1999 Annual Report of the Clerk of the Court

1999

ANNUAL REPORT OF THE

CLERK OF THE COURT

TO THE

JUDGES OF THE COURT OF APPEALS

OF THE STATE OF NEW YORK

***

Stuart M. Cohen
Clerk of the Court
Court of Appeals

CONTENTS

State of New York,
Court of Appeals,

Howard A. Levine
Judge

612 State Street, 2nd Floor
Schenectady, New York 12305-2113

April 2000

I am delighted to write this Preface to the Annual Report of the work of the Court of Appeals for the last year of the 20th century. That milestone piqued my curiosity about what an Annual Report might have shown a century earlier.

Perusal through Volume 161, covering the cases decided during 1899-1900, reveals a remarkable continuity in the issues addressed by this marvelous judicial institution, and the endurance of the principles established for the law of this State, many of which have been emulated nationally. For example, applying principles of equity for the first time to a separation agreement, the Court a century ago rescinded an agreement improvidently signed by the wife because of the husband's overreaching. Only two terms ago, as discussed in last year's Annual Report, we were called upon to apply the rules arising from that case to a pre-nuptial agreement. And just this past term, as the current Report shows, we applied common-law contract principles on the validity of liquidated damage clauses, as initially developed in an 1899 case, in the modern context of an appeal involving a national accounting firm's restrictive covenant agreement. On the other hand, the 1899-1900 Court of Appeals was not confronted with the great issues of constitutional law under the Bill of Rights we see in our modern docket, as reflected in the pages that follow.

One other major difference shines out. Before reforms of one kind or another enabling the Court to limit its caseload to matters of Statewide importance, the sheer volume of cases before the Court of Appeals resulted in a backlog so large that an 1899 constitutional amendment was required to permit designation of Supreme Court Justices to serve as additional Associate Judges. This unfortunate situation had its historical bright side, however, when, in 1913, a recently elected Supreme Court Justice, Benjamin N. Cardozo, was so designated. Happily, as noted in this Annual Report, in 1999 our Court continued its modern, proud tradition of currency in calendaring and deciding appeals. This achievement is attributable in no small part to the dedicated efforts of our Staffs, for which I express sincere appreciation on behalf of all of the members of the Court.

Howard A. Levine

1999

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

***

Introduction

As I reflect and report on yet another busy, productive year at the Court of Appeals, four themes stand out.

First, the Court continues its tradition of docket currency, likely a record among State high courts of the nation. A litigant arguing before the Court one Session might well expect resolution of the appeal, in a writing, during the next month's Session. Notable as well is the fact that while the number of appeals taken to and decided by the Court has declined since the 1985 enactment of "Chapter 300" -- essentially making this a "certiorari" court -- the number of full opinions has remained relatively constant (chart, page 10). The promise of Chapter 300 is thus plainly being fulfilled, providing the Court an opportunity for greater concentration on the relatively most important, leaveworthy issues of Statewide significance. The range of novel, significant issues the Court decides each year is apparent in Part III (pages 29-47) of this Report.

Second, another legislative enactment, occurring ten years after Chapter 300, also has affected the work of the Court. In reinstating the death penalty in 1995, the Legislature implemented the constitutionally mandated direct appeal and wide review

powers of the Court -- including fact-finding jurisdiction. The Legislature also created important administrative and rulemaking responsibilities connected with the implementation of the new statute and the Court's adjudicative role and responsibility. In the four and one-half years that have elapsed since the effective date of this legislation (September 1995), the Court has been hard at work, both discharging these responsibilities and overseeing the steps necessary to the presentation of the first appeals under the statute. A summary of the Court's activities in this respect appears in Part IA (pages 3-7) of this Report.

Third, the Court achieved currency of a different sort in 1999 with the launch of its Internet web site, which gives the Bench, Bar and Public immediate access to the Court's decisions, rules, calendars, summaries of upcoming cases and other useful information. The web site was created and is maintained by Clerk's Office staff, and already has received tens of thousands of visits. So, the Court is also technologically up to date.

Finally, any reference to significant events of the year naturally includes changes on the Bench. In 1999, Hon. Albert M. Rosenblatt, appointed to the Court following the retirement of Judge Vito J. Titone, was sworn in and took his place on the Bench. As the Clerk of the Court, I cannot resist as well a "tip of the hat" to one of my predecessors in that role, now Senior Associate Judge Joseph W. Bellacosa, who has served on the Court since 1987 and has announced that he will step down in August 2000 to become Dean of St. John's University School of Law.

This report is divided into four parts. The first offers a statistical and graphic overview of the matters filed with and decided by the Court in 1999. The second describes various functions of the Clerk's Office and summarizes the administrative accomplishments of the year. The third highlights selected major decisions of 1999. The fourth consists of appendices with detailed statistics and other information.

I. The Work of the Court

The Judges of the Court, as a Bench of seven, decide all appeals, certified questions and motions. Individually, the Judges decide applications for leave to appeal in criminal cases and emergency show cause orders. 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 (except for Judge Bellacosa, who lives in Albany County) return to their Home Chambers throughout the State, where they continue their work of writing opinions and preparing for the next Albany Session. During these Home Chambers Sessions, they 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 additionally have many other judicial and professional responsibilities to fulfill during the Home Chambers Sessions.

In 1999, the Court and its Judges expeditiously disposed of some 4,500 matters. The Court decided 208 appeals, 1522 motions and 2799 criminal leave applications. A detailed analysis of the Court's work follows.

A. Capital Case Matters

1. Administrative and Rulemaking Responsibilities

The 1995 death penalty statute created significant administrative and rulemaking responsibilities for the Court of Appeals, requiring substantial judicial and staff time and other resources in order to meet these obligations in a timely manner. A list of tasks completed in compliance with the statute -- or to effectuate this Court's review of capital appeals -- follows:

- Pursuant to CPL 400.27(12)(f), an order delegating to the Appellate Division the task of formulating rules establishing uniform procedures for appeals from pretrial findings of mental retardation in capital cases (see 22 NYCRR Part 540);

- Pursuant to CPL 400.27(15), an order approving a rule and adopting a form for the jury's use, during the sentencing phase of a capital trial, to record the findings and determinations of sentence (see 22 NYCRR 218.2);

- Pursuant to Judiciary Law § 211-a, an order approving rules governing the establishment of a uniform capital case database (see 22 NYCRR

218.7, 510.18) and adopting a capital case data report form that trial court clerks must complete in those cases the statute specifies. The Legislature intends these data to assist the Court of Appeals in determining whether a particular sentence of death is disproportionate or excessive. A later order adopted certain changes to the capital case data report form;

- Pursuant to CPL 460.40(3), an order approving rules governing stays of execution in capital cases (see 22 NYCRR 218.4, 510.4, 510.5);

- Pursuant to Judiciary Law § 35-b(6)(b), an order approving rules governing notice to the Capital Defender Office ("CDO") in capital cases (see 22 NYCRR 218.3, 510.16);

- Pursuant to Judiciary Law § 35-b(4)(b)(iv), approval of minimum standards promulgated by the Capital Defender Office 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). The Court also developed internal procedures for managing capital cases;

- 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), approval of capital case payment guidelines for assigned appellate counsel, an assigned counsel claim form and applicable case log sheets;

- An order amending Rule 510.8(a) of the Rules of the Court of Appeals in Capital Cases to provide for the issuance, where necessary, of more than one Initial Capital Appeal Management Order in a capital appeal;

- An order deleting language in Rule 510.18(b) and Rule 218.7(b) concerning capital case data reports.

2. Capital Appeals Pending

The State Constitution and the death penalty statute provide a mandatory appeal directly 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 September 1998, the Court issued an Initial Capital Appeal Management Order (see 22 NYCRR 510.8[a]) in the Harris case. In this order, the Court assigned the CDO as Harris' 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 CDO filed a 31-volume record on appeal containing 20,822 pages. The fifteen copies of the record filed with the Court fill 70 linear feet of shelving. Thereafter, in August 1999, the CDO filed the Preliminary Appeal Statement (see 22 NYCRR 510.9), which set forth 39 general issues likely to be raised on appellant Harris' appeal. In November 1999, following the Court's grant of the CDO's motion to consolidate with the capital appeal appellant Harris' 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]). That order set a briefing schedule for the parties and for amici curiae, set a deadline for the People's filing of any Grand Jury testimony or evidence, required the parties to file periodic progress reports and directed the parties and those seeking amicus status not to brief at this time issues concerning the proportionality or excessiveness of the sentence (see CPL 470.30[3][b]).

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). During 1999, the Court issued Initial Capital Appeal Management Orders in the Mateo and Shulman appeals.

3. Counsel In Capital Matters

The death penalty statute recognizes various resources for the assignment of counsel in capital cases, 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/Capital Defense Unit has been 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 her by NY Constitution, article VI, § 28 to promulgate standards for capital appellate and State post-conviction counsel, which were approved by the Court of Appeals in May 1998.

A private attorney may seek appointment as lead or associate counsel on a capital appeal by submitting to the CDO an application, on the form approved by the Administrative Board of the Courts and available from the CDO, with the required documentation and attachments. The CDO reviews each application and delivers all completed applications to the appropriate Departmental Screening Panel, together with a statement concerning the attorney's completion of the requisite training and its 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 1999, Screening Panels had designated only three attorneys as qualified to serve as capital appellate counsel. Vacancies on the Screening Panels have impeded their work, but the affected Departments report that those vacancies will soon be filled.

The death penalty statute also vests the Court of Appeals with responsibility to approve the rates at which counsel will be compensated in capital cases. In September 1997, at the Court's direction, the Clerk asked the four Departmental Screening Panels for responses to questions concerning their experience with compensating counsel under the capital counsel fee schedules the Court approved in November 1996. In reply, three of four Departmental Screening Panels proposed

reductions in the hourly rate of compensation for lead and associate counsel. Following a period of public comment, in December 1998 the Court issued an order approving reduced capital counsel fee schedules for the four Judicial Departments and directing the Departmental Screening Panels to submit to the Chief Judge, by December 31, 1999, reports "relating the experiences under the original and revised uniform capital counsel fee schedules." At year's end, the Screening Panels had each asked for an extension of time in which to comply with this directive.

Finally, in April 1999, a proceeding challenging the Court's reduction of capital counsel fees was commenced in the State Supreme Court. In October 1999, Supreme Court denied the petition and dismissed the proceeding (see Matter of New York State Assn. of Criminal Defense Attorneys v Kaye, et al.). Petitioners have appealed to the Appellate Division, Third Department.

4. Future Costs and Requests

Although the Court has performed its administrative tasks and managed its capital caseload thus far without a budgetary increase earmarked for capital case purposes, this situation is at a critical planning juncture and must change. Our experience to date, as well as the experience of other States, teaches that additional staff and resources will be essential to insure effective oversight and management, and to hold the parties to a responsible schedule for preparing and presenting appeals. The full Court has initiated a needs assessment and preparation of a plan of action. Discussions with the Chief Administrative Judge concerning the Court's fiscal requirements in this area already have begun.

B. Non-capital Matters: Calendar and Currency

The Court determines most appeals after oral argument and full briefing by the parties (normal course). In those 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 fall to assignment by random draw to individual Judges for the purposes of reporting at the next morning's Conference to the full Court. When, at Conference, a majority of the Court agrees with the reporting Judge's proposed disposition for an assigned appeal, the reporting Judge becomes responsible for preparing the Court's opinion in the case. If the majority of the Court disagrees with the recommended disposition of the appeal, one of the Judges taking the

majority position assumes responsibility for the proposed opinion. Draft writings are circulated to all Judges during the Court's Home Chambers Session, and the Court's determination of each appeal is typically handed down during the next Albany Session of the Court, after further deliberation and discussion of the proposed opinions.

The Court also employs the subsidiary track of sua sponte merits (SSM) review of submissions pursuant to Rule 500.4. Through its SSM procedure, the Court decides a small number of appeals expeditiously on written submissions without oral argument, saving the litigants and the Court the time and expense of full briefing and oral argument. A case may, for example, be placed on SSM track if it involves issues raised in a normal-coursed appeal already scheduled for argument, to enable the Court to consider both cases together. The rent stabilization cases discussed at page 14 of this Report are an illustration. 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. The Calendar

In 1999, 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 months, about the same as in 1997 and 1998. Also in 1999, the average period from readiness (all papers served and filed) to calendaring was approximately one and one-half months, again about the same as in the previous two years. The average time from argument or submission to disposition of an appeal decided in the normal course was 44 days; for all appeals, the average time from argument or submission to disposition was 39 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 1999 (including SSM appeals tracked to normal course) was 230 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 180 days. Thus, by every measure, the Court maintained its exceptional currency in calendaring and deciding appeals in 1999.

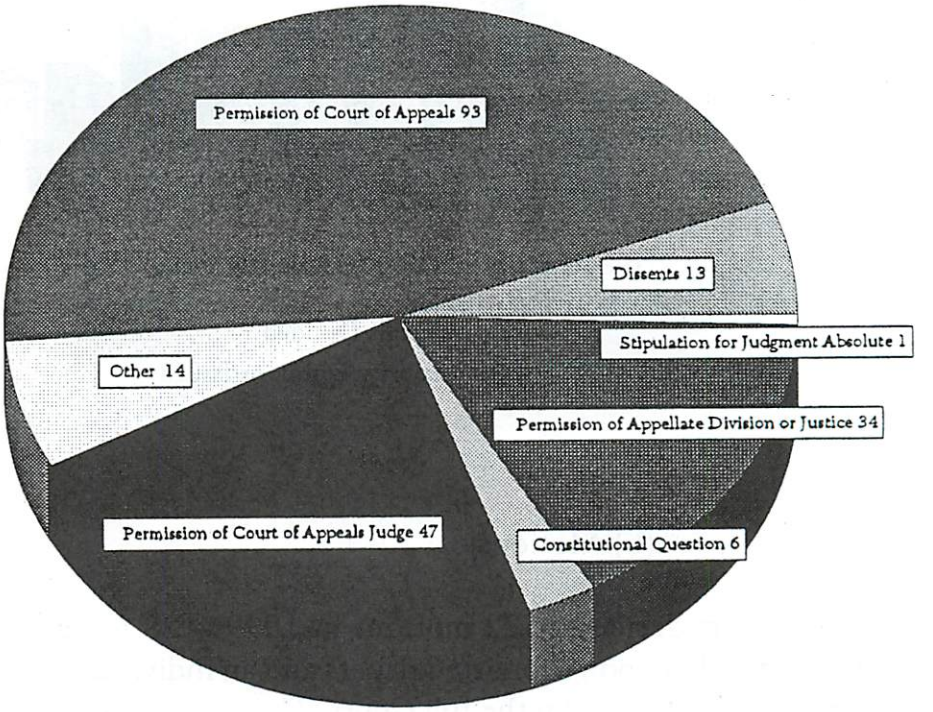
2. Filings

Three hundred forty-five notices of appeal and orders granting leave to appeal were filed in 1999 (349 were filed in 1998). Two hundred eighty-two filings were civil matters (compared to 267 in 1998), and 63 were criminal matters (compared to 82 in 1998).

During 1999, 1505 motions were filed, a less than one per cent decrease from the 1513 filed in 1998. The 1999 statistics are consistent with the number of motion filings in the last four years.

Two thousand eight hundred and fifteen applications for leave to appeal in criminal cases were assigned to individual Judges of the Court in 1999. On average, each Judge was assigned 402 cases during the year.

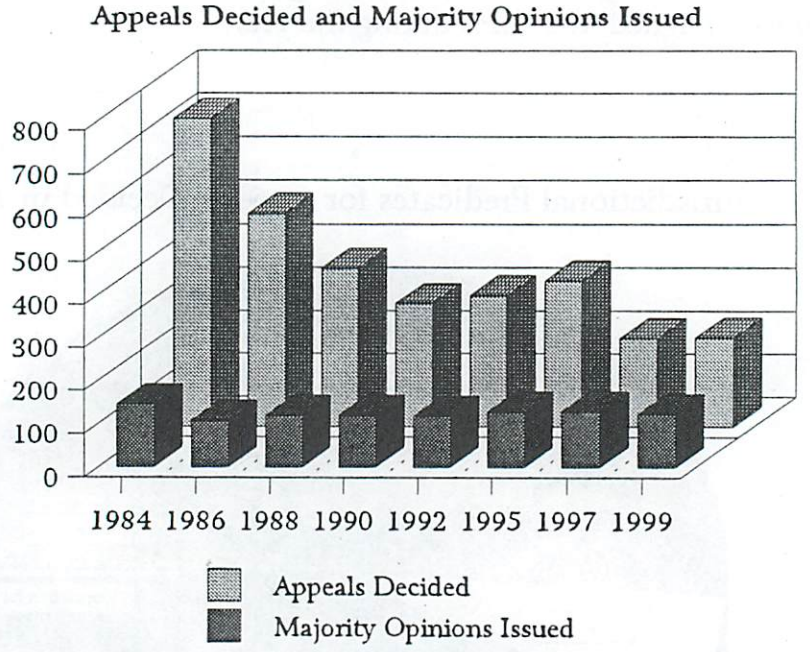
Jurisdictional Predicates for Appeals Decided in 1999



3. Dispositions

(a) Appeals and Writings

The Court decided 208 appeals in 1999 (146 civil and 62 criminal). Of these appeals, 193 were decided unanimously. The Court issued 123 majority opinions, three Per Curiam opinions and 47 memoranda. Eleven dissenting opinions and one concurring opinion were written. The chart on the previous page analyzes these appeals by jurisdictional predicate. The chart below tracks appeals decided and majority opinions issued for selected years before and after Chapter 300 expanded the certiorari jurisdiction of the Court.



(b) Motions

The Court decided 1522 motions in 1999 -- 28 fewer than in 1998. 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 53 days, while the average period of time from return date to disposition for all motions was 46 days.

The breakdown of dispositions of civil motions for leave to appeal has remained relatively constant over the last four years. Of the 1204 motions for leave to appeal in civil cases decided in 1999, the Court granted 7.8%, denied 68.3%, and dismissed 23.9% for jurisdictional defects.

The Court granted 94 motions for leave to appeal in civil cases in 1999. The most frequently raised issues involved the Civil Service Law, insurance and social services. Other subject matter categories included damages, libel and issues relating to schools.

The number of motions for amicus curiae relief in 1999 was 87, one fewer than in each of the previous two years. The Court granted 69 of these 87 motions submitted in 1999. Reasons for denials of motions for amicus curiae relief include filing insufficiently in advance of the argument of the appeal to allow adequate Court review of the motion and of the proposed brief, filing by a party to pending litigation involving the same issue as the appeal before the Court, and failure to present law or arguments not presented by the parties. Given that the Court hears the majority of appeals by its own permission, and that the questions presented are generally novel and of Statewide importance, the Bar should take special note that the Court encourages appropriate requests for permission to file amicus curiae submissions.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 44 of the 2799 applications for leave to appeal in criminal cases decided in 1999 – somewhat fewer than the 57 granted in 1998. Five of the 44 applications granted were filed by the People. Almost 10% of the applications (229) were dismissed for lack of jurisdiction.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work by the individual Judges of the Court in their Home Chambers when Court is not in session in Albany. In 1999, on average, 67 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments.

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

In 1999, the Court reviewed two determinations of the State Commission on Judicial Conduct. The Court accepted the sanction of removal determined by the Commission in both cases. Two orders of removal were entered in cases in which review was not requested. In addition, the Court ordered two suspensions with pay.

(e) Rule 500.17 Certifications

The Annual Report for 1998 contains a detailed discussion of Rule 500.17 certifications.

In 1985, New York State voters passed an amendment to the State Constitution granting the New York Court of Appeals discretionary jurisdiction to review certified questions from certain Federal courts and other courts of last resort (NY Const, art VI, § 3[b][9]). Thereafter, this Court promulgated section 500.17 of its Rules of Practice, providing that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals or a court of last resort of any other State that determinative questions of New York law are involved in a cause pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court.

After a court so certifies a question pursuant to Rule 500.17, the matter is referred to an individual Judge of the Court, 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 and, thus, as a manifestly important matter. 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 40 days. The average period from acceptance of a certification to disposition is 181 days, or six months. (This calculation does not include Norcon Power Partners, L.P. v Niagara Mohawk Power Corp., 92 NY2d 458, the calendaring of which was affected by the parties' settlement negotiations.) Where review was expedited, as is usual, disposition time has been as short as 72 days (see Joblon v Solow, 91 NY2d 457).

In 1999, the Court received and accepted one certified question from the United States Court of Appeals for the Second Circuit, Messenger v Gruner + Jahr Print & Publ. (decided February 17, 2000). Also in 1999, the Court answered the six certified questions that remained pending for review on the merits at the end of 1998: Argentina v Emery World Wide Delivery Corp. (93 NY2d 554); Matter of Southeast Banking Corp. (93 NY2d 178); Tanges v Heidelberg N. Am. (93 NY2d 48); Messner Vetere Berger McNamee Schmetterer Euro RSCG v Aegis Group (93 NY2d 229); Engel v CBS, Inc. (93 NY2d 195); and Great N. Ins. Co. v Mount Vernon Fire Ins. Co. (92 NY2d 682).

During 1999, the Clerk and his staff assisted the Advisory Group to the State and Federal Judicial Council in preparing a guidebook for litigants involved in the Rule 500.17 certification process. Copies are available upon request from the Clerk's Office.

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 1999, 106 appeals were subject to Rule 500.3 inquiry, and all but fourteen were withdrawn, dismissed sua sponte or on motion, or transferred to the Appellate Division (fifteen 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 345 appeals filed in 1999, 15 (4%) were initially selected to receive sua sponte merits consideration. Slightly more than 6% of the appeals decided in 1999 were decided upon SSM review. The percentage of appeals decided upon SSM review or receiving SSM consideration has been about the same throughout 1997, 1998 and 1999.

A particularly appropriate use of the SSM procedure is demonstrated by six appeals involving related issues of rent stabilization -- three of which were orally argued in November 1999 -- all decided on the same day, December 21, 1999. Matter of Dworman v New York State Div. of Hous. and Community Renewal, Matter of Seymour v New York State Div. Of Hous. and Community Renewal, and Matter of Elkin v Roldan were already scheduled for oral argument when motions for leave to appeal in three other cases, Matter of Pledge v New York State Div. of Hous. and Community Renewal, Matter of Shapiro v New York State Div. of Hous. and Community Renewal, and Matter of Sudarsky v New York State Div. of Hous. and Community Renewal, came before the Court. By granting leave to appeal and placing the later appeals on the SSM track, the Court kept the earlier appeals on their oral argument schedule and at the same time had the opportunity to consider six appeals raising related issues in different contexts.

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 1999 was 102 days, nearly three months less than the 183 days average length of time for decision of an orally argued appeal decided in 1999.

Two of the 15 appeals selected in 1999 for SSM consideration were pending administratively at the end of the year. One was abandoned and dismissed prior to submission to the Court. The remaining 12 were submitted to the Court for review. In addition to these 12 appeals, three appeals, initially selected in 1998 for SSM consideration but still pending administratively as of December 31, 1998, were assigned to the Court in 1999. Thus, 15 SSM appeals -- 6 criminal cases and 9 civil cases -- were assigned to the Court in 1999.

The Court decided 13 appeals on an SSM basis. This figure includes two SSMs that were assigned in 1998, but not yet decided as of December 31, 1998. Thus, of the 15 appeals assigned as SSMs in 1999, 11 (73.3%) were decided on an SSM basis. Three appeals (20%) were directed to full briefing and oral argument,

and one SSM (6.7%) which had been assigned in 1999 remained pending as of December 31, 1999.

Of the 13 appeals decided on SSM submissions in 1999 (which include the two assigned in 1998 and decided in 1999), one case was decided in an opinion, nine cases were decided in memoranda and three were decided in decision list entries. All 13 decisions were unanimous. There were five affirmances, seven reversals and one modification.

D. Court Rules

By orders dated June 28, 1999, the Court of Appeals amended section 500.1 of its Rules of Practice and section 510.1 of the Rules of the Court of Appeals in Capital Cases. The amendments permit, by stipulation of the parties, or require, by order granted on motion of a party or by the Court sua sponte, the filing and service of companion records, appendices and briefs on Compact Disk-Read Only Memory (CD-ROM), in addition to the required number of printed paper copies.

By order dated December 15, 1999, the Court of Appeals amended section 500.10(b) of its Rules of Practice, concerning requests for reargument or reconsideration of applications for leave to appeal in criminal cases, by setting forth requirements that previously had been incorporated by reference to another section of the Rules.

II. Administrative Functions and Accomplishments

A. Case Management

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Prisoner Applications Clerk, several secretaries, court attendants and service aides perform the myriad tasks involved in appellate case management. Their responsibilities include receiving and reviewing all papers, filing and distributing to the proper recipients all materials received, scheduling and noticing oral arguments, compiling and reporting statistical

information about the Court's work, assisting the Court during conferences and preparing the Court's decisions for release to the Public. In every case, multiple controls insure that the Court's actual determinations are accurately reported in the written decisions and orders released to the Public. The Court's document reproduction unit prepares the Court's decisions for release to the Public and handles most of the Court's internal document reproduction needs. Court attendants screen and deliver mail in-house, and maintain the Court's appeal records room, keeping track of and distributing all briefs, records, exhibits and original court files. During the Court's Albany Sessions, the court attendants also assist the Judges in the Courtroom and in Conference.

In addition, many members of the Clerk's Office staff respond -- in person, by telephone and in writing -- to inquiries and requests for information from attorneys, litigants, the Public, academicians and other court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. With the launching of the Court's new Internet web site (see Parts IIB and IIH), essential information concerning the Court's practice -- including its Rules, civil and criminal jurisdictional outlines, Session calendars, decision lists for appeals and motions, and a form for use by pro se litigants -- is available online. Members of the Clerk's Office staff also regularly participate in programs designed to educate the Bar about the Court's practice. Appendix 2 contains a list of relevant Clerk's Office telephone numbers.

B. Public Information

In December, 1999, the Court introduced its new Internet web site. The web site provides information about the Court, its Judges, history, rules and other news, as well as the Court's latest decisions, published to the site within hours after the official hand-down time. The address of the Court of Appeals web site is: http://www.courts.state.ny.us/ctapps.

Also in 1999, the Court's Public Information Officer, Paul Browne, resigned and was succeeded by Gary Spencer. Assisted by a part-time secretary, the Public Information Officer provides information concerning the work and history of New York's highest court to all segments of the Public -- from school children to media representatives 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 disseminates the Court's decisions upon release. The Public Information Officer also prepares monthly for public use a descriptive summary of cases to be argued before the Court. A version of that summary is now posted monthly on the web site and is available in print at Court of Appeals Hall. During 1999, the Public Information Office maintained the list of subscribers to the Court's slip opinion service and handled requests from the Public for individual slip opinions. The Public Information Officer also worked with the Librarian to establish a plan whereby video tapes of oral arguments before the Court would once again be available for sale to the Public. At present, oral argument tapes from April 1998 onward are available for on-site viewing only at Albany Law School's Government Law Center.

The 1999 Law Day celebration outside Court of Appeals Hall recognized the media's essential role in educating the Public concerning the Rule of Law and the workings of the Judicial Branch. To underscore this theme, the Public Information Officer invited editors and journalists from across the State to the Law Day ceremony, followed by a luncheon and discussion with the Judges of the Court.

C. Office for Professional Matters

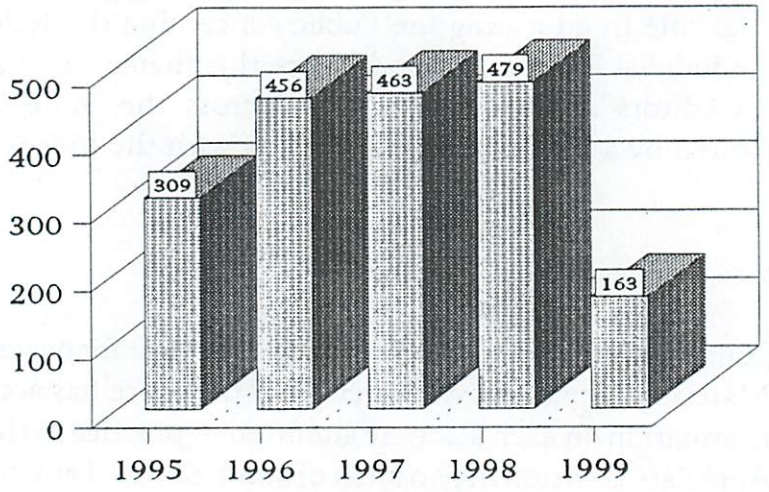
The Court Attorney for Professional Matters manages the Office for Professional Matters, supported by a secretary. The Office has access, via computer terminal, to information on each attorney admitted to practice in the State, including the date and Appellate Division department of admission and any subsequent change in status due to disciplinary or other administrative action. The Court's records complement the official registry of attorneys maintained by the Office of Court Administration, which answers public inquiries about the status of attorneys. The Court's Office prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship. Additionally, the Court Attorney drafts preliminary reports to the Court on matters relating to (1) attorney 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 number of petitions for waiver of the Rules for Admission filed in 1999 shows a dramatic decrease from previous years (see chart on next page). 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 only could sit for the bar examination with a waiver granted by order of the Court. The Court Attorney for Professional Matters spoke to the American Bar Association's Conference on Graduate Legal Education in March 1999 about the Court's Rules for Admission and the 1998 amendments.

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

Petitions for Waiver of Rules, 1995-1999



In 1999, the Court established a Continuing Legal Education Committee consisting of the Court Attorney for Professional Matters, the Chief Motion Clerk, the Chief Court Attorney and the Deputy Chief Court Attorney. Under the auspices of the Office of Court Administration, the Committee has presented live and video Continuing Legal Education lectures open to the legal staff of the Court, including Judges' law clerks, Clerk's Office attorneys, and attorneys from the Law Reporting Bureau and State Board of Law Examiners. From April to December 1999, the CLE Committee sponsored 36 presentations offering 57 hours of Continuing Legal Education credits.

The secretary to the Office for Professional Matters coordinates the CLE schedule and notifies personnel of classes to be held. She also completes the

necessary paperwork to assure that the rules of the Office of Court Administration and the CLE Board are followed and that attorneys receive the proper CLE credit for their attendance. To that end, the secretary has created three interactive databases tracking the CLE classes the Court offers, the Court attorneys eligible to attend our classes and the number of CLE credits individually earned.

The in-house CLE classes have been well received by the Court's legal personnel. Many attorneys on the Clerk's staff and from the Law Reporting Bureau have taught CLE accredited classes, as has Senior Associate Judge Joseph W. Bellacosa and Supreme Court (Third Judicial District) Justice Harold J. Hughes.

D. Central Legal Research Staff

The Central Legal Research Staff prepares draft reports on civil motions for leave to appeal, certified questions and selected appeals under the supervision of individual Judges and the Clerk of the Court for the full Court's review and deliberation. Through December 1999 Decision Days, Central Staff attorneys completed 1193 motion reports, 76 SSD reports, 1 certified question report, and 9 SSM reports. Throughout 1999, 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 and analytical tasks as requested. In 1999, Central Staff again revised and updated the civil practice jurisdictional outline for the Court's internal use. Under the principal supervision of the Deputy Chief Court Attorney, Central Staff also revised the Court's external civil practice outline, which is posted on the Court's Internet web site.

Attorneys usually join the Central Legal Research Staff directly following law school graduation. This year, staff attorneys represent Albany, Brooklyn, SUNY Buffalo, Columbia University, Cornell University, Hofstra University, New York, CUNY Queens, Pace University, St. John's University, Syracuse University and Touro College law schools. Staff attorneys hired for 2000 will represent Albany, Brooklyn, SUNY Buffalo, Cornell University and New York University law schools.

In 1999, the Chief Court Attorney served on the Executive Committee of the American Bar Association's Council of Appellate Staff Attorneys.

E. Library

The Librarian provides extensive legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk's Office staff. In 1999, the Librarian's instructional programs in Legal Research, Legislative Intent, and Database Searching were certified under the Office of Court Administration's CLE regulations.

Collection development in the Conference Room library and in the Home Chambers libraries continued in 1999 -- the Court acquired newly-published works falling within the collection development policy, replacing seldom-used and superseded materials. The Librarian and her assistants also monitored mergers in the publishing industry, revising title maintenance and accounting procedures as necessary.

Library staff created a full-text, searchable database of the Court's internal reports on motions and appeals. Eventually, the full text of all reports generated since the turn of the twentieth century will be included. The purpose is two-fold -- to facilitate research by providing Boolean logic access to these materials, and to preserve and make available the content of older documents, many of which are affected by acid paper degeneration.

The Court transferred several collections of documents to the New York State Archives. These include Cases and Briefs 1990-1994, documents of the Judicial Commission on Reapportionment, Court exhibit materials and the final portion of the pre-1940 original internal reports collection. The Archives has accessioned these materials and commenced preservation work, as necessary. As in past years, at the request of the State Library, the depository copy of Records and Briefs was shipped to a micropublisher for microfiching. In addition, a set was microfilmed commercially, thus ensuring widespread access to the Records and Briefs collection.

The State Library, the Archives, the Albany Law School Library, the Legislative Library, the SUNYA libraries, the Albany Public Library, the Albany High School Library and the Capital District Library Council continued to facilitate the Court's access to materials not part of its collection. On behalf of the Court, I express my ongoing appreciation for their cooperation in timely furnishing requested items and information.

In 1999, the Chief Judge appointed the Librarian to the Committee to Promote Public Trust and Confidence in the Legal System. The Librarian also attended the 1999 Court Historical Societies Conference.

F. Management and Operations

The Administrative Services Assistant, aided by two secretarial assistants, is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting, preparation of payroll documents, processing vouchers, counseling employees on and processing applications for various benefit programs, and development of the Court's annual budget request.

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

G. Budget and Finance

The Administrative Services Assistant is responsible for initial preparation, administration, implementation and monitoring of the Court's annual budget.

1. Expenditures

The work of the Court and all its ancillary agencies was performed within the 1999-2000 fiscal year budget appropriation of $10,598,410. This figure included all judicial and 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 Request

The total request for fiscal year 2000-2001 for the Court and its ancillary agencies is $11,035,609, an increase of 4.1% from the previous year's appropriation.

The 2000-2001 personal services request of $8,596,733 reflects an increase of $148,177, or 1.75%, over the current year's appropriation. This request includes funding for contractual salary increments for all eligible non-judicial employees. The

2000-2001 non-personal services request of $2,438,876 reflects an increase of $289,022 or 13.4% more than the current year's adjusted appropriation. The requested non-personal service appropriation of $2,438,876 includes adjustments in legal reference materials ($109,485), supplies and materials ($6,509), travel ($8,734), rentals ($4,548), repairs to structure ($1,224), printing ($168,729), telephone ($8,686), and contractual services ($54,902), which are partially offset by reductions in repairs of equipment (-$27,201), EDP telecommunication (-$5,460), postage and shipping (-$10,815), computer-assisted legal research (-$5,418) and replacement equipment (-$24,901).

The modest increase in the budget request, driven by the substantial escalation of certain costs, demonstrates the Court's commitment to perform its functions and those of its ancillary agencies as economically as possible. The Court will continue to take advantage of opportunities for savings that will limit increases in future budget requests.

As stated earlier in this Report, the Court has performed its administrative tasks and managed its capital caseload thus far without a budgetary increase earmarked for capital case purposes. Additional staff and resources will be required, in an amount to be determined by the Court upon completion of its needs assessment.

3. Revenues

In calendar year 1999, the Court remitted filing fees of $250 for each of 99 civil appeals. The $24,750 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 ($16,854), the computer bulletin board access service ($50) and miscellaneous collections ($1,173.48). For calendar year 1999, revenue collections totaled $42,827.48.

H. Computer Operations

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

Driven by potential programming errors in computer chips related to the numerical changeover from year 1999 to 2000, the Information Systems Department focused most of its attention in 1999 on attaining "Y2K" compatibility for all its equipment, including routers, switches, computers, printers, and software. The Department upgraded more than 100 computers, and their related software, used in the Court. Seven antiquated servers and a number of older workstations were completely replaced. A new e-mail system was installed, compatible with the Court's upgraded software and with the rest of the New York State Unified Court System. Word processing and research capabilities were enhanced. Research connections were switched from dial-up modem lines to TCP/IP network connections, eliminating the need for modem data lines. Hardware and software for the AS400 system were patched or upgraded and a new power backup was installed. As a result of these preparations, the transition to the new year was uneventful.

During 1999, the Information Systems Department staff continued the "House Calls to Home Chambers" program, scheduling visits to each of the six remote Home Chambers at least once every six weeks. In all, 30 scheduled visits were made. Rewiring of Home Chambers was completed, bringing all Home Chambers up to court system wiring standards. A wiring study was performed at Court of Appeals Hall as well, and much of the wiring was found to be substandard. Immediate corrections were made where possible; however, a more thorough upgrading is necessary to bring the building up to code.

The Information Systems Department maintains a Help Desk for technical support of both hardware and software on a permanent basis. Information Systems Department staff respond to an estimated 500 calls per year -- in person where possible, by telephone in long distance emergencies, and through vendor or manufacturer technical support when necessary. Training for new software and for software unfamiliar to new employees is scheduled as needed.

The Information Systems Department developed and designed the Court's new Internet web site in cooperation with other members of the Clerk's staff. The Department maintains the site and insures that its content is current.

I. Court of Appeals Hall

The Building Manager, Deputy Building Superintendent and their staff are responsible for the excellent condition and beautiful appearance of Court of Appeals Hall and its grounds. The Building Manager and Deputy Building Superintendent

also coordinate all work by outside contractors; arrange for transportation of appeal records and other materials between Court of Appeals Hall and the Judges' Home Chambers, and supervise the provision of security services by the building guards.

This past year witnessed the installation of a new telephone system with voice mail features, the completion of a construction project on the basement level, and the reconfiguring of archival storage space. The Building Manager's staff recycled 29,400 pounds of white paper, as well as other solid waste materials, in 1999. The building maintenance staff also provided invaluable assistance in preparing for the Court's 1999 Law Day celebration held, for the second time, on the steps of Court of Appeals Hall.

During 1999, the Building Manager oversaw the completion of the Court's portrait conservation project, undertaken by the New York State Office of Parks and Historic Preservation. That agency also restored and refinished a twelve-foot by four-foot oak table designed by noted architect H.H. Richardson as part of his 1883 construction of new chambers for the Court of Appeals on the third floor of the Capitol. The Court of Appeals moved its chambers from the Capitol to Old State Hall in 1917.

Last renovated in the late 1950s, Court of Appeals Hall is no longer adequate to house the Court's Judicial and non-judicial staff. During 1999, the Clerk of the Court and the Building Manager worked with the Office of Court Administration and the Dormitory Authority of the State of New York to review bids and award a contract for a comprehensive analysis of the Court's space and programmatic needs. The Judiciary's Fiscal Year 2000-2001 budget request includes a line item for the renovation and expansion of Court of Appeals Hall.

Finally, a number of personnel changes occurred in the Building Manager's staff in 1999, detailed in Part IIK of this Report.

J. Fire and Safety

During 1999, the Fire and Safety Committee continued to monitor building safety requirements. The Clerk acknowledges the presence, professionalism and expertise of the State Police officers assigned to Court of Appeals Hall during 1999.

K. Personnel

The following personnel changes occurred during 1999:

APPOINTMENTS:

Lisa Herriman was employed as Clerical Research Aide in May 1999.

Brian J. LeBlanc was employed as per diem Court Building Guard (temporary) in July 1999.

Vivian Ali, employed as Telephone Operator (temporary) in July 1998, was appointed permanent Telephone Operator in November 1999.

Joseph J. Muller was employed as Assistant Building Superintendent in November 1999.

Gary Spencer was employed as Public Information Officer in November 1999.

PROMOTIONS AND TRANSFERS:

Sarah W. Kleemann was promoted from Reference Clerk to Principal PC Analyst in January 1999.

Bryan D. Lawrence was promoted from Assistant Local Area Network Administrator to Local Area Network Administrator in January 1999.

Stephen F. Calacone was promoted from Senior Custodial Aide to Clerical Research Aide in February 1999.

Donna J. McMillen was promoted from Principal Stenographer, Court of Appeals to Secretary to Clerk, Court of Appeals in August 1999.

Lisa M. Connelly was transferred from Principal Law Clerk to Judge Bellacosa to Principal Court Attorney, Court of Appeals in August 1999.

Erika Duthiers was promoted from Senior Court Attorney, Court of Appeals to Principal Law Clerk to Judge Smith in August 1999.

Joanne M. Harvey was promoted from Senior Court Attorney, Court of Appeals to Principal Law Clerk to Judge Bellacosa in August 1999.

Tiffany H. Lee was promoted from Senior Court Attorney, Court of Appeals to Principal Law Clerk to Judge Wesley in August 1999.

Francis W. Pepper was promoted from Custodial Aide to Senior Custodial Aide in September 1999.

RETIREMENTS:

Minnie Turner, Custodial Aide, retired on October 4, 1999, after 14 years and six months of service.

Ural Sims, Assistant Building Superintendent, retired on November 4, 1999, after 14 years and four months of service.

RESIGNATIONS:

Kathleen M. Vakiener, Telephone Operator, Court of Appeals, resigned January 15, 1999, after 12 months of service.

Linda T. Kaczmarek, Clerical Research Aide, resigned March 1, 1999, after 12 months of service.

Paul J. Browne, Public Information Officer, resigned August 16, 1999, after 2 years and 1 month of service.

Theresa A. Buel, Secretary to Clerk, Court of Appeals, resigned September 16, 1999, after 19 years and 6 months of service.

Travis R. Moore, Senior Services Aide, resigned September 27, 1999, after 4 years and 3 months of service.

Jeffrey Lilac, Court Building Guard, resigned November 17, 1999, after 3 years and 8 months of service.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Jesse Ashdown, Jenny L. Chung, Ronald S. Lanza, Matthew S. Lerner, David W. Novak and Wendy E. Smith were appointed Court Attorneys in August 1999.

PROMOTIONS:

Zainab A. Chaudhry, J. Matthew Donohue, Vaughn E. James, Barbara Comninos Kruzansky and Leah M. Soule were promoted from Court Attorneys to Senior Court Attorneys in August 1999 and James A. Costello was promoted from Senior Court Attorney to Principal Court Attorney in August 1999. Julia S. Bielawski was promoted from Senior Law Clerk to Judge Levine to Principal Court Attorney in August 1999.

COMPLETION OF CENTRAL STAFF CLERKSHIPS:

Senior Court Attorneys Teresa A. Bruce, Erika Duthiers, Joanne M. Harvey, Craig Hurley-Leslie, Tiffany H. Lee, Melissa E. Osborne-Varble and Carol B. Pressman completed their Central Staff clerkships in August 1999. Erika Duthiers is now Principal Law Clerk to Judge Smith, Joanne M. Harvey is now Principal Law Clerk to Judge Bellacosa and Tiffany H. Lee is now Principal Law Clerk to Judge Wesley.

ACKNOWLEDGMENT

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 Mary Ellen Cadalso, who compiled and prepared many of the detailed appendices, William Fitzpatrick, who produced the copies, Donna McMillen, Lisa Connelly, Hope Engel and Rosemarie Fitzpatrick, who provided proofreading services, and Marjorie McCoy, whose editorial and compilational work was invaluable. I also specially acknowledge the services Terri Buel rendered to my predecessor, Donald M. Sheraw, to me and to the entire Court. Terri, who resigned in September 1999 after almost 20 years' employment at the Court to work in a family business, embodied the ideals of public service to which we all aspire.

Throughout 1999, the Clerk's Office staff and the Building Manager's staff made every effort to ensure the efficient and courteous running of the Court. Again, I thank each staff member for providing the Bar and the Public exemplary service. A complete list of non-judicial personnel appears in Appendix 11.

III. 1999: Year In Review

This section presents a sampling of significant decisions the Court of Appeals handed down in 1999, highlighting the range of constitutional, statutory and common law issues that reach the Court every year.

GOVERNMENTAL LAW

Matter of World Trade Ctr. Bombing Litig. (93 NY2d 1)

Following the terrorist bombing of the World Trade Center in 1993, various businesses and individuals injured in the bombing brought negligence actions against the Port Authority of New York and New Jersey. Plaintiffs claimed that the Port Authority negligently failed to implement security measures that would have avoided the bombing or mitigated its damages. The appeal dealt with plaintiffs' pretrial efforts to obtain World Trade Center building security plans and documents from the Port Authority. The Court held that the Port Authority was not required to disclose the security-related material at issue. Rather, the Court concluded that a confidential judicial pre-assessment of the disputed documents was necessary to weigh whether the particular requested data should be shielded from public disclosure of confidential governmental communications and reports.

Council of City of N. Y. v Giuliani; Campaign to Save our Pub. Hosps. -- Queens Coalition v Giuliani (93 NY2d 60)

In response to the New York City health care crisis, the City administration agreed to sublease Coney Island Hospital, operated by the New York City Health and Hospitals Corporation, to PHS New York Inc., a for-profit entity, pursuant to the Health and Hospitals Corporation Act. On this appeal, the Court concluded that the Act did not permit the City to sublease the hospital and turn over its operations and service obligations to the private entity. The Court held that both the language of the statute and its legislative history clearly indicate that municipal hospitals would remain a governmental responsibility and would be operated by HHC as long as HHC remained in existence. According to the Court, the only way for HHC to exit the hospital business is the way it entered: through an act of the Legislature.

Matter of McCall v Barrios-Paoli (93 NY2d 99)

At issue here was the Comptroller's authority to conduct "performance audits." After New York City refused to cooperate with the State Comptroller's "performance audits" investigating compliance with the law, the efficacy of data-gathering systems and the allocation of resources of City agencies, the Comptroller sought enforcement of subpoenas compelling the City to comply. The City claimed, however, that the Comptroller's power to audit was strictly limited to financial matters. The Court held that, as the State's chief fiscal officer, the Comptroller was constitutionally and statutorily permitted to investigate the performance of City agencies. The Court explained that in authorizing the Legislature to delegate to the Comptroller "supervision of the accounts of any political subdivision" and incidental administrative duties, article V, § 1 of the State Constitution allowed inquiry into the effectiveness of City expenditures of State funds. The Court further concluded that, by statute, the Legislature had delegated supervisory powers to the Comptroller that extended beyond purely financial matters.

Cohen v State of New York (94 NY2d 1)

On December 18, 1998, the Legislature passed and the Governor approved Chapter 635 of the Laws of 1998, providing that if legislative passage of the budget "has not occurred prior to the first day of any fiscal year, the net amount of any * * * [legislator's] bi-weekly salary installment payments to be paid on or after such day shall be withheld and not paid until such legislative passage of the budget has occurred * * *." Plaintiffs, individual members of the Legislature who either voted against passage of Chapter 635 or were not in office at the time of its passage, challenged the facial constitutionality of the Act. The State directly appealed to the Court of Appeals from a Supreme Court judgment declaring the unconstitutionality of Chapter 635 of the Laws of 1998. The Court of Appeals reversed, declared the statute constitutional, and held that the statute does not abridge the protections of article III, § 6 of the State Constitution. Rather, the statute satisfies the constitutional payment mandate, in conformity with this Court's controlling precedents, and serves as an incentive to complete constitutional budget obligations in a timely fashion. The Court also concluded that Chapter 635 does not violate the separation of powers doctrine, reasoning that passage of the budget is a compromise between the Legislative and Executive branches, and that Chapter 635 does not require the Legislature to pass the Governor's budget, but to pass a budget before the fiscal year in order to receive its salaries.

Grumet v Pataki (93 NY2d 677)

Plaintiffs, citizen taxpayers, commenced an action challenging the constitutionality of Chapter 390 of the Laws of 1997, which enabled Kiryas Joel, a village in Orange County, New York comprised solely of Satmar Hasidic Jews, to create a separate school district for its disabled children. This Court held that Chapter 390 violated fundamental Establishment Clause neutrality principles because the statute's criteria enabling a municipality to establish a publicly funded school district were consciously drawn to benefit Kiryas Joel, and other groups or municipalities with educational needs similar to those of Kiryas Joel would not have an equal opportunity to create a publicly funded school district under the statute. Indeed, only two of this State's 1,545 municipalities qualified under Chapter 390. Moreover, applying the tripartite test of Lemon v Kurtzman (403 US 602), the Court concluded that Chapter 390 advanced one religion over others and constituted an impermissible religious accommodation.

Mark G. v Sabol; Martin A. v Sabol; Dakinya B. v Sabol; Frances F. v Sabol (93 NY2d 710)

Plaintiffs were eleven children (and the estate of a twelfth) from four families. They brought this action against New York City child welfare officials, asserting multiple claims under a variety of legal theories. Specifically, plaintiffs asserted that when they were placed in foster care, they remained within the ambit of the City's custodial responsibility, and that the City's failure to take supervisory and interventive steps and provide certain protective services deprived them of procedural and substantive due process of law. This Court held that this case did not involve an attempt by the government to deprive the plaintiffs of a right that carries with it a pre-deprivation procedure. Thus, plaintiffs had not pleaded a violation of procedural due process. In addressing plaintiffs' substantive due process claims, the Court adopted the "professional judgment" standard (articulated by the Supreme Court of the United States in Youngberg v Romeo, 457 US 307) fashioned to address substantive due process claims of persons committed to facilities for the mentally retarded. Considering that neither the parties nor the courts below had a precedential basis on which to proceed, this Court affirmed the lower court's dismissal of plaintiffs' substantive due process claims, but granted plaintiffs leave to replead.

Bonnie Briar Syndicate v Town of Mamaroneck (94 NY2d 96)

A property owner challenged the Town's rezoning of property for solely recreational purposes as a regulatory taking under the Fifth and Fourteenth Amendments to the United States Constitution. This Court clarified the appropriate standard to be applied in reviewing the sufficiency of the relationship between the Town's interests and the rezoning determination for Takings Clause analysis, and held that in the context of a regulatory denial of development pursuant to a generally applicable zoning law, all that is required is that the zoning determination bear a reasonable relation to legitimate State objectives.

Port Jefferson Health Care Facility v Wing (94 NY2d 284)

Twenty-one nursing home facilities treating significant percentages of non-Medicaid patients brought this declaratory judgment action. The facilities claimed their Fourteenth Amendment right to equal protection of the law was violated by a statutory scheme in which the State imposed a gross receipts tax upon all residential health care facilities, but reimbursed them only to the extent they paid the tax on receipts from Medicaid patients. The Court held the tax statute had a rational basis, and declared it constitutional, because the statute furthered legitimate State interests in reducing the incentive for higher quality-of-care facilities to prefer non-Medicaid patients and in encouraging those facilities to share the burden of providing skilled nursing home care to the medically indigent.

DEATH PENALTY

People v Mateo (93 NY2d 327)

Under Penal Law § 125.27(1)(a)(xi), what does the phrase "in a similar fashion" mean? In its second decision interpreting New York State's death penalty statute, the Court noted that it was clear that the Legislature and the Governor intended the phrase "committed in a similar fashion" to include serial killings, but nonetheless declined to fashion a set of criteria to define the requirements of the statutory phrase at issue. The Court concluded that by any standard, the evidence before the Grand Jury was legally insufficient to establish the "committed in a similar fashion" element of the statute in this case: the victims were of different ethnic and racial backgrounds; varied weapons were used to commit these murders; the motives

for each shooting differed, as did the wounds inflicted by defendant upon his victims; and the locations of these multiple killings were different.

CONSUMER PROTECTION

Karlin v IVF Am. (93 NY2d 282)

At issue here was the scope of two consumer protection statutes -- General Business Law §§ 349 and 350, which prohibit deceptive business practices and false advertising. After unsuccessful treatment at defendants' in vitro fertilization program, plaintiffs complained that defendants had violated sections 349 and 350 by publicizing false success rates and misrepresenting health risks associated with in vitro fertilization. Defendants challenged the applicability of these statutes to a medical procedure, arguing that plaintiffs were required to bring their action as one based on lack of informed consent. Drawing on the broad wording and history of sections 349 and 350, the Court held that plaintiffs could pursue their claims under these statutes, as defendants' multi-media dissemination of information to the public was precisely the sort of consumer-oriented conduct the statutes were designed to address.

Gaidon v Guardian Life Ins. Co. of Am.; Goshen v Mutual Life Ins. Co. of N.Y. (94 NY2d 330)

Defendant life insurance companies moved to dismiss various claims brought against them by purchasers of "vanishing premium" life insurance. The purchasers alleged that the insurance companies marketed policies using fraudulent, deceptive and misleading policy illustrations. The Court upheld the dismissal of all claims with the exception of the General Business Law § 349 causes of action. Section 349, the Court held, "contemplates actionable conduct that does not necessarily rise to the level of fraud." By alleging that insurance companies created unrealistic expectations that premiums were likely to "vanish" at fixed dates in the near future, purchasers properly pleaded a "deceptive act or practice" under the statute. The Court further noted that disclaimer language accompanying the policy illustrations did not, as a matter of law, insulate defendants from the purview of section 349.

FREEDOM OF INFORMATION LAW

Matter of Daily Gazette Co. v City of Schenectady (93 NY2d 145)

Two newspapers brought this proceeding to compel the Schenectady Police Department to turn over records regarding disciplinary action against 18 officers, pursuant to the State's Freedom of Information Law (FOIL), following news reports of misconduct by police officers celebrating a fellow officer's bachelor party. In denying access, the Court declined to limit strictly the Civil Rights Law § 50-a exemption from FOIL disclosure to a request made in the context of actual or potential litigation, because such an interpretation conflicted with the statute's plain wording, legislative history, precedent and the paramount objectives of the Legislature in enacting section 50-a: to prevent abusive exploitation of personally damaging information contained in officers' personnel records.

Matter of Mantica v New York State Dept. of Health (94 NY2d 58)

The Court in this case held that a patient could obtain his or her own medical records from a State agency, pursuant to FOIL, despite the prohibition of Public Health Law § 18(6) against redisclosure of patient information by third parties. After receiving allegedly deficient medical care in an Albany hospital, petitioner filed a complaint with the New York State Department of Health (DOH). Later, in conjunction with his medical malpractice action against the hospital and several physicians, petitioner requested the DOH to provide him, among other things, a complete copy of his medical records. Citing Public Health Law § 18(6), the DOH denied the request, and petitioner invoked FOIL. The Court held that Public Health Law §18(6) was intended to prevent disclosure of confidential medical records to third parties, not to prevent disclosure to patients of their own medical records. Thus, the DOH was required to comply with the FOIL request.

EVIDENCE

People v James (93 NY2d 620)

In a perjury prosecution, defendant argued on appeal that hearsay evidence was improperly introduced at trial against him, in violation of New York's rules of evidence and the Confrontation Clauses of the Federal and New York State Constitutions. The Court held it proper under the state-of-mind exception to the

hearsay rule to admit against a criminal defendant a declarant's statement of intention to perform acts entailing the joint participation of, and prior agreement between, the declarant and the non-declarant defendant for purposes of proving that such conduct took place.

Katherine F. v State of New York (94 NY2d 200)

Claimant, a psychiatric patient who was sexually abused by an employee at defendant State hospital, demanded discovery of all incident reports arising from the abuse. The issue here was whether such reports were exempt from disclosure under Education Law § 6527(3). Relying on the statute's plain language and its legislative purpose of promoting the quality of care through self-review, the Court held that reports of patient sexual abuse were privileged both as "incident reports," and as reports prepared pursuant to a quality assurance review function.

Spensieri v Lasky (94 NY2d 231)

On this appeal, the Court rejected a path taken by several other jurisdictions and held that the Physician's Desk Reference (PDR) is not prima facie evidence of a standard of care for physicians who prescribe medications for their patients. According to the Court, the PDR may have some significance in identifying a doctor's standard of care in the administration and use of prescription drugs, but it is not the sole determinant. The information contained in the PDR can only be analyzed in the context of the medical condition of the patient; therefore, the testimony of an expert is necessary to interpret whether the drug in question presented an unacceptable risk for the patient in either its administration or the monitoring of its use. The Court also concluded that the learned intermediary doctrine did not create a new hearsay exception for the use of the PDR to establish a standard of care in medical malpractice trials.

CRIMINAL LAW & PROCEDURE

People v Garcia (93 NY2d 42)

An indigent defendant appealed to this Court arguing that his constitutional right to counsel was violated when he was not adequately informed of his right to counsel on the People's appeal and, as a result, was unrepresented at the Appellate

Division. Recognizing that a defendant has vital interests at stake on a People's appeal and that constitutional guarantees to legal counsel therefore apply, the Court held that the ultimate duty of informing a defendant of his or her right to counsel on appeal rests with the State. Accordingly, the Court ruled that, upon discerning that defendant was unrepresented on the People's appeal, the Appellate Division should not have proceeded to consider and decide the appeal without record proof that defendant had waived his right to counsel.

People v Johnson (93 NY2d 254)

This case tested when a court must hold a Sirois hearing to determine whether a defendant's misconduct procured a witness's silence. The Court held that it was reversible error not to hold a Sirois hearing where there were competing inferences as to why a witness refused to testify at trial. The case involved a 52-year old pastor who had engaged in a relationship with a 12-year old parishioner. Taped conversations before his arrest had the defendant requesting the witness to lie so that he would not go to jail. After the arrest, the witness did testify at a suppression hearing as well as before the Grand Jury, which testimony was later admitted at trial. Under these circumstances and without a waiver by the defendant, a Sirois hearing was necessary to determine why the witness refused to testify at defendant's trial.

People v Hernandez (93 NY2d 261)

Defendant was convicted of attempted rape and sexual abuse, each in the first degree. The primary issue before this Court was whether defendant's certification as a "sex offender" could be appealable as part of a direct appeal from the judgment of conviction. Noting that the Sex Offender Registration Act (SORA) provides that a court shall certify that the person is a sex offender upon conviction, the Court held that such "certification" is appealable and reviewable as part of the judgment of conviction. The Court reasoned that defendant's certification was unmistakably part of the court's adjudication with respect to defendant's crimes and it, along with the other elements of the disposition, formed an integral part of the conviction and sentencing. In addition, the Court noted that, pursuant to SORA, the "certification" must be included in the order of commitment and, consequently, the "certification" must be included in the certificate of conviction. Therefore, the Court held it is appealable. In so holding, the Court distinguished People v Stevens (91 NY2d 270), which held that risk-level determinations were not part of a final adjudication.

People v Seda (93 NY2d 307)

Criminal Procedure Law § 30.10(4)(a) tolls the Statute of Limitations after the commission of an offense for any period during which "the whereabouts of the defendant were continuously unknown and continuously unascertainable" through reasonable diligence. Defendant in this case argued that this tolling provision was only meant to apply where the identity of the perpetrator is known, but cannot be found. The Court rejected defendant's "strained" interpretation of this statute, and concluded that the toll is applicable where both the defendant's identity and location are unknown or where just the location of the defendant is unknown.

People v Owusu (93 NY2d 398)

In this case, the Court was called upon to decide whether an individual's teeth can constitute a "dangerous instrument" within the meaning of section 10.00(13) of the Penal Law. The Court concluded that, while the use of an object to produce injury is an appropriate analytical vehicle to determine whether an object is dangerous, the statute's ordinary meaning, its legislative history and the Court's own jurisprudence demonstrate that an individual's body part does not constitute an instrument under the statute.

People v Feerick (93 NY2d 433)

Several members of the New York City police force were convicted of official misconduct, coercion and trespass, among other crimes, for attempting to recover a lost police radio by ransacking an apartment and threatening several persons with arrest unless the radio was returned. One of the main issues on appeal was whether the People had proven official misconduct. Defendants contended that the official misconduct statute was not designed to cover overzealous law enforcement, but instead dealt with graft, pay-offs or other corrupt activities on the part of public servants. Review of the statute's history indicated that the Legislature intended to cover more than just graft, and had included in the definition of the crime two mental state requirements to ensure that honest errors of judgment were not criminalized. The People had to prove not only that a public servant knew that the activities were unauthorized, but also that he or she acted with the intent of receiving a benefit, defined as any gain or advantage. In this case, the People provided sufficient evidence of intent to receive a benefit by showing that defendants had been

instructed not to pursue the police radio, and thus had acted in an unauthorized manner to benefit themselves.

People v Carroll (93 NY2d 564)

In this criminal case against a stepmother of a three-year-old who was beaten to death by her father, the issue was whether defendant was "legally charged" with the child's care. Defendant described herself as the child's "mother," "stepmother" and "primary caretaker" during the child's visits. Although defendant saw her husband repeatedly beat the child, and was aware that the child had stopped eating, she did not seek medical attention. After a Grand Jury indicted defendant for endangering the welfare of a child, defendant claimed that she could not be "legally charged" with the child's care because the child did not live with her and she had not assumed full-time parental duties. The Court held that the evidence was legally sufficient. It was irrelevant that defendant had not assumed full-time parental duties as, to fall within the statute, a person need only be responsible for the child's care "at the relevant time."

People v Martello (93 NY2d 645)

This criminal case required the Court to address whether its 1993 ruling in People v Bialostok (80 NY2d 738), holding that "audio-capable" pen registers are subject to this State's probable cause requirements, applies retroactively, so as to govern all pen register surveillance conducted by law enforcement in this State prior to the issuance of the Bialostok ruling. Concluding that Bialostok emanates from this Court's interpretation of the provisions of the Criminal Procedure Law, as opposed to emanating from the Court's interpretation of constitutional requirements, the Court held that Bialostok should be applied prospectively only. Additionally, the Court held that as a result of the 1988 enactment of CPL 705, which specifically governs pen register surveillance, pen register surveillance conducted subsequent to the effective date of CPL 705, and in compliance therewith, is not subject to the Bialostok ruling.

Matter of Grand Jury Subpoena Duces Tecum (Museum of Modern Art)
(93 NY2d 729)

In this case, the Court was called upon to determine whether Arts and Cultural Affairs Law § 12.03, which protects the artwork of nonresident lenders from "any

kind of seizure" while on exhibit in New York State, encompassed a subpoena duces tecum requiring production of two paintings by Egon Schiele, on loan to the Museum of Modern Art from the Leopold Foundation in Vienna. The subpoena was issued by the New York County District Attorney's Office pursuant to a Grand Jury investigation into the theft of those paintings during the German annexation of Austria. The Court held that the statute is not limited in its application to civil proceedings and that the subpoena in question had the effect of "seizing" the paintings in violation of the statute.

People v Young (94 NY2d 171)

At issue in this case was whether a presumption of vindictiveness arose where, after a successful appeal and retrial, defendant received a lesser overall sentence but a greater sentence on one individual count. This has been a recurring issue in courts across the nation. Here, defendant was convicted of several counts at his first trial, for which he received an aggregate sentence of 45 years to life. Following an appellate reversal, he was retried and convicted of only a single count. The trial judge imposed a sentence of 25 years to life on that count -- 20 years less than the aggregate sentence after his first trial, but greater than the sentence imposed on that one count after his first trial. This Court held that a presumption of vindictiveness did not arise, because the record revealed that the primary motivating factor behind the trial judge's sentence was the defendant's extensive criminal history, not vindictiveness. Where a defendant receives a lesser overall sentence after retrial, but a greater sentence on an individual count, the presumption does not arise unless there is a reasonable likelihood that the new sentence was the result of impermissible vindictiveness.

ZONING

City of New York v Les Hommes, (94 NY2d 267)

The City of New York sought to close Les Hommes, a book and video store that sells and rents adult materials. The question in this case was whether literal compliance with the City's administrative guidelines, established to implement an amended zoning resolution regulating adult establishments, was adequate compliance. Specifically, Les Hommes had complied with the administrative guidelines by dedicating over 60% of its stock and floor and cellar space to non-adult videos. The City claimed that compliance was a sham and that Les Hommes was still

a non-conforming adult establishment because the stock of non-adult videos was too stale and was offered only for sale, not rent. The Court disagreed with the City. The City's own guidelines were clear and required only that a business adjust its stock and floor and cellar space to match the 60:40 ratio of non-adult to adult use. Also, the guidelines treated sales and rentals the same way. As a result, the guidelines themselves did not allow for a sham analysis, and Les Hommes' literal compliance was adequate.

TORT LAW

Engel v CBS, Inc. (93 NY2d 195)

This certified question from the United States Court of Appeals for the Second Circuit asked the Court to examine the elements of a common law malicious prosecution action. Specifically, the issue was whether New York required "special injury" as an element. After reviewing the history of this issue, the Court concluded it does. This means that a plaintiff must "abide some concrete harm that is considerably more cumbersome than the physical, psychological or financial demands of defending a lawsuit." The Court reasoned that the special injury element ensures open access to the courts and prevents *ad infinitum* litigation. Under the facts presented by the Second Circuit, the New York Court of Appeals concluded that Engel, an attorney who was compelled to strategize around conflicts created by CBS's prior lawsuit against him, had not demonstrated the special injury necessary to establish a malicious prosecution claim.

Argentina v Emery World Wide Delivery Corp. (93 NY2d 554)

Plaintiff was injured by a steel plate that was negligently loaded into a van owned by Emery World Wide Delivery. Vehicle and Traffic Law § 388(1) imposes liability on all vehicle owners for accidents resulting from negligence in the permissive "use or operation" of their vehicles. The United States Court of Appeals for the Second Circuit certified two questions regarding the proper interpretation of this statute. In answering the first question, the Court determined that unloading and loading constituted "use and operation" of the vehicle. The second question asked whether the vehicle itself must have been a proximate cause of the injury, as required by the no-fault insurance law. The Court held that section 388 and the no-fault law serve different functions, are animated by different purposes and have different limiting principles. As a result, the Vehicle and Traffic Law provision should not be

interpreted identically to the no-fault law, and the vehicle itself need not have been a proximate cause of the injury.

Lunney v Prodigy Servs. Co. (94 NY2d 242)

In this case, the Court was called upon to decide whether an Internet service provider (ISP) could be held liable for defamation as a result of messages transmitted through its system. Usurping the name of Alexander Lunney, an unknown imposter opened a number of accounts with Prodigy Services. The imposter posted two vulgar messages in Lunney's name on a Prodigy bulletin board and sent a threatening, profane e-mail message through Prodigy to a third person. Evaluating the case in accordance with established tort principles, the Court held that, like a telephone company, an ISP cannot be held liable in defamation as a "publisher" of e-mail messages transmitted through its system by a third party. The Court also held that even though Prodigy reserved the power to exclude certain vulgarities from bulletin board messages, this did not change its passive character in connection with the millions of messages posted on its bulletin boards or compel it to guarantee the content of those myriad messages. Thus, this Court held that under the facts of this case, Prodigy was not the "publisher" of the bulletin board messages.

Huggins v Moore (94 NY2d 296)

The former husband and manager of a popular actress and recording artist brought a defamation action against the writer and publisher of three news articles concerning the dissolution of the couple's marital and financial relationships. The Court held that even though plaintiff was not a public figure, he was required to prove that the media defendants were grossly irresponsible in publishing the articles. Because there was no abuse of editorial discretion, the Court deferred to defendant's determination that the couple's personal saga was reasonably related to the issue of economic spousal abuse, a theme arguably within the sphere of legitimate public concern.

PRODUCTS LIABILITY

Scarangella v Thomas Built Buses (93 NY2d 655)

A school bus driver brought a products liability action, on a design defect theory, against the manufacturer of a bus after being injured while the bus, which her

employer chose not to equip with a back-up alarm, was being operated in reverse. The Court held that the bus was not defective because plaintiff failed to submit any proof to negate the evidence that (1) the buyer was thoroughly knowledgeable regarding the product and its use and was actually aware that the safety feature was available; (2) there existed normal circumstances of use in which the product was not unreasonably dangerous without the optional equipment; and (3) in view of the range of uses of the product, the buyer was in a position to balance the benefits and the risks of not having the safety device, given the specifically contemplated circumstances of the buyer's use of the product.

CIVIL PROCEDURE

Perez v Paramount Communications (92 NY2d 749)

A certified question from the Appellate Division asked the procedural question whether the filing of a motion for leave to amend a complaint to add a defendant to a pending action can, for Statute of Limitations purposes, be considered the timely commencement of the action against the party sought to be added when the motion papers include a copy of the proposed supplemental summons and amended complaint. Holding that such filing tolls the Statute of Limitations during the pendency of the motion, but is not considered the commencement of the action, the Court distinguished its 1949 ruling in Arnold v Mayal Realty Co. (299 NY 57) where it held, under the commencement-by-service system, that service upon a new defendant in a pending action prior to receiving judicial permission does not stop the running of the Statute of Limitations. Applying a fresh rationale in light of this State's 1992 transition to a commencement-by-filing system, the Court held that plaintiff's filing of a proposed supplemental summons and amended complaint with the court tolled the Statute of Limitations and, as a result, preserved his cause of action against the party sought to be added.

PROFESSIONAL RESPONSIBILITY

Kassis v Teacher's Ins. and Annuity Assn. (93 NY2d 611)

Plaintiff's law firm, Weg & Myers, moved to disqualify defendant's law firm, Thurm & Heller, after Thurm & Heller hired a former associate of Weg & Myers who had participated in plaintiff's litigation while employed at Weg & Myers. Recognizing that per se disqualification of Thurm & Heller was unduly burdensome,

the Court held that where one attorney is disqualified as a result of having acquired confidential client information, the imputed presumption of disqualification of the entire law firm is rebuttable. The Court ruled that where the party seeking to avoid disqualification could prove that any information acquired by the disqualified attorney was unlikely to be significant or material in the litigation, that law firm could erect a "Chinese Wall" around the disqualified lawyer to avoid disqualification. Under the circumstances of this case, given (1) that the disqualified attorney had extensively participated in the litigation at Weg & Myers and (2) Thurm & Heller's representation of the adversary in the same matter, the Court concluded that Thurm & Heller's conclusory assertions otherwise had failed to rebut the presumption that the disqualified attorney had not acquired material confidences. Thus, the fact that Thurm & Heller had erected a "Chinese Wall" around the disqualified attorney was inconsequential and the law firm was disqualified.

CONTRACTS

BDO Seidman v Hirshberg (93 NY2d 382)

A national accounting firm sued a former employee for breach of an employment agreement in which the employee agreed to compensate the firm for serving any of the employer's former clients within 18 months after termination of employment. Notwithstanding the Court's acknowledgment that accountancy has all the earmarks of a learned profession, the Court held that the learned profession precedents did not preclude independent scrutiny of the anti-competitive agreement under the common-law standard of reasonableness. The Court held that the restrictive covenant could only be enforced to the extent necessary to protect plaintiff's legitimate interest in preventing former employees from exploiting or appropriating the goodwill of a client or customer, which had been created and maintained at the employer's expense, to the employer's competitive detriment. Here, the agreement went beyond that legitimate interest by preventing competition for personal clients of defendant whose goodwill was not acquired through the expenditure of plaintiff's resources.

JUVENILE AND FAMILY LAW

Matter of Benjamin L. (92 NY2d 660)

The Court held that a juvenile has a right to speedy adjudication under the Due Process Clause of our State Constitution. Noting that the same policies that precipitated the articulation and enforcement of a criminal defendant's right to a speedy trial are applicable to juveniles in delinquency proceedings, the Court concluded that the speedy trial protections afforded under the Due Process Clause are not for criminal proceedings alone and are not at odds with the goals of juvenile proceedings. The Court adopted, extended and modified the five factors for determining whether a defendant's speedy trial rights have been violated, articulated in People v Taranovich (37 NY2d 442), to the juvenile delinquency context, and directed courts to weigh these factors on a case-by-case basis. However, this Court cautioned courts to be acutely cognizant of the goals, character and unique value of juvenile proceedings when assessing a speedy trial claim.

O'Shea v O'Shea (93 NY2d 187)

The case presented the issue whether Domestic Relations Law § 237(a) grants courts discretion to award a non-monied spouse attorneys' fees for legal services rendered before an action was commenced, and for those rendered in connection with a counsel fee hearing. The Court determined that it does. Tracing the deep statutory roots of Domestic Relations Law § 237(a), the Court held that this provision is designed to prevent the matrimonial scales of justice from becoming unbalanced by the weight of the wealthier litigant's wallet.

DEBTOR-CREDITOR LAW

Matter of Southeast Banking Corp. (93 NY2d 178)

Debtor Southeast Banking Corporation issued $60 million in unsecured (senior) notes. Southeast also issued more than $300 million of subordinated (junior) notes. The senior creditors commenced a proceeding in Bankruptcy Court to compel payment of post-petition interest not from Southeast, but from distributions otherwise payable on the junior notes, based on language in the subordination. The Bankruptcy Court rejected the senior creditors' claim. The District Court affirmed. In answering the first question certified to this Court from

the United States Court of Appeals for the Eleventh Circuit, the Court adopted the framework of the so-called "Rule of Explicitness," mandating that a senior creditor's claim for post-petition interest is only allowed if the subordination agreement specifically alerted the junior creditors to the increased risk. Noting the practical policy concerns of those who drafted subordination agreements before the Eleventh Circuit questioned the Rule of Explicitness in this case -- policies echoed in this Court's precedents and the process of common-law development -- the Court held it can and should recognize the Rule of Explicitness.

RENT REGULATION

Matter of Dworman v New York State Div. Of Hous. & Community Renewal; Matter of Elkin v Roldan; Matter of Seymour v New York State Div. of Hous. & Community Renewal (94 NY2d 359)

These three cases are the Court's first dealing with the "luxury decontrol" provisions of the Rent Regulation Reform Act of 1993. The Division of Housing and Community Renewal (DHCR) deregulated rent-stabilized apartments because the tenants had failed to provide income verification information within 60 days after the agency's requests. DHCR argued that the Act did not permit it to accept late responses, whatever the reasons for the delay. This Court held that DHCR had authority to accept late filings where tenants had demonstrated good cause, or where the delay was minimal. The Court remitted two of the three cases to the agency to determine, in its discretion, whether the late filings should be accepted, and in the third case upheld DHCR's rejection of a filing that was five months late with no excuse offered.

EMPLOYMENT RELATIONS

Matter of Board of Educ. of Watertown City School Dist. (Watertown Educ. Assn.) (93 NY2d 132)

At issue here was whether a particular grievance fell within the scope of the arbitration clause in the parties' collective bargaining agreement. The agreement contained provisions relating to the percentages of health insurance premium costs allocatable to the parties. It also contained a broad arbitration clause, which provided that "any alleged violation of this Agreement, or any dispute with respect to its meaning or application," was arbitrable. Shortly before the agreement went

into effect, the Watertown City School District, together with other school districts, entered into a municipal cooperation agreement to provide health insurance benefits for employees of participating districts. Subsequently, the insurance plan raised employees' co-payment cap. The Association filed a grievance alleging, in essence, that this change constituted an impermissible, unilateral reduction in employee benefits in violation of the Watertown City School District's obligations under the agreement. This Court agreed, and in so ruling also held that historical presumptions against the arbitrability of such grievances are no longer justified.

Maas v Cornell Univ. (94 NY2d 87)

Plaintiff professor asserted a plenary breach of contract action against defendant Cornell University, premised on the University's alleged failure to follow the procedures it had instituted for the resolution of sexual harassment claims brought by students against the professor. The Court of Appeals held that the action did not lie and plaintiff was not otherwise entitled to judicial relief. The Court reasoned that a CPLR article 78 proceeding, rather than a plenary action, was the appropriate vehicle by which to review claims that an educational institution failed to follow procedures set forth in its employee handbook. Because plaintiff specifically avoided conversion of his action to a CPLR article 78 proceeding in the courts below, the Court concluded that plaintiff could not seek conversion in his present appeal, and that his breach of contract action, premised on an implied-in-fact agreement based on procedures contained in the University's Campus Code, should be dismissed.

Matter of Ganley v Giuliani; Lieutenants' Benevolent Assn. of City of N.Y. v City of New York; Matter of Hill v City of New York (94 NY2d 207)

In these related appeals, the Court determined that section 1127 of the New York City Charter did not apply to nonresidents of the City who, as a result of a merger, were transferred en masse from a public benefit corporation or authority to City agencies. Relying on Matter of Legum v Goldin (55 NY2d 107), which held that payments to the City pursuant to section 1127 of the City Charter are premised on a contract between the City and certain of its nonresident employees, the Court concluded that the employees here did not voluntarily enter into a pre-employment contract with the City. Thus, they were not required to make the section 1127 payments.

ENTITLEMENT PROGRAMS

Nealy v US Healthcare HMO (93 NY2d 209)

This appeal resolved the issue whether the Federal Employee Retirement Income Security Act (ERISA) preempts State common law claims against treating physicians relating to medical care. Seeking to recover damages for her husband's death, plaintiff commenced an action against his primary care physician for breach of contract, breach of fiduciary duty and medical malpractice, alleging that the doctor failed to take steps to provide for timely treatment by a specialist. The Court rejected the doctor's argument that ERISA preempted plaintiff's suit. The Court explained that Congress authorized preemption of State laws only insofar as they relate to the administration of a covered employee benefits plan. Because plaintiff's claims related to provision of medical care, not plan administration, plaintiff could pursue them consistent with ERISA's principal object: the protection of plan participants and beneficiaries.

Matter of Hernandez v Barrios-Paoli (93 NY2d 781)

Petitioner, a recipient of public assistance suffering from clinical/symptomatic HIV, commenced a CPLR article 78 proceeding challenging the Human Resource Administration's requirement that all AIDS and clinical/symptomatic HIV clients served by the Division of AIDS Services Income Support (DASIS) undergo Eligibility Verification Review (EVR) investigations. Petitioner argued that because Local Laws, 1997, No. 49 (codified in Administrative Code of the City of New York §§ 21-126 et seq.) authorized DASIS to establish all elements of public assistance eligibility for its clients, EVR investigations posed an additional, unauthorized eligibility requirement for DASIS clients. This Court held that the EVR procedure, when applied to DASIS clients, violated both the language and the intended purpose of Local Law No. 49.

IV. Appendices

APPENDICES

APPENDIX 1

JUDGES OF THE COURT OF APPEALS

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

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

Hon. Joseph W. Bellacosa
Senior Associate Judge of the Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207-1095
Telephone: (518) 455-7730

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

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

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

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

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

APPENDIX 2

PERTINENT CLERK'S OFFICE TELEPHONE NUMBERS

Court of Appeals Switchboard: (518) 455-7700

Questions Concerning Motions:
Suzanne Aiardo, Esq. (518) 455-7705

Questions Concerning Criminal Leave Applications:
Terry DiLeva (518) 455-7784

Questions Concerning Civil and Criminal Appeals:
Laurene Tacy, Esq. (518) 455-7701
Martin Strnad, Esq. (518) 455-7702
Hope Engel, Esq. (518) 455-7703

Questions Concerning Attorney Admission and Discipline:
Hope Engel, Esq. (518) 455-7703

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

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

SUMMARY OF TOTAL APPEALS DECIDED IN 1999 BY JURISDICTIONAL PREDICATE

January 1, 1999 through December 31, 1999

BASIS OF JURISDICTION	ALL APPEALS TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Dissents in Appellate Division	9	4	0	0	0	13
Permission of Court of Appeals or Judge thereof	82	41	16	0	1	140
Permission of Appellate Division or Justice thereof	18	15	0	1	0	34
Constitutional Question	3	1	1	1	0	6
Stipulation for Judgment Absolute	1	0	0	0	0	1
Other	0	2	1	0	11	14*
Totals	113	63	18	2	12	208

BASIS OF JURISDICTION	CIVIL APPEALS TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Dissents in Appellate Division	9	4	0	0	0	13
Permission of Court of Appeals	46	35	11	0	1	93
Permission of Appellate Division	7	12	0	0	0	19
Constitutional Question	3	1	1	1	0	6
Stipulation for Judgment Absolute	1	0	0	0	0	1
Other	0	2	1	0	11	14*
Totals	66	54	13	1	12	146

BASIS OF JURISDICTION	CRIMINAL APPEALS TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Permission of Court of Appeals Judge	36	6	5	0	--	47
Permission of Appellate Division Justice	11	3	0	1	--	15
Other	0	0	0	0	--	0
Totals	47	9	5	1	--	62

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

APPENDIX 4 (A)

COMPARATIVE STATISTICAL ANALYSIS FOR 1999 DECIDED APPEALS

ALL APPEALS - % CIVIL AND CRIMINAL

	1995	1996	1997	1998	1999
Civil	57% (193 of 340)	59% (174 of 295)	73% (190 of 260)	63% (124 of 198)	70% (146 of 208)
Criminal	43% (147 of 340)	41% (121 of 295)	27% (70 of 260)	37% (74 of 198)	30% (62 of 208)

CIVIL APPEALS - TYPE OF DISPOSITION

	1995	1996	1997	1998	1999
Affirmed	48%	52%	47%	40%	45%
Reversed	31%	32%	37%	37%	37%
Modified	13%	10%	5%	6%	9%
Dismissed after Argument	--	--	2%	1%	1%
Other (e.g. judicial suspension; Rule 500.17 certified question)	8%	6%	9%	16%	8%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	1995	1996	1997	1998	1999
Affirmed	59%	63%	67%	62%	76%
Reversed	25%	24%	21%	30%	15%
Modified	9%	9%	3%	1%	8%
Dismissed	7%	4%	9%	7%	1%

CIVIL APPEALS - JURISDICTIONAL PREDICATES

	1995	1996	1997	1998	1999
Appellate Division Dissents	13% (25 of 193)	10% (18 of 174)	12% (22 of 190)	11% (13 of 124)	9% (13 of 146)
Court of Appeals Leave Grants	63% (122 of 193)	60% (104 of 174)	59% (112 of 190)	45% (56 of 124)	63% (93 of 146)
Appellate Division Leave Grants	11% (20 of 193)	14% (25 of 174)	12% (23 of 190)	16% (20 of 124)	13% (19 of 146)
Constitutional Question	5% (10 of 193)	7% (12 of 174)	7% (14 of 190)	8% (10 of 124)	4% (6 of 146)
Stipulation for Judgment Absolute	--	1% (1 of 174)	--	1% (1 of 124)	1% (1 of 146)
CPLR 5601(d)	--	1% (2 of 174)	1% (2 of 190)	2% (3 of 124)	2% (3 of 146)
Supreme Court Remand	.5% (1 of 193)	--	--	1% (1 of 124)	--
Judiciary Law § 44	.5% (1 of 193)	5%* (9 of 174)	7% (13 of 190)	4%* (5 of 124)	3%* (4 of 146)
Certified Question from Federal Court (Rule 500.17)	3% (6 of 193)	2% (3 of 174)	2% (4 of 190)	12%** (15 of 124)	5%** (7 of 146)
Other	4% (8 of 193)	--	--	--	

* Includes judicial suspension matters

** Includes decisions accepting/declining certification

APPENDIX 4 (C)

CRIMINAL APPEALS - JURISDICTIONAL PREDICATES

	1995	1996	1997	1998	1999
Permission of Court of Appeals Judge	65% (96 of 147)	74% (89 of 121)	70% (49 of 70)	72% (53 of 74)	76% (47 of 62)
Permission of Appellate Division Justice	35% (51 of 147)	26% (32 of 121)	30% (21 of 70)	28% (21 of 74)	24% (15 of 62)

SUMMARY OF DISPOSITIONS BY JURISDICTIONAL PREDICATE

(showing percentage of type of disposition within each category of jurisdictional predicate)

January 1, 1999 through December 31, 1999

ALL APPEALS

Type of Disposition

Jurisdictional Predicate:	Affirmance	Reversal	Modification	Dismissal	Other
Dissents in Appellate Division	69% (9 of 13)	31% (4 of 13)	--	--	--
Permission of Court of Appeals or Judge thereof	59% (82 of 140)	29% (41 of 140)	11% (16 of 140)	--	1% (1 of 140)
Permission of Appellate Division or Justice thereof	53% (18 of 34)	44% (15 of 34)	--	3% (1 of 34)	--
Constitutional Question	50% (3 of 6)	17% (1 of 6)	17% (1 of 6)	17% (1 of 6)	--
Stipulation for Judgment Absolute	100% (1 of 1)	--	--	--	--
Other (e.g. Judiciary Law § 44[7], Remand from U.S. Supreme Court)	--	14% (2 of 14)	7% (1 of 14)	--	79%* (11 of 14)

*Dispositions other than affirmance, reversal, etc., such as question certified by U.S. Court of Appeals (Rule 500.17); State Commission on Judicial Conduct matters.

APPENDIX 5 (A)

APPENDIX 5 (B)

SUMMARY OF DISPOSITIONS BY JURISDICTIONAL PREDICATE

(showing percentage of type of disposition within each category of jurisdictional predicate)

January 1, 1999 through December 31, 1999

CIVIL APPEALS

	Type of Disposition				
Jurisdictional Predicate:	Affirmance	Reversal	Modification	Dismissal	Other
Dissents in Appellate Division	69% (9 of 13)	31% (4 of 13)	--	--	--
Permission of Court of Appeals	49% (46 of 93)	38% (35 of 93)	12% (11 of 93)	--	1% (1 of 93)
Permission of Appellate Division	37% (7 of 19)	63% (12 of 19)	--	--	--
Constitutional Question	50% (3 of 6)	17% (1 of 6)	17% (1 of 6)	17% (1 of 6)	--
Stipulation for Judgment Absolute	100% (1 of 1)	--	--	--	--
Other (e.g. Judiciary Law § 44[7], Remand from U.S. Supreme Court)	--	14% (2 of 14)	7% (1 of 14)	--	79%* (11 of 14)

*Dispositions other than affirmance, reversal, etc., such as question certified by U.S. Court of Appeals (Rule 500.17); State Commission on Judicial Conduct matters.

SUMMARY OF DISPOSITIONS BY JURISDICTIONAL PREDICATE

(showing percentage of type of disposition within each category of jurisdictional predicate)

January 1, 1999 through December 31, 1999

CRIMINAL APPEALS

Type of Disposition

Jurisdictional Predicate	Affirmance	Reversal	Modification	Dismissal	Other
Permission of Court of Appeals Judge	77% (36 of 47)	13% (6 of 47)	10% (5 of 47)	--	--
Permission of Appellate Division Justice	73% (11 of 15)	20% (3 of 15)	--	7% (1 of 15)	--

APPENDIX 5 (C)

APPENDIX 6

MOTION STATISTICS (1996-1999)

Motions Undecided as of January 1, 1999 - 138
Motion Numbers Used in 1999 - 1505
Motions Undecided as of December 31, 1999 - 71
Motion Dispositions During 1999 - 1522

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

	1996	1997	1998	1999
Mos. to waive rule compliance	1	6	4	2
granted	0	1	0	1
Mos. for poor person status	69	61	61	80
granted	3	0	2	1
denied	0	0	1	0
dismissed	66	61	58	79
Mos. to vacate dismissal/preclusion	5	4	4	0
granted	0	1	3	0
Mos. for calendar preference	8	6	7	6
granted	1	1	0	2
Mos. for amicus curiae status	114	88	88	87
granted	92	68	71	69
Mos. for Exec. Law § 71 order (AG)	0	2	1	0
Mos. for leave to intervene	0	3	0	3
granted	0	1	0	2
Mos. to stay/vacate stay	37	50	39	29
granted	0	5	6	0
denied	4	5	3	0
dismissed	32	39	29	29
withdrawn	1	1	1	0
Mos. for CPL 460.30 extension	25	28	23	33
granted	21	22	21	27
Mos. to strike appdx or brief	8	9	7	3
granted	2	3	0	2
Mos. to amend remittitur	4	2	2	2
granted	1	2	0	0
Mos. for miscellaneous relief	25	32	23	18
granted	1	6	2	3
denied	21	19	14	12
dismissed	3	7	7	3
Withdrawals/substitution of counsel	0	2	2	0
denied	0	0	0	0

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

APPENDIX 6 (continued)

APPENDIX 7

CRIMINAL LEAVE APPLICATIONS ENTERTAINED BY COURT OF APPEALS JUDGES IN 1999

TOTAL APPLICATIONS ASSIGNED:	2815
TOTAL APPLICATIONS DECIDED:	2799*
TOTAL APPLICATIONS GRANTED:	44
TOTAL APPLICATIONS DENIED:	2512
TOTAL APPLICATIONS DISMISSED:	229
TOTAL APPLICATIONS WITHDRAWN:	14
TOTAL PEOPLE'S APPLICATIONS:	54
(a) GRANTED:	5
(b) DENIED:	42
(c) DISMISSED:	1
(d) WITHDRAWN:	6
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	402
AVERAGE NUMBER OF GRANTS OF LEAVE TO APPEAL BY EACH JUDGE	6

*Includes applications assigned in previous year.

CRIMINAL LEAVE APPLICATIONS ENTERTAINED BY COURT OF APPEALS JUDGES

	1995	1996	1997	1998	1999
TOTAL APPLICATIONS ASSIGNED:	3164	2797	3064	2953	2815
TOTAL APPLICATIONS DECIDED:	3140*	3018*	2944*	2982*	2799*
TOTAL APPLICATIONS GRANTED:	89	53	110**	57	44
TOTAL APPLICATIONS DENIED:	2793	2711	2587	2709	2512
TOTAL APPLICATIONS DISMISSED:	240	241	238	209	229
TOTAL APPLICATIONS WITHDRAWN:	18	13	9	7	14
TOTAL PEOPLE'S APPLICATIONS:	128	112	63	67	54
(a) GRANTED:	15	13	8	5	5
(b) DENIED:	106	90	51	59	42
(c) DISMISSED:	2	1	1	1	1
(d) WITHDRAWN:	5	8	3	2	6
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	452	400	438	451***	402
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	13	8	16	9	6

*Includes some applications assigned in previous year.

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

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

APPENDIX 9

1999

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

SSD (sua sponte dismissal) - Rule 500.3

Total Number of Inquiry Letters Sent in 1999		106
Appeals Dismissed on Motion	12	
Appeals Dismissed on Consent	1	
Appeals Withdrawn or Discontinued on Stipulation	4	
Dismissed by Court sua sponte	57	
Transferred sua sponte to Appellate Division	3	
Appeals allowed to proceed in normal course (A final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	10	
Jurisdiction Retained - appeals decided	4	
Inquiries Pending	15	
	106	

OFFICE FOR PROFESSIONAL MATTERS STATISTICS

1995 - 1999

TOPIC	1995	1996	1997	1998	1999
Attorneys Admitted (OCA)	6824	6913	7087	7339	7542[1]
Certificates of Admission	183	243	226	235	171
Clerkship Certificates	10	3	5	9	7
Petitions for Waiver	309	456	463	479[2]	163
Written Inquiries	220	218	224	257	193
Disciplinary Orders and Name Change Orders	879	1078	848	1689	966[3]

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

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

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

APPENDIX 11

NONJUDICIAL STAFF

Aiardo, Suzanne - Chief Motion Clerk

Ali, Vivian - Telephone Operator, Court of Appeals

Andrews, Barbara J. - Secretary to Judge Smith

Ashdown, Jesse - Court Attorney, Court of Appeals

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

Beachel, Sue E. - Secretary to Judge Wesley

Bielawski, Julia S. - Senior Law Clerk to Judge Levine; Principal Court Attorney, Court of Appeals

Bohannon, Randy A. - Court Building Guard

Browne, Paul J. - Public Information Officer (resigned 8/16/99)

Bruce, Teresa A. - Senior Court Attorney, Court of Appeals

Buel, Theresa A. - Secretary to the Clerk, Court of Appeals (resigned 9/16/99)

Cadalso, Mary Ellen - Secretary, Court of Appeals

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

Calacone, Stephen F. - Clerical Research Aide

Carro, Christine - Secretary to Judge Ciparick

Carroll, Frederic J. - Supervising Court Attendant, Court of Appeals

Chaudhry, Zainab A. - Senior Court Attorney, Court of Appeals

Chung, Jenny L. - Court Attorney, Court of Appeals

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

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

Cohn, David M. - Law Clerk to Chief Judge Kaye

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 Law Clerk to Judge Bellacosa; Principal Court Attorney, Court of Appeals

Costello, James A. - Principal Court Attorney, Court of Appeals

Declet, Rafael A., Jr. - Senior Law Clerk to Judge Ciparick

DiLeva, Terry J. - Prisoner Applications Clerk

Donohue, J. Matthew - Senior Court Attorney, Court of Appeals

Donnelly, William E. - Senior Custodial Aide

Dragonette, John M. - Court Building Guard

Duthiers, Erika - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Smith

Emigh, Brian J. - Building Manager

Engel, Hope B. - Court Attorney for Professional Matters

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

Fitzpatrick, J. Brian - Administrative Services Assistant, Court of Appeals

Fitzpatrick, Rosemarie - Principal Stenographer, Court of Appeals

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

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

Fludd, Christopher - Senior Court Building Guard

Friedman, Kathryn Bryk - Senior Law Clerk to Judge Wesley

Garvey, Michael J. - Law Clerk to Judge Rosenblatt

Gilbert, Marianne - Senior Stenographer, Court of Appeals

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

Hallenbeck, Kenneth A. - Senior Custodial Aide

Harvey, Joanne M. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Bellacosa

Herriman, Lisa - Clerical Research Aide

Heyman, Amy - Secretary to Chief Judge Kaye

Hurley-Leslie, Craig A. - Senior Court Attorney, Court of Appeals

James, Vaughn E. - Senior Court Attorney, Court of Appeals

Kaczmarek, Linda T. - Clerical Research Aide (resigned 2/26/99)

Karmel, Jonathan B. - Senior Law Clerk to Judge Levine

Kehn, Patricia Ann - Principal Stenographer, Court of Appeals

Kleemann, Sarah W. - Principal PC Analyst

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

Kruzansky, Barbara Comninos - Senior Court Attorney, Court of Appeals

Lagios, James P. - Law Clerk to Judge Rosenblatt

Lanza, Ronald S. - Court Attorney, Court of Appeals

Laubscher, Jay C. - Senior Law Clerk to Judge Ciparick

Lawrence, Bryan D. - Local Area Network Administrator

LeBlanc, Brian J. - Building Guard (per diem)

Lee, Tiffany H. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Wesley

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

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

Leveille, Vania J. - Senior Law Clerk to Judge Smith

Lilac, Jeffrey - Court Building Guard (resigned 11/17/99)

Loffredo, Carmel M. - Secretary to Judge Levine

MacPhee, Concetta J. - Senior Assistant Building Superintendent

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

Martinez, Cristina Baiata - Law Clerk to Judge Ciparick

Mayo, Michael J. - Deputy Building Superintendent

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

McCormick, Cynthia A. - Secretary to Judge Bellacosa

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

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

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

Moore, Travis R. - Senior Services Aide (resigned 9/27/99)

Muller, Joseph J. - Assistant Building Superintendent

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

Nolan, Michael J. - Principal Law Clerk to Judge Wesley

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

Osborne-Varble, Melissa E. - Senior Court Attorney, Court of Appeals

Paglia, Paul J. - Court Building Guard

Pam, Aaron R. - Senior Law Clerk to Judge Smith

Parker, Amy - Law Clerk to Judge Levine

Pepper, Francis W. - Senior Custodial Aide

Pressman, Carol B. - Court Attorney, Court of Appeals

Ragonese, Carmela - Custodial Aide

Ravida, Tina - Custodial Aide

Salvinski, Mildred A. - Custodial Assistant

Sanderson, Ralph W. - Assistant Building Superintendent

Schauer, Michelle I. - Principal Law Clerk to Judge Rosenblatt

Schecter, Jennifer G. - Senior Law Clerk to Chief Judge Kaye

Shufelt Sr., Theodore J. - Assistant Building Superintendent

Sims, Ural - Assistant Building Superintendent (retired 11/4/99)

Smith, Wendy E. - Court Attorney, Court of Appeals

Sommer, Christina D. - Senior Law Clerk to Chief Judge Kaye

Soule, Leah M. - Senior Court Attorney, Court of Appeals

Spencer, Gary H. - Public Information Officer

Strnad, Martin F. - Assistant Deputy Clerk, Court of Appeals

Tacy, Laurene L. - Assistant Deputy Clerk, Court of Appeals

Tierney, Inez M. - Secretary to Judge Rosenblatt

Torre, Joseph R. - Court Building Guard

Troisi, Kimberly A. - Senior Law Clerk to Judge Bellacosa

Turner, Minnie - Custodial Aide (retired 10/4/99)

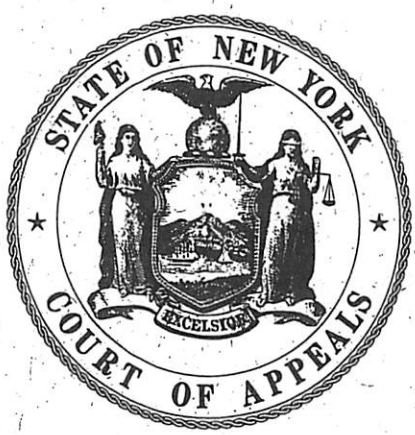
Vakiener, Kathleen M. - Telephone Operator, Court of Appeals (temporary-resigned 1/15/99)

Voerg, Patricia Mullery - Secretary to Judge Bellacosa (on leave)

Wager, Charles C. - First Assistant Building Superintendent

Weissman, Kenneth I. - Senior Law Clerk to Chief Judge Kaye

Welch, Ann M. - Custodial Aide


STATE OF NEW YORK
EXCELSIOR
COURT OF APPEALS