legislature did not intend to impose upon clerics a fiduciary duty giving rise to civil liability. Moreover, the Court opined that such an extension of CPLR 4505 would have grave First Amendment implications as it would necessitate the introduction in court of evidence concerning the correct interpretation or application of religious requirements and place fact-finders in the inappropriate role of deciding whether a cleric violated religious law in disclosing the confidences.

Alston v State of New York (97 NY2d 159)

The Court of Appeals was asked to determine whether the State retained its sovereign immunity as to claims brought under the Fair Labor Standards Act of 1938 (FLSA) because those claims were not filed within the time limitations of Court of Claims Act § 10(6). The Court concluded that New York's conditioning of its waiver of sovereign immunity on the timely filing of claims did not distinguish this case from Alden v Maine (527 US 706), in which the Supreme Court of the United States held that Congress, in exercising its general legislative powers under article I of the United States Constitution by enacting FLSA, lacked the authority to abrogate the States' sovereign immunity.

Landlord and Tenant

City of New York v. New York State Div. of Hous. and Community Renewal (97 NY2d 216)

This case involved a challenge by landlords to a change in rent control. The formula that determines maximum rents for rent-controlled apartments in New York City is designed to ensure that landlords recoup their fixed costs and obtain an 8.5 % return on capital value. The City law that sets the formula defines "capital value" as equalized assessed valuation under the Real Property Tax Law (RPTL). The RPTL provides for equalization because local governments often assess real property, for tax purposes, at something less than market value, and the State needs to know the market value of property State-wide. The RPTL contains two articles that provide for the determination of equalization ratios applicable to property in New York City -- article 12 and article 12A. When enacted in 1970, the City's rent control formula provided for using equalized assessed values determined under article 12A to determine capital value, because article 12A valuations were the most up-to-date valuations available at that time. Subsequently, the State amended RPTL article 12 so that it now provides a more accurate measure of building value. Accordingly, in 1997 the City amended the rent control formula to adopt article 12 valuations. The adoption of RPTL article 12 valuations diminished the maximum rents that many landlords can collect, and therefore some landlords challenged the new formula. The landlords argued that the 1997 local law enacting the new formula violated the Urstadt Law, a 1973 State statute prohibiting "more stringent and restrictive" rent regulation. The Court determined, however, that the new formula did not render rent control more stringent or restrictive, but merely ensured an accurate measure of the capital value component of maximum base rent, as the rent control formula has contemplated since its inception.

Insurance

Harvey v Members Empls. Trust for Retail Outlets (96 NY2d 99)

Plaintiff estate brought suit against a self-insured health benefit insurance plan, seeking reimbursement for the hospital and medical bills incurred by decedent, who was treated for alcohol-related illnesses. The Court interpreted the Insurance Law and its implementing regulations to prohibit defendant insurance plan from excluding coverage for treatment of illnesses arising from the use of alcohol. The Court also concluded that the Federal Employee Retirement Income Security Act (ERISA) did not preempt application of the Insurance Law and regulations because defendant, as a self-insured multiple-employer welfare arrangement plan, fell within an exception to ERISA preemption of State regulation of employee benefit plans.

Oberly v Bangs Ambulance (96 NY2d 295)

The Court held that a "serious injury due to permanent loss of use of a body organ, member function or system" means that there must be a total loss of use in order to be compensable. This action was brought by a dentist and his wife after a five pound IV pump fell on his right forearm while he was being transported to a hospital in an ambulance. The dentist claimed that the resulting injury to his arm prevented him from practicing his profession. This

Court concluded that plaintiffs had not established a total loss of use and, since they had abandoned any claim of “permanent consequential limitation” or “significant limitation of use of a body function or system,” they failed to establish a serious injury under the No Fault Law.

Travelers Cas. and Sur. Co. v Certain Underwriters at Lloyd's of London (96 NY2d 583)

Plaintiff insurance companies sought to recover under reinsurance treaties for losses resulting from environmental injuries which took place over decades at numerous industrial and waste disposal sites across the country. The term “disaster and/or casualty” is defined in the treaties as “all loss resulting from a series of accidents, occurrences and/or causative incidents having a common origin and/or being traceable to the same act, omission, error and/or mistake.” The Court focused on the limiting nature of the word “series” as denoting a group of events having a spatial or temporal relationship to one another, and held the varied losses could not be aggregated as a single disaster or casualty for purposes of recovery under the treaties.

Zoning and Land Use

Friends of Van Cortlandt Park v City of New York (95 NY2d 623)

At issue here, on a question certified to the Court of Appeals by the United States Court of Appeals for the Second Circuit, was whether New York City's use of a portion of Van Cortlandt Park for a water treatment facility required legislative approval. Construction was to last more than five years, during which time a portion of the park would be closed; a million cubic yards of soil and rock would be removed; and the treatment plant would permanently change the gradient of the park. The City claimed legislative approval was unnecessary both because there would be no alienation of parkland and because the plant was to be built substantially underground, with park surfaces restored. The State, concerned citizens and community groups went to Federal court to enjoin development of the plant, and the District Court agreed with the City that legislative approval was unnecessary. Recognizing the appeal required analysis of an important State law issue, the Second Circuit certified to this Court the question whether any aspect of the water treatment plant required legislative approval. This Court concluded it did, and reaffirmed the long-standing common-law rule requiring legislative approval before a substantial intrusion on parkland for non-park purposes takes place, regardless of whether an outright conveyance of title will occur and regardless of whether the parkland is ultimately to be restored. The Court held that dedicated park areas in New York are impressed with a constructive trust for the benefit of the people. Use for other than park purposes, whether for a period of years or permanently, requires the approval of the Legislature.

City of New York v Stringfellow's of New York (96 NY2d 51)

New York City's Adult Zoning Resolution defined adult establishments as ones not customarily open to the general public because they exclude minors by reason of their age, and confined such establishments to certain high-density zoning districts. In response to this zoning plan, Stringfellow's established a policy purporting to admit minors if parents met exacting standards, and under this policy Stringfellow's admitted one minor. Stringfellow's argued that

because it purported to admit minors, it was not an adult establishment subject to the zoning restrictions. The Court of Appeals held that Stringfellow's was not customarily open to people of all ages, that its policy was an obvious attempt to evade the City's zoning law, and that Stringfellow's was an adult establishment subject to the City's zoning restrictions.

Town of Lysander v Hafner (96 NY2d 558)

In this case, the Court addressed the scope of a statute that prohibited local governments from unreasonably restricting or regulating "farm operations" within agricultural districts. Defendants attempted to install several single-wide mobile homes on their farm in order to house migrant farm workers. The Town sought to enjoin defendants from doing so because the homes did not comply with a zoning ordinance that required all one-story family dwellings to have a minimum living area of 1,100 square feet. The Court of Appeals concluded that the Town was not entitled to such an injunction because the mobile homes were protected "on-farm" buildings, the zoning ordinance unreasonably restricted defendants' "farm operations" and the Town failed to show that the "public health or safety" exception to the ban on unreasonable regulation of farm operations applied.

Town of Oyster Bay v Commander Oil Corp. (96 NY2d 566)

In its first significant riparian rights case in over a generation, the Court determined that riparian owners may dredge public underwater lands, when necessary, to maintain their right of access to navigable water. Commander Oil Corporation stores petroleum on its property on the shores of Oyster Bay, off-loading the oil from barges that dock beside a pier that extends into the harbor. The Town of Oyster Bay owns the underwater land adjoining Commander's property. Owing to a process of silting exacerbated by runoff from the Town's storm drainage system, the berths where the barges dock became too shallow for safe and economical use by Commander. Commander therefore sought to dredge the underwater lands, obtaining permission from the appropriate state agencies but not the Town. Commander maintained that as a riparian owner, with an established right of access to navigable water, it had the right to dredge in order to preserve this access, while the Town maintained that dredging was an invasion of property subject to its veto. The Court determined that riparian rights precedents, with their emphasis on reasonable use by public and riparian owners alike, did not prohibit dredging by Commander, and remitted the case for a determination of whether dredging was necessary for Commander to maintain access.

Consumer Protection

Polonetsky v Better Homes Depot (97 NY2d 46)

New York City's Consumer Protection Law prohibits "any deceptive or unconscionable trade practice in the sale, lease, rental or loan of any consumer goods or services" (Consumer Protection Law [Administrative Code] § 20-700). In its enforcement capacity, the City's Department of Consumer Affairs sued Better Homes Depot and its president seeking fines and an injunction against defendants' allegedly deceptive practices in connection with their business, which involved buying, repairing and then reselling homes in New York City. Defendants

argued that the Department of Consumer Affairs did not have jurisdiction to bring suit, because homes are not "consumer goods or services." The Court of Appeals held that homes are not, in themselves, consumer goods, but that defendants fraudulently promised a package of services to consumers. That package of services falls within the jurisdiction of the Department of Consumer Affairs, even though it was offered in connection with the sale of a home.

IV. Appendices

APPENDIX 1

JUDGES OF THE COURT OF APPEALS

**COURT OF APPEALS
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**Hon. Richard C. Wesley
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APPENDIX 2

PERTINENT CLERK'S OFFICE TELEPHONE NUMBERS

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Court of Appeals Internet web site

<http://www.courts.state.ny.us/ctapps>

SUMMARY OF TOTAL APPEALS DECIDED IN 2001 BY JURISDICTIONAL PREDICATE

January 1, 2001 through December 31, 2001

BASIS OF JURISDICTION: ALL APPEALS

	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Dissents in Appellate Division	10	2	2	0	0	14
Permission of Court of Appeals or Judge thereof	48	40	5	1	0	94
Permission of Appellate Division or Justice thereof	20	14	3	0	0	37
Constitutional Question	4	3	1	0	0	8
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	<u>0</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>20</u>	<u>23¹</u>
Totals	82	62	11	1	20	176

BASIS OF JURISDICTION: CIVIL APPEALS

	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Dissents in Appellate Division	10	2	2	0	0	14
Permission of Court of Appeals	27	31	4	1	0	63
Permission of Appellate Division	12	11	3	0	0	26
Constitutional Question	4	3	1	0	0	8
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	<u>0</u>	<u>3</u>	<u>0</u>	<u>0</u>	<u>20</u>	<u>23¹</u>
Totals	53	50	10	1	20	134

BASIS OF JURISDICTION: CRIMINAL APPEALS

	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Permission of Court of Appeals Judge	21	9	1	0	0	31
Permission of Appellate Division Justice	8	3	0	0	0	11
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Totals	29	12	1	0	0	42

¹Includes anomalies which did not result in an affirmance, reversal, modification or dismissal (e.g. judicial suspensions, acceptance of a case for review pursuant to Rule 500.17).

APPENDIX 4

COMPARATIVE STATISTICAL ANALYSIS FOR APPEALS DECIDED IN 2001

ALL APPEALS - % CIVIL AND CRIMINAL

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Civil	73% (190 of 260)	63% (124 of 198)	70% (146 of 208)	60% (102 of 170)	76% (134 of 176)
Criminal	27% (70 of 260)	37% (74 of 198)	30% (62 of 208)	40% (68 of 170)	24% (42 of 176)

CIVIL APPEALS - TYPE OF DISPOSITION

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Affirmed	47%	40%	45%	49%	40%
Reversed	37%	37%	37%	30%	37%
Modified	5%	6%	9%	7%	7%
Dismissed after Argument	2%	1%	1%	—	1%
Other (e.g. judicial suspension; Rule 500.17 certified question)	9%	16%	8%	14%	15%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Affirmed	67%	62%	76%	69%	69%
Reversed	21%	30%	15%	20%	29%
Modified	3%	1%	8%	7%	2%
Dismissed	9%	7%	1%	4%	—

CIVIL APPEALS - JURISDICTIONAL PREDICATES

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Appellate Division Dissents	12% (22 of 190)	11% (13 of 124)	9% (13 of 146)	9% (9 of 102)	11% (14 of 134)
Court of Appeals Leave Grants	59% (112 of 190)	45% (56 of 124)	63% (93 of 146)	56% (57 of 102)	47% (63 of 134)
Appellate Division Leave Grants	12% (23 of 190)	16% (20 of 124)	13% (19 of 146)	12% (13 of 102)	19% (26 of 134)
Constitutional Question	7% (14 of 190)	8% (10 of 124)	4% (6 of 146)	9% (9 of 102)	6% (8 of 134)
Stipulation for Judgment Absolute	—	1% (1 of 124)	1% (1 of 146)	—	—
CPLR 5601(d)	1% (2 of 190)	2% (3 of 124)	2% (3 of 146)	—	2% (3 of 134)
Supreme Court Remand	—	1% (1 of 124)	—	—	—
Judiciary Law § 44	7% (13 of 190)	4% ¹ (5 of 124)	3% ¹ (4 of 146)	5% ¹ (5 of 102)	4% ¹ (5 of 134)
Certified Question from Federal Court (Rule 500.17)	2% (4 of 190)	12% ² (15 of 124)	5% ² (7 of 146)	9% ² (9 of 102)	11% ² (15 of 134)
Other	—	—	—	—	—

¹ Includes judicial suspension matters

² Includes decisions accepting/declining certification

APPENDIX 6

CRIMINAL APPEALS - JURISDICTIONAL PREDICATES

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Permission of Court of Appeals Judge	70% (49 of 70)	72% (53 of 74)	76% (47 of 62)	81% (55 of 68)	74% (31 of 42)
Permission of Appellate Division Justice	30% (21 of 70)	28% (21 of 74)	24% (15 of 62)	18% (12 of 68)	26% (11 of 42)
Other ¹				1% (1 of 68)	

¹ Remand from Supreme Court of the United States

MOTION STATISTICS (1997 - 2001)

Motions Undecided as of January 1, 2001 - 74

Motion Numbers Used in 2001 - 1439

Motions Undecided as of December 31, 2001 - 140

Motion Dispositions During 2001 - 1474

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Motion Numbers Used for Calendar Year	1583	1513	1505	1461	1439
Motions Decided for Calendar Year	1628	1550	1522	1393	1474
Mos. for leave to appeal	1215 ¹	1202 ¹	1209 ¹	1088 ¹	1115 ¹
granted	96	91	94	54	72
denied	853	867	822	809	824
dismissed	261	238	288	223	215
withdrawn	5	6	5	2	4
Mos. to dismiss appeals	15	11	15	4	5
granted	10	5	10	2	3
denied	4	6	5	2	2
dismissed	0	0	0	0	0
withdrawn	1	0	0	0	0
Sua sponte and Court's own motion dismissals	163	119	110	107	102
TOTAL DISMISSALS OF APPEALS	173	124	120	109	105
Mos. for reargument of appeal	28	8	9	8	20
granted	0	0	0	0	0
Mos. for reargument of motion	88	82	71	56	64
granted	2	0	0	0	1
Mos. for extension of time to move for reargument	0	1	1	0	0
granted	0	0	1	0	0
Mos. for assignment of counsel	54	55	40	37	48
granted	54	51	40	37	45
Legal Aid	27	15	13	13	17
denied	0	4	0	0	3
dismissed	0	0	0	0	0

APPENDIX 7

APPENDIX 7 (continued)

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Mos. to waive rule compliance granted	6 1	4 0	2 1	3 2	4 2
Mos. for poor person status granted denied dismissed	61 0 0 61	61 2 1 58	80 1 0 79	71 1 0 70	64 1 0 63
Mos. to vacate dismissal/preclusion granted	4 1	4 3	0 0	5 2	1 1
Mos. for calendar preference granted	6 1	7 0	6 2	6 0	4 1
Mos. for amicus curiae status granted	88 68	88 71	87 69	59 50	110 94
Mos. for Exec. Law § 71 order (AG)	2	1	0	5	1
Mos. for leave to intervene granted	3 1	0 0	3 2	0 0	1 1
Mos. to stay/vacate stay granted denied dismissed withdrawn	50 5 5 39 1	39 6 3 29 1	29 0 0 29 0	26 1 3 22 0	23 2 2 19 0
Mos. for CPL 460.30 extension granted	28 22	23 21	33 27	38 28	32 26
Mos. to strike appdx or brief granted	9 3	7 0	3 2	5 0	0 0
Mos. to amend remittitur granted	2 2	2 0	2 0	1 0	2 0
Mos. for miscellaneous relief granted denied dismissed withdrawn	28 5 17 6 0	23 2 14 7 0	18 3 12 3 0	25 5 14 4 2	20 2 14 3 1
Withdrawals/substitution of counsel granted denied	2 2 0	2 2 0	0 0 0	1 1 0	1 1 0

¹Because more than one relief request may be decided under a single motion number, the total of decisions by relief requests is greater than the total of motions decided.

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

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
TOTAL APPLICATIONS ASSIGNED:	3064	2953	2815	2920	2827
TOTAL APPLICATIONS DECIDED:	2944 ¹	2982 ¹	2799 ¹	2863 ¹	2840 ¹
TOTAL APPLICATIONS GRANTED:	110 ²	57	44	51	43
TOTAL APPLICATIONS DENIED:	2587	2709	2512	2579	2604
TOTAL APPLICATIONS DISMISSED:	238	209	229	221	187
TOTAL APPLICATIONS WITHDRAWN:	9	7	14	12	6
TOTAL PEOPLE'S APPLICATIONS:	63	67	54	68	62
(a) GRANTED:	8	5	5	7	10
(b) DENIED:	51	59	42	54	49
(c) DISMISSED:	1	1	1	3	1
(d) WITHDRAWN:	3	2	6	4	2
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	438	451 ³	402	448 ³	404
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	16	9	6	8	6

¹ Includes some applications assigned in previous year.

² Includes grants of 54 separate applications handled as a single appeal below and handled as a single appeal in this Court.

³ 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

2001

THRESHOLD REVIEW OF SUBJECT MATTER JURISDICTION BY THE COURT OF APPEALS

SSD (sua sponte dismissal) - Rule 500.3

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Total Number of Inquiry Letters Sent	139	99	106	108	91
Appeals Dismissed on Motion	14	11	12	3	3
Appeals Dismissed on Consent	4	0	1	2	2
Appeals Withdrawn or Discontinued on Stipulation	2	1	4	5	5
Dismissed by Court <u>sua sponte</u>	92	71	57	65	64
Transferred <u>sua sponte</u> to Appellate Division	6	1	3	4	2
Appeals allowed to proceed in normal course (A final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	6	7	10	7	6
Jurisdiction Retained - appeals decided	5	3	4	0	2
Inquiries Pending	10	5	15	22	9

COMPARATIVE ANALYSIS OF OFFICE FOR PROFESSIONAL MATTERS STATISTICS

1997-2001

<u>TOPIC</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Attorneys Admitted (OCA) ¹	7087	7339	7725	7194	7440
Certificates of Admission	226	235	171	164	150
Clerkship Certificates	5	9	7	12	4
Petitions for Waiver	463	479 ²	163	149	144
Written Inquiries	224	257	193	116	150
Disciplinary Orders/Name Changes	848	1689	966 ³	842 ³	954

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' violation of the registration requirements (Judiciary Law § 468-a).

APPENDIX 11

NONJUDICIAL STAFF

Acri, Gabriel - Law Clerk to Judge Ciparick
Aiardo, Suzanne - Chief Motion Clerk
Ali, Vivian - Principal Stenographer, Court of Appeals
Amyot, Leah M. Soule - Principal Law Clerk to Judge Levine
Andrews, Barbara J. - Secretary to Judge Smith
Ashdown, Jesse - Principal Court Attorney, Court of Appeals (resigned 12/31/01)
Asiello, John P. - Assistant Consultation Clerk, Court of Appeals
Beachel, Sue E. - Secretary to Judge Wesley
Beard, Dorothy - Secretary to Chief Judge Kaye
Bohannon, Randy A. - Senior Court Building Guard
Cadalso, Mary Ellen - Secretary, Court of Appeals (retired 12/6/01)
Calacone, Stephen F. - Clerical Research Aide
Call, Gregory A. - Law Clerk to Chief Judge Kaye
Cambria, Elizabeth Brace - Senior Court Attorney, Court of Appeals
Cannataro, Anthony - Senior 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

Appendix 11 (Continued)

Chung, Jenny L. - Senior Court Attorney, Court of Appeals (resigned 8/7/01)
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 (resigned 8/11/01)
Conklin, Elmer - Clerical Assistant, Court of Appeals
Conley, Paul F. - Senior Clerical Assistant, Court of Appeals
Connair, George P. - Senior Services Aide
Connelly, Lisa M. - Principal Court Attorney, Court of Appeals (resigned 11/17/01)
Cortelli, Terrence James - Court Attorney, Court of Appeals
Costello, James A. - Principal Law Clerk to Judge Levine
Davis, Heather A. - Court Attorney, Court of Appeals
Deer, Wendy E. - Senior Court Attorney, Court of Appeals (resigned 7/2/01)
Diebel, Beth A. - Court Attorney, Court of Appeals
DiLeva, Terry J. - Prisoner Applications Clerk
Dimino, Michael R. - Law Clerk to Judge Rosenblatt
Donnelly, William E. - Principal Custodial Aide
Dragonette, John M. - Senior Court Building Guard
Dunn, Matthew R. - Law Clerk to Judge Graffeo
Eddy, Margery Corbin - Senior Court Attorney, Court of Appeals
Emigh, Brian J. - Building Manager
Engel, Hope B. - Deputy Chief Court Attorney, Court of Appeals; Court Attorney for Professional Matters

Appendix 11 (Continued)

Farrell, Laurence - Senior Security Attendant, Court of Appeals
Faulkner, Cedric K. - Court Attendant, Court of Appeals
Fitzpatrick, J. Brian - Director, Court of Appeals Management and Operations
Fitzpatrick, Rosemarie - Assistant Secretary to Chief Judge Kaye; 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
Garvey, Michael J. - Senior Law Clerk to Judge Rosenblatt (resigned 8/14/01)
Gerber, Matthew L. - Senior Security Attendant, Court of Appeals
Gilbert, Marianne - Principal Stenographer, Court of Appeals
Graver, Molly - Court Attorney, Court of Appeals
Groff, Janice L. - Principal Stenographer, Court of Appeals
Heffron, Elaine J. - Secretary to Judge Graffeo
Herriman, Lisa - Principal Stenographer, Court of Appeals
Herrington, June A. - Principal Stenographer, Court of Appeals
Heyman, Amy - Secretary to Chief Judge Kaye (resigned 3/29/01)
Ignazio, Andrea R. - Clerical Research Aide
Jackson, Deidre - Senior Law Clerk to Judge Smith
James, Ta-Tanisha D. - Senior Law Clerk to Judge Smith
Joyce, Jean - Senior Law Clerk to Chief Judge Kaye
Kehn, Patricia Ann - Principal Stenographer, Court of Appeals

Appendix 11 (Continued)

Kleemann, Sarah W. - Principal PC Analyst
Klein, Andrew W. - Consultation Clerk, Court of Appeals
Lagios, James P. - Principal Law Clerk to Judge Rosenblatt (resigned 12/16/01)
Lanza, Ronald S. - Senior Court Attorney, Court of Appeals (resigned 8/16/01)
LaVergne, Malcolm Pierce - Senior Court Attorney, Court of Appeals
Lawrence, Bryan D. - Local Area Network Administrator
LeCours, Lisa A. - Principal Law Clerk to Judge Graffeo
Lee, Tiffany H. - Principal Law Clerk to Judge Wesley
Lenart, Margaret S. - Principal Stenographer, Court of Appeals
Lerner, Matthew S. - Principal Court Attorney, Court of Appeals
Loffredo, Carmel M. - Secretary to Judge Levine
MacPhee, Concetta J. - Principal Assistant Building Superintendent
Maier, Sr., Joseph J. - Principal Custodial Aide
Markus, David Evan - Law Clerk to Judge Rosenblatt
Martinez, Cristina Baiata - Principal Law Clerk to Judge Ciparick
Mayo, Michael J. - Deputy Building Superintendent
McClymonds, James T. - Principal Law Clerk to Judge Levine
McCormick, Cynthia A. - Principal Court Analyst, Court of Appeals
McCoy, Marjorie S. - Deputy Clerk of the Court of Appeals
McGrath, Paul J. - Chief Court Attorney, Court of Appeals
McManus, John T. - Senior Law Clerk to Judge Graffeo

Appendix 11 (Continued)

McMillen, Donna J. - Secretary to the Clerk, Court of Appeals
Merrill, Tammy L. - Principal Custodial Aide
Miller, Meredith R. - Senior Court Attorney, Court of Appeals
Moore, Travis R. - Senior Security Attendant, Court of Appeals
Morales, Emily - Court Attorney, Court of Appeals
Morris, Matthew J. - Law Clerk to Chief Judge Kaye
Morrissey, Jr., James R. - Security Attendant, Court of Appeals (resigned 3/28/01)
Muller, Joseph J. - Assistant Building Superintendent I
Murray, Elizabeth F. - Chief Legal Reference Attorney, Court of Appeals
Natalizio, Nicholas M. - Security Attendant, Court of Appeals
Novak, David W. - Principal Court Attorney, Court of Appeals
O'Connor, Michael A. - Court Building Guard
Paglia, Paul J. - Senior Court Building Guard
Parker, Amy - Senior Law Clerk to Judge Levine (resigned 8/14/01)
Pepper, Francis W. - Principal Custodial Aide
Ragonese, Carmela - Senior Custodial Aide
Ravida, Tina - Senior Custodial Aide
Ronan, Sean D. - Court Attorney, Court of Appeals
Sanderson, Ralph W. - Assistant Building Superintendent I (deceased 12/3/01)
Schechter, Jennifer G. - Principal Law Clerk to Chief Judge Kaye (resigned 12/23/01)
Schweitzer, Lisa M. - Law Clerk to Chief Judge Kaye

Appendix 11 (Continued)

Shufelt Sr., Theodore J. - Assistant Building Superintendent I
Somerville, Robert - Senior Court Building Guard
Spencer, Gary H. - Public Information Officer
Strnad, Martin F. - Assistant Deputy Clerk, Court of Appeals
Tacy, Laurene L. - Assistant Deputy Clerk, Court of Appeals
Taylor, William K. - Law Clerk to Judge Wesley
Tierney, Inez M. - Secretary to Judge Rosenblatt
Torre, Joseph R. - Senior Court Building Guard
Torres, Gabriel - Law Clerk to Judge Rosenblatt
Wager, Charles C. - First Assistant Building Superintendent
Wasielewski, John P. - Chief Security Attendant, Court of Appeals
Welch, Ann M. - Custodial Aide (retired 10/13/01)
Yalamanchili, Pavani - Court Attorney, Court of Appeals (resigned 5/24/01)