Court of Appeals of the State of New York

Annual Report
of the
Clerk of the Court
2008

2008

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

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Court of Appeals

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Court of Appeals

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Eugene F. Pigott, Jr.
Judge

April 15, 2009

We all knew it was coming, the last year of the most remarkable judicial career in the history of the Court of Appeals. 2008 began with all of us knowing that come December we would lose our beloved Chief Judge, the Honorable Judith S. Kaye.

But an entire year would pass before the inevitable and it was, as usual, filled with both the expected and the unanticipated.

January saw the investiture of our colleague, Judge Carmen Beauchamp Ciparick, following her nomination by the Governor and confirmation by the Senate to another 14-year term on our Court.

On March 17, 2008, David A. Paterson became New York's Governor.

In April the Court traveled to the Bronx to hear oral arguments and be treated to a remarkable visit to the Bronx High School of Law, Government and Justice.

The Court of Appeals Lecture Series ventured into professional sports in March with a presentation by NBA Commissioner David Stern speaking on "Courts and Sports" followed in June by an eye-opening lecture on efforts to restore "Stolen Art" to its rightful owners and concluding in the fall with "Woodstock: Music of the First Amendment".

As we worked our way toward the inevitable end of the year, all of us at Court of Appeals Hall felt the growing sense of loss. Nothing in the year 2008 could overcome it.

Eugene F. Pigott, Jr.

2008

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

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Introduction

The foremost concern of the Court of Appeals "family" in 2008 was that this would be Chief Judge Kaye's final year as the Court's—and the State's—Chief Judge. Of course, we also were concerned about who would replace Chief Judge Kaye. That question was answered with the appointment, in January 2009, of Jonathan Lippman as Chief Judge.

Our debt of gratitude to Chief Judge Kaye is best expressed by her successor in his article, *Chief Judge Judith S. Kaye: A Legacy of Visionary Leadership*, appearing in the Winter 2008 issue of the New York State Bar Association's Government, Law and Policy Journal (vol 10, no 2, at 7):

> "In short, New Yorkers have Judith S. Kaye to thank for a twenty-first century court system that is fair and accessible, efficient and accountable, and responsive to their needs and expectations. And for this we express our heartfelt gratitude to Chief Judge Kaye for her courage and commitment to the ideal of justice. Her record of exceptional leadership is, by any standard, unmatched in the history of our state's judiciary."

While Chief Judge Kaye no longer holds the office of Chief Judge, she is and always will remain a beloved member and leader of the Court of Appeals family. At the same time, we look forward to the Court's transition to operating under the proven leadership of Chief Judge Lippman.

The 2008 Annual Report is divided into four parts. The first section is a narrative, statistical and graphic overview of matters filed with and decided by the Court during the year. The second describes various functions of the Clerk's Office and summarizes administrative accomplishments in 2008. The third section highlights selected decisions of 2008. The fourth part consists of appendices with detailed statistics and other information.

I. The Work of the Court

The Court of Appeals is composed of its Chief Judge and six Associate Judges, each appointed by the Governor to a 14-year term. Similar to the Supreme Court of the United States and other state courts of last resort, the primary role of the New York Court of Appeals is to unify, clarify and pronounce the law of its jurisdiction for the benefit of the community at large. Reflecting the Court's historical purpose, the State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right. Thus, the Court hears most appeals by its own permission, or *certiorari*, granted upon civil motion or criminal leave application. Appeals by permission typically present novel and difficult questions of law having statewide importance. Often these appeals involve issues in which the holdings of the lower courts of the state conflict. The correction of error by courts below remains a legitimate, if less frequent, basis for this Court's decision to grant review. By State Constitution and statute, the Appellate Division also can grant leave to appeal to the Court of Appeals in civil cases, and individual Justices of that court can grant leave to appeal to the Court of Appeals in most criminal cases.

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

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

The Court sits in Albany throughout the year, usually for two-week sessions. During these sessions, the Court meets each morning in conference to discuss the appeals argued the afternoon before, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters. Afternoons are devoted to hearing oral argument, and evenings to preparing for the following day. In April 2008 the Court traveled to the Bronx to hear arguments in the The Bronx Hall of Justice. The Court expresses its appreciation to the judges, staff and County Bar of that borough for their hospitality.

Between Albany sessions, the Judges return to their home chambers throughout the State, where they continue their work of studying briefs, writing opinions and preparing for the next Albany session. During these home chambers sessions, each Judge annually decides hundreds of requests for permission to appeal in criminal cases, prepares reports on motions for the full Court's consideration and determination, and fulfills many other judicial and professional responsibilities.

Each year, with the Appellate Division Departments, the Court of Appeals publishes a timetable for appellate review of primary election-related matters. In August of each year, the Court holds a special session to consider expedited appeals and motions for leave to ap-

peal in cases concerning the September primaries. The Court reviews primary election motions and appeals on the Appellate Division record and briefs, and hears oral argument of motions for leave to appeal. When the Court determines an appeal lies as of right or grants a motion for leave to appeal, oral argument of the election appeal is usually scheduled for the same day. Primary election appeals are decided quickly, often the day after oral argument is heard.

In 2008, the Court and its Judges disposed of 4,321 matters, including 225 appeals, 1,459 motions and 2,637 criminal leave applications. A detailed analysis of the Court's work follows.

A. Appeals Management

1. Screening Procedures

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

Of the 152 notices of appeal filed in 2008, 70 were subject to Rule 500.10 inquiries. Of those, all but 10 were dismissed sua sponte or on motion, withdrawn or transferred to the Appellate Division. Four inquiries were pending at year's end. The Rule 500.10 sua sponte dismissal (SSD) screening process is valuable to the Court, the Bar and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

2. Normal Course Appeals

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

In conference, the Judges are seated clockwise in seniority order around the conference table. When a majority of the Court agrees with the reporting Judge's proposed disposition, the reporting Judge becomes responsible for preparing the Court's writing in the case.

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

3. Alternative Track Appeals

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

Of the 328 appeals filed in 2008, 59 (18%) were initially selected to receive SSM consideration, a slight increase from the percentage initially selected in 2007 (14.7%). Forty-two were civil matters and 17 were criminal matters. Nine appeals initially selected to receive SSM consideration in 2008 were directed to full briefing and oral argument. Of the 225 appeals decided in 2008, 31 (13.7%) were decided upon SSM review (14.6% were so decided in 2007; 18% were so decided in 2006). Twenty-five were civil matters and six were criminal matters.

Of the 59 appeals filed in 2008 and initially selected to receive SSM consideration, 31 were taken from orders or judgments of the Appellate Division, First Department. Ten of these were appeals as of right based on a double dissent below, 14 were leave grants of the Appellate Division or a Justice of that court, and seven were by leave of this Court or a Judge of this Court.

4. Promptness in Deciding Appeals

In 2008, litigants and the public continued to benefit from the Court's remarkable tradition of prompt calendaring, hearing and disposition of appeals. The average time from argument or submission to disposition of an appeal decided in the normal course was 38 days; for all appeals, the average time from argument or submission to disposition was 32 days. The average period from filing a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately seven months. The average period from readiness (all papers served and filed) to calendaring for oral argument was approximately three months.

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 2008 (including SSM appeals tracked to normal course) was 255 days. For all appeals, including those decided pursuant to the Rule 500.11 SSM procedure, those dismissed pursuant to Rule 500.10 SSD inquiries, and those dismissed pursuant to Rule 500.16(a) for failure to perfect, the average was 160 days. Thus, by every measure, in 2008 the Court maintained its long tradition of exceptional currency in calendaring and deciding appeals.

B. The Court's 2008 Docket

1. Filings

Three hundred and twenty-eight (328) notices of appeal and orders granting leave to appeal were filed in 2008 (340 were filed in 2007). Two hundred and fifty-one (251) filings were civil matters (compared to 279 in 2007), and 77 were criminal matters (compared to 61 in 2007). The Appellate Division Departments issued 54 of the orders granting leave to appeal filed in 2008 (36 were civil, 18 were criminal). Of these, the First Department issued 34 (24 civil and 10 criminal).

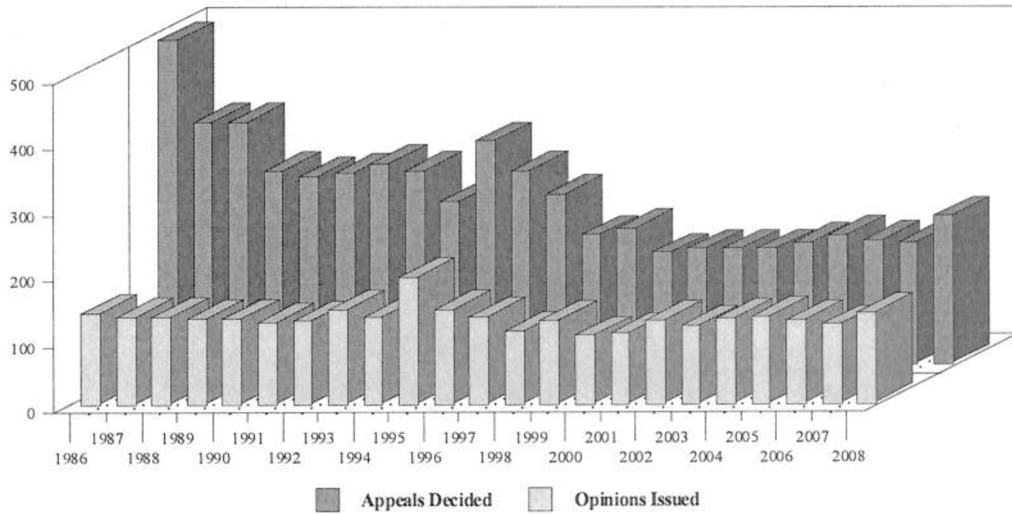
Motion filings decreased in 2008. During the year, 1421 motion numbers were used, a decrease of 4.05% from the 1481 motion numbers used in 2007. Criminal leave applications increased in 2008. Two thousand six hundred and eighty-seven (2,687) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 305 more than in 2007. On average, each Judge was assigned 400 such applications during the year.

2. Dispositions

(a) Appeals and Writings

In 2008, the Court decided 225 appeals (172 civil and 53 criminal, compared to 135 civil and 50 criminal in 2007). Of these appeals, 186 were decided without dissent. The Court issued 132 signed opinions, 4 per curiam opinions, 34 dissenting opinions, 6 concurring opinions, 62 memoranda and 27 decision list entries. The chart on the next page tracks appeals decided and full opinions (signed and per curiam) issued since Laws of 1985, chapter 300 narrowed the available predicates for appeals as of right and expanded the civil *certiorari* jurisdiction of the Court.

Appeals Decided and Opinions Issued
1986-2008

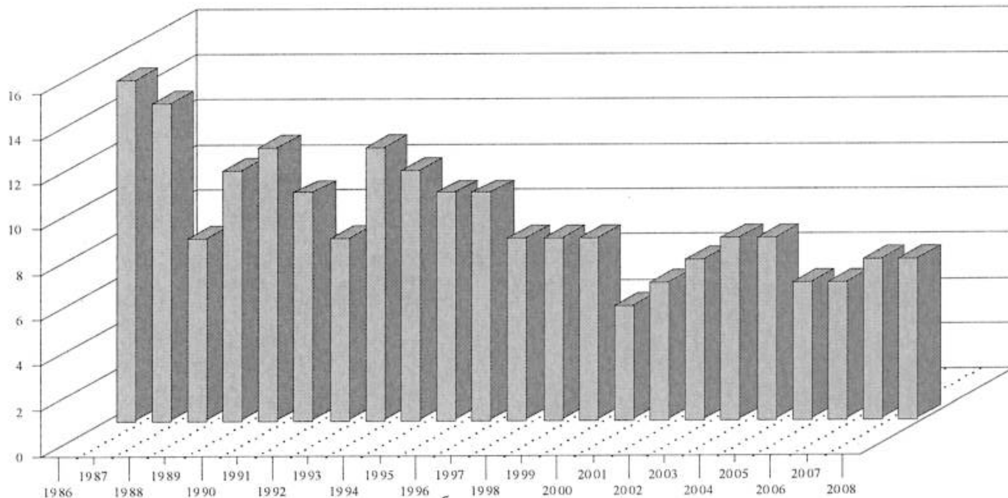


(b) Motions

The Court decided 1,459 motions in 2008—19 more than in 2007. 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 60 days, while the average period of time from return date to disposition for all motions was 55 days.

The Court decided 1,093 motions for leave to appeal in civil cases during the year—the same as in 2007. Of these, the Court granted 6.8% (down from 7% in 2007), denied 75.9% (up from 75.4% in 2007) and dismissed for jurisdictional defects 17.3% (down from 17.6% in 2007). The chart below shows the percentage of civil motions for leave to appeal granted since the expansion of the Court's certiorari jurisdiction in 1986.

Motions for Leave to Appeal Granted by Year
1986-2008



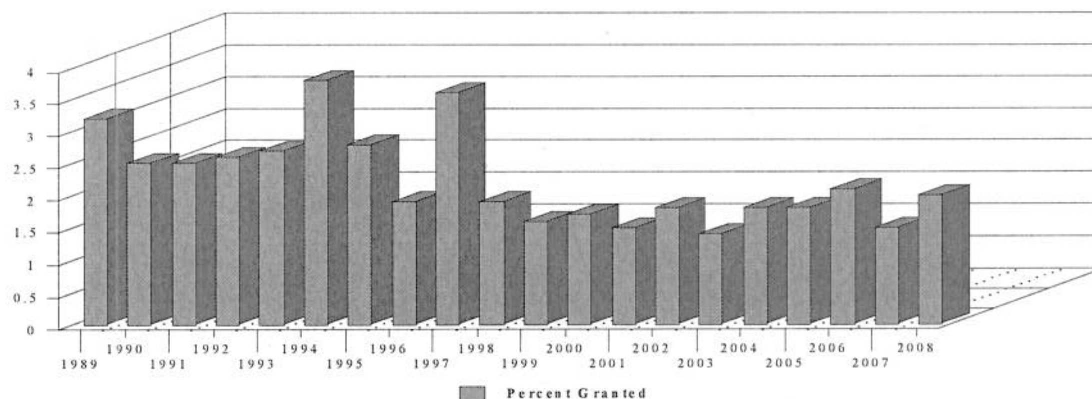
Seventy-four motions for leave to appeal were granted in 2008. The Court's leave grants covered a wide range of subjects. In the matrimonial and family court context, the Court granted leave to address the proper date of valuation of assets where a prior action for divorce was voluntarily discontinued, the vacatur of a judgment under Uniform Rule 202.48, whether a minor was a "consent" or "notice" father, the enforceability of a French prenuptial agreement, and whether a husband may receive credit for maintenance payments to a former wife that were paid with marital funds. The Court granted leave in election matters to address whether a losing candidate may challenge an election determination before the Board of Elections certifies the winner of the election and whether the Public Officers Law requires a general election for an unexpired term. The Court granted leave in several proceedings commenced under the Sex Offender Registration Act (SORA) to address the appropriate interpretation of one of the categories of the Risk Assessment Instrument, whether a defendant is subject to SORA's requirements where his aggregate maximum term extended beyond the statute's 1996 effective date, whether a defendant had a "relationship" with individuals pornographically depicted on his computer, whether documents generated by the District Attorney's office constitute reliable hearsay, whether applying the act to individuals whose kidnapping offenses do not involve a sexual component is constitutional, and whether a criminal complaint constitutes reliable hearsay.

Other matters covered an exemption for water and sewer charges where a building was used for worship space and contained residential apartments, a dispute between a diocese and a local church over church property, federal preemption of an action seeking to restrain loud drumming to publicize a union's handbilling activities, notice of a street defect based on a "Big Apple" map, the sealing of records upon termination of a criminal action in favor of the accused, whether parishioners may maintain a civil action to enjoin demolition of a parish church, the appropriate interpretation of the statutory scheme relating to payments that off-track betting corporations must make to harness tracks, the enforceability of a stipulation granting a tenant an unregulated lease to a rent stabilized apartment in exchange for an agreement to pay an allegedly unlawful rent, imposition of a civil penalty under the lifetime bar provision of the Public Officers Law, interpretation of a lawyer's approval clause in a contract for the sale of real property, the subrogation rights of an insurer, the ability of aid recipients to challenge the adequacy of shelter allowances, the validity of a durational employment contract in the education context, and the prohibition against members of the State Police consulting with counsel or a union representative during a critical incident inquiry.

(c) CPL 460.20 Applications

Individual Judges of the Court granted 53 of the 2,637 applications for leave to appeal in criminal cases decided in 2008—up from 36 in 2007. Two hundred and twenty applications were dismissed for lack of jurisdiction, and nine were withdrawn. Seven of 60 applications filed by the People were granted. The chart on the next page reflects the percentage of applications for leave to appeal granted in criminal cases over the past 20 years.

Criminal Leave Applications Granted by Year
1989-2008



Laws of 2002, chapter 498 amended the criminal jurisdiction of the Court of Appeals to allow appeals by permission from intermediate appellate court orders determining applications for writs of error coram nobis. In 2008, 229 applications for leave to appeal from such orders were assigned to Judges of the Court, down from 241 in 2007. Two such applications were withdrawn, and two were granted.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court during home chambers sessions. The period during which such applications are pending usually includes several weeks for the parties to prepare and file their written arguments. In 2008, on average, 65 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

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

By Constitution and statute, the Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this state with a crime punishable as a felony. In 2008, the Court reviewed three determinations of the State Commission on Judicial Conduct, accepting the recommended sanction of removal in each case. Pursuant to Judiciary Law § 44(8), the Court ordered the removal of one judge, and the suspension of three judges with pay.

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

In 1985, to promote comity and judicial efficiency among court systems, New York voters passed an amendment to the State Constitution granting the New York Court of Appeals discretionary jurisdiction to review certified questions from certain federal courts and

other courts of last resort (NY Const, art VI, § 3[b][9]). Thereafter, this Court promulgated Rule 500.17, providing that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals or a court of last resort of any other state that determinative questions of New York law are involved in a cause pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court. The Annual Report for 1998 contains a detailed discussion of the history of Rule 500.17 certifications to this Court. In September 2005, Rule 500.17 was recodified as Rule 500.27.

After a court certifies a question to this Court pursuant to Rule 500.27, the matter is referred to an individual Judge, who circulates a written report for the entire Court analyzing whether the certification should be accepted. When the Court of Appeals accepts a certified question, the matter is treated similarly to an appeal. Although the certified question may be determined in the normal course, by full briefing and oral argument, or pursuant to the Court's alternative procedure (*see* Rule 500.11), the preferred method of handling is full briefing and oral argument on an expedited schedule. In 2008, the average period from receipt of initial certification papers to the Court's order accepting or rejecting review was 27 days. The average period from acceptance of a certification to disposition was 6.7 months.

Two cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2007. In 2008, the Court answered the questions certified in both those cases. Also in 2008, the Court accepted nine new cases involving questions certified by the United States Court of Appeals for the Second Circuit. Two cases were decided during the year and seven remained pending at the end of 2008.

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

C. Court Rules

Section 510.18 of the Rules of the Court of Appeals in Capital Cases was suspended effective January 30, 2008. Part 500 of the Rules of Practice of the Court of Appeals was amended, effective November 5, 2008, to improve procedures implemented by the comprehensive reformulation of the Rules of Practice in 2005. Part 530 of the Court's Rules, which governs procedures on review of determinations of the State Commission on Judicial Conduct, also was revised, to conform portions of Part 530 to the Part 500 practice rules. A guide to the 2008 revisions to Parts 500 and 530 is available on the Court's website at www.nycourts.gov/courts/appeals.

II. Administrative Functions and Accomplishments

A. Court of Appeals Hall

Court of Appeals Hall has been the Court's home for over 90 years. This classic Greek Revival building, originally known as State Hall, formally opened in 1842 with offices for the Chancellor, the Register of Chancery and the State Supreme Court. On January 8, 1917, the Court of Appeals moved across the park, from the State Capitol, into the newly refurbished building at 20 Eagle Street. The Court's beloved Richardson Courtroom was reassembled in an extension to State Hall built to accommodate both the courtroom and the Court's library and conference room. Major renovations in 1958-1959 and 2002-2004—the latter including two additions to the building faithful to its Greek Revival design—produced the architectural treasure the Court inhabits today.

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

B. Case Management

The expressions of gratitude I regularly receive from litigants and the Bar attest to the expertise and professionalism of the Clerk's Office staff. Counsel and self-represented litigants will find a wealth of Court of Appeals practice aids on the Court's website (http://www.nycourts.gov/courts/appeals). Additionally, Clerk's Office staff respond—in person, by telephone and in writing—to inquiries and requests for information from attorneys, litigants, the public, academicians and court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. Members of the Clerk's Office staff also regularly participate in, and consult on, programs and publications designed to educate the Bar about Court of Appeals practice.

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

distributing all briefs, records, exhibits and original court files. During the Court's Albany sessions, the court attendants also assist the Judges in the courtroom and in conference.

The Clerk's staff carried forward into 2008 its work with the Office of Court Administration to replace the Court's electronic case management system, and transition to the new system began in December. I extend my particular thanks to our Clerk's Office personnel and the Office of Court Administration's Department of Technology for their dedicated work on this valuable project.

C. Public Information

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

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

Under an agreement with Albany Law School's Government Law Center and Capital District public television station WMHT, the Public Information Office supervises the videotaping of all oral arguments before the Court and of special events conducted by the Chief Judge or the Court. The tapes are preserved for legal, educational and historical research in an archive at the Government Law Center, and copies are available for purchase by the public. The videotapes may be ordered from the Law Center at (518) 445-3287.

The Court's comprehensive website (http://www.nycourts.gov/courts/appeals) posts information about the Court, its Judges, history, summaries of pending cases and other news, as well as more than a year's worth of Court of Appeals decisions. The latest decisions are posted at the time of their official release. The website provides helpful information about the Court's practice—including its rules, civil and criminal jurisdictional outlines, session calendars, and a form for use by pro se litigants—and it provides links to other judiciary-related websites. The text and webcast of the Chief Judge's most recent State of the Judiciary address is posted on the home page and the text of prior addresses can be reached through the "Court News" link. Archived webcasts of selected oral arguments, prior Annual Reports and other materials are also available through that link.

Over 724,000 visits to the website were recorded in 2008, averaging approximately 1,978 visits per day. In 2008 the public could access two live webcasts of high profile oral arguments and three installments of the Court's lecture series.

Launched in 2002 and chartered by the State of New York, the Historical Society of the Courts of the State of New York also performs a public information service. The Society fosters scholarly understanding and public appreciation of the history of the New York State courts, and collects and preserves artifacts of the State's judicial history. The Society's website address is http://www.courts.state.ny.us/history.

D. Office for Professional Matters

The Court Attorney for Professional Matters manages the Office for Professional Matters. A court analyst provides administrative support for the office.

The office has access to information on each attorney admitted to practice in the State. Court of Appeals records complement the official registry of attorneys maintained by the Office of Court Administration, which answers public inquiries about the status of attorneys. The Court's Office for Professional Matters prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship.

Additionally, the Court Attorney drafts preliminary reports to the Court on matters relating to (1) attorney admission and disciplinary cases, (2) petitions for waivers of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law and the Rules for the Licensing of Legal Consultants, and (3) proposed rule changes ultimately decided by the Court. The Court did not amend any of those Rules in 2008. The Court Attorney for Professional Matters continues to serve on the New York State Bar Association's Committee on Legal Education and Admission to the Bar.

The office continues to update an internal database created in 1998 for archiving and reviewing its files. Additionally, the office continued the expansion of historical files included in its database.

E. Central Legal Research Staff

Under the supervision of the individual Judges and the Clerk of the Court, the Central Legal Research Staff prepares draft reports on motions (predominantly civil motions for leave to appeal), requests to answer certified questions and selected appeals for the full Court's review and deliberation. From December Decision Days 2007 through December Decision Days 2008, Central Staff completed 1,088 motion reports, 77 SSD reports, 41 SSM reports and 9 reports regarding certified questions. Staff attorneys also write and revise research materials for use by the Judges' chambers and Clerk's staff, and perform other research tasks as requested. Throughout 2008, Central Staff remained current in its work.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed in 2008 were graduates of Albany, the State University of New York at Buffalo, Cornell University, the University of California

(Hastings), the University of Florida, New York, the City University of New York at Queens, St. John's University, Syracuse University, Touro University and the University of Wisconsin law schools.

F. Library

The Chief Legal Reference Attorney provides extensive legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk's Office staff. During 2008, databases played an ever-increasing role in the provision of legal and non-legal information. Commercial databases to which the Court has access include Lexis/ Nexis, Westlaw, LRS, the Making of Modern Law and HeinOnline. The Court continued to benefit from the New York State Library's electronic gateway, through which the Court accesses a wide range of non-legal databases including the complete digitized back-runs of core scholarly journals through JSTOR.

This year, the Chief Legal Reference Attorney developed or greatly expanded several hyperlinked intranet databases. These include New York State bill jackets, the early consolidations of New York statutes, the1938 Poletti reports on state and local government, the Bartlett Commission reports on the Penal Law and CPL, and the Special Committees reports on the CPLR. Much of the expansion was made possible by the digital documents programs at the New York State Library and New York State Archives. The in-house ISYS databases remained key to providing full-text access to the Court's internal reports. Each year the coverage grows, and over 1,200 newly-generated reports were added in 2008. Retrospective conversion of the older reports continued, and more than 2,800 older reports were added during the year. The Court now has electronic access to all reports generated since 1985, some 30,000 documents.

The Chief Legal Reference Attorney is a member of the Court's CLE Committee and provides programs on Constitutional, Statutory and Regulatory Intent and on the wide array of legal and non-legal research databases. These programs are CLE certified and are updated and offered to Judges' law clerks and staff attorneys annually.

As secretary of the Board of Trustees of *The Historical Society for the Courts of the State of New York*, and chair of the Society's website committee (http://www.courts.state.ny.us/history), the Chief Legal Reference Attorney continued to be involved in the work of the Society. With the Deputy Director of the Supreme Court Historical Society and the Executive Director of The Historical Society of the Courts of the State of New York, she planned the American Association of State and Local History, Court History Group 2008 annual meeting programs. These included a visit to The Center for the Study of Civil and Human Rights Laws in Grove Place, Rochester and presentations by two attorneys who had been instrumental in setting up museums related to legal history. The Chief Legal Reference Attorney worked also on the "Ladies of Legend" program, jointly sponsored by the Society and the Supreme Court Historical Society. She coordinated the Society's 2008 essay competition for SUNY and CUNY Community College students. The winning essay, *The Courts and Human Rights in New York: The Legacy of the Lemmon*

Slave Case, is available on the Society's website. She continued to participate in planning the Court of Appeals Lecture Series and prepared exhibits in the Court of Appeals anteroom on the lecture topics.

G. Continuing Legal Education Committee

The Continuing Legal Education (CLE) Committee was established in 1999 to coordinate professional training for Court of Appeals, Law Reporting Bureau and Board of Law Examiners attorneys. The Committee is currently chaired by a Principal Court Attorney. Other members include the Deputy Clerk, the Chief Court Attorney, the Chief Legal Reference Attorney, two Judges' law clerks, and two attorneys from the Law Reporting Bureau. A Central Legal Research Staff secretary manages CLE records and coordinates crediting and certification processes with the New York State Judicial Institute (JI). Specifically, the secretary maintains three databases to track CLE classes offered by the Court, the attorneys eligible to attend classes, and the number of credits each attorney has earned at Court-sponsored programs. In addition, she prepares the paperwork necessary to comply with the rules of the JI and the CLE Board, and she provides general support to the Committee.

During 2008, the CLE Committee provided 12 programs for Court of Appeals attorneys—including new staff training and orientation—totaling 19.5 credit hours. Law Reporting Bureau and Board of Law Examiners attorneys participated in many of the offered programs. Attorneys also attended classes offered by the New York Supreme Court, Appellate Division, Third Department, and the New York State Bar Association, and several individuals viewed the JI's simulcast Lunch and Learn programs at their desktops. In addition, many attorneys at the Court of Appeals, the Law Reporting Bureau and the Board of Law Examiners took advantage of the JI's Legal Update seminar.

H. Management and Operations

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

I. Budget and Finance

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

1. Expenditures

The work of the Court and its ancillary agencies was performed within the 2008-2009 fiscal year budget appropriation of $16,043,599, which included all judicial and nonjudicial staff salaries (personal services costs) and all other cost factors (nonpersonal services costs), including in-house maintenance of Court of Appeals Hall.

2. Budget Requests

The total request for fiscal year 2009-2010 for the Court and its ancillary agencies is $16,308,446, an increase of 1.6% over the current year's appropriation. The 2009-2010 personal services request of $13,277,008 reflects an increase of $271,575 from the current year's appropriation, which provides funding for all authorized judicial positions. The funding request for nonjudicial positions reflects the projected impact of a stringent vacancy control program, along with funding for increments, general salary increases and longevity bonuses for eligible nonjudical employees.

The 2009-2010 nonpersonal services request of $3,031,438 reflects a decrease of $6,728, or 0.2%, less than the current year's adjusted appropriation. The nonpersonal services request includes inflationary and expenditure-based increases in travel ($24,372), utilities ($9,474), conferences and training ($7,400) and other general services ($5,192). These increases are offset by a reduction in equipment funding (-$59,700).

Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2009-2010 illustrates the Court's diligent attempt to perform its functions and those of its ancillary agencies economically and efficiently. The Court will continue to maximize opportunities for savings to limit increases in future budget requests.

3. Revenues

In calendar year 2008, the Court reported filing fees of $315 for each of 140 civil appeals, totaling $44,100. Also, the Court reported filing fees of $45 for each of 831 motions, totaling $37,395. The $81,495 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 ($3,600) and miscellaneous collections ($1,116). For calendar year 2008, revenue collections totaled $86,211.

J. Computer Operations

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Principal LAN Administrator, assisted by a LAN Administrator and a PC Analyst. These operations include all software and hardware used by the Court, and a statewide network connecting six remote Judges' chambers

with Court of Appeals Hall.

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

The Department successfully completed the Court's participation in a project that transitioned the entire state court system from the Novell Netware platform to a Windows-based system. All networking software and hardware infrastructure were in place and functioning by December 2008. In addition, the Department worked closely with the Office of Court Administration Division of Technology to test and implement the Court's new Case Management System for rollout in 2009.

K. Security Services

The Court Security Unit is comprised of the Chief Security Attendant, Deputy Chief Security Attendant, three Senior Court Security Attendants, one Court Security Attendant, five Senior Court Building Guards and three Court Building Guards. The Chief, Deputy Chief and Court Security Attendants are sworn court officers and have peace officer status throughout New York State. The officers provide security at Court of Appeals Hall by screening all persons who come to the Court, as well as all mail and packages received. Regular patrols of the area in and around the Courthouse are conducted to ensure the safety and security of the Judges, staff and visitors.

The Court's building guards are present and maintain a watchful eye over the Court, its employees and the many visitors to the Court on a 24-hour by seven-days-a-week basis. Between the officers and building guards, a constant security presence exists at Court of Appeals Hall, including during the many public events held at the Court during 2008. Additionally, the officers provided security escorts, when necessary, to the Judges of the Court, both in the Albany area and throughout the State. Building guards conduct tours of the Courtroom for members of the public visiting Court of Appeals Hall.

The members of the Security Unit completed several training programs during 2008. In addition to the mandatory firearms, OC pepper spray, baton and three year in-service classes, officers attended classes on Judicial Protection and SEMO & FEMA Incident Command Systems. All Security staff, Court Officers and Building Guards, as well as some of the maintenance staff, attended Basic First-Aid and Automated External Defibrillator training given by the NYS Court Officers Academy.

L. Personnel

The following personnel changes occurred during 2008:

APPOINTMENTS:

Muller, Joseph J. - employed as Court Security Attendant, Court of Appeals in February 2008.

Garcia, Heather A. - employed as Court Security Attendant, Court of Appeals in July 2008.

Kane, Suzanne M. - employed as Stenographer, Court of Appeals in July 2008.

Kaiser, Warren - employed as PC Analyst in August 2008.

Bowman, Jennifer L. - employed as Court Building Guard in October 2008.

Gaston, Johnny L. - employed as Court Building Guard in October 2008.

Waithe, Nelvon H. - employed as Court Building Guard in November 2008.

PROMOTIONS:

Irwin, Nancy J. - promoted to Senior Stenographer, Court of Appeals in January 2008.

Spiewak, Keith J. - promoted to Local Area Network Administrator in April 2008.

Muller, Joseph J. - promoted to Senior Court Security Attendant, Court of Appeals in September 2008.

RESIGNATIONS AND RETIREMENTS:

Gerber, Matthew - Senior Court Security Attendant, resigned in June 2008.

Edwards, Kevin P. - Senior Court Building Guard, resigned in July 2008.

Couser, Lisa A. - Senior Court Building Guard, resigned in October 2008.

Leonard, Donna M. - Senior Court Building Guard, resigned in October 2008.

Ravida, Tina - Principal Custodial Aide, retired in December 2008, after 23 years of service.

CENTRAL LEGAL RESEARCH STAFF

APPOINTMENTS:

Katherine G. Breitenbach, John Althouse Cohen, Mark G. Mitchell, Robert S. Rosborough, IV, Molly J. Timko and Anne Wilson were appointed Court Attorneys in August 2008.

PROMOTIONS:

Scott M. Fusaro, Rebecca Green Neale, Sandra H. Irby, Rachael M. MacVean, Margaret P. Nyland and Justin D. Pfeiffer were promoted to Senior Court Attorneys in August 2008. Daisy G. Ford was promoted from Senior Court Attorney to Principal Law Clerk to Court of Appeals Judge in August 2008.

COMPLETION OF CLERKSHIPS:

Senior Court Attorney Anthony M. Belsito completed his Central Staff clerkship in May 2008. Senior Court Attorneys Jeremy D. Alexander, Joshua Fleury and Justin C. Levin completed their Central Staff clerkships in August 2008. Senior Court Attorney Emily D. Stein completed her Central Staff clerkship in September 2008.

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ACKNOWLEDGMENT

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

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

A number of staff left the Court's employ in 2008. I particularly thank Matthew Gerber, who has served 15 years as a Court Officer, including the past 8 at Court of Appeals Hall, and who left the Court to accept a Sergeant position at the Greene County Court; and Tina Ravida, who faithfully served the Court as a Custodial Aide for 23 years. I also would like to thank former Deputy State Reporter Charles A. ("Andy") Ashe, who retired after 36 years with the Law Reporting Bureau, for his excellent service.

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

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III. 2008: Year in Review

This section—a summary of Court of Appeals decisions handed down in 2008—reflects the range of constitutional, statutory, regulatory, and common-law issues reaching the Court each year.

ATTORNEY'S FEES

Matter of Giaquinto v Commissioner of N.Y. State Dept. of Health (11 NY3d 179)

The Court considered whether petitioner was entitled to recover attorney's fees from respondent Commissioner of the New York State Department of Health under 42 USC §1988 (b) or whether such claim is barred under the Eleventh Amendment. Petitioner, a resident of an adult care facility, commenced a CPLR article 78 proceeding alleging that respondent's determination to deny medical assistance was arbitrary, capricious and in violation of state and federal Medicaid laws. Supreme Court granted the petition and awarded petitioner attorney's fees. The Appellate Division reversed petitioner's fee award. After discussing 42 USC § 1988 (b) and the Eleventh Amendment, the Court held that because petitioner sought prospective relief (i.e., he sought to end an ongoing or future violation of the law), the Eleventh Amendment did not bar petitioner's suit against respondent. However, as it was not clear from the record that Supreme Court awarded petitioner relief on federal grounds, the Court determined that, at this time, attorney's fees could not be awarded to petitioner. The Court remitted the matter to Supreme Court for a determination of (1) petitioner's claim that respondent's denial of medicaid benefits violated federal law and (2) petitioner's request for section 1988 attorney's fees.

Lawrence v Graubard Miller (11 NY3d 588)

Over a 21-year period, the law firm retained by Sylvan Lawrence's widow billed her over $18 million in legal fees. In late 2004, Mrs. Lawrence, noticing an increase in her quarterly legal bills, asked the firm about the possibility of a new fee arrangement. A revised retainer agreement, which provided for, among other things, a 40% contingent fee, was executed. Five months later the firm, on behalf of Mrs. Lawrence, reached a settlement under which the former executor's estate agreed to pay Mr. Lawrence's estate approximately $104.8 million. Citing the revised retainer agreement, the firm sought a fee of approximately $40 million. As stated by the Court: "Whether the revised retainer agreement is unenforceable because it is unconscionable when entered into, or became so in retrospect, is the issue before us on appellants' motions to dismiss the firm's petition to compel payment of legal fees." In an opinion which discussed fundamental principles regarding unconscionable contracts, the courts' role in scrutinizing contingent fee agreements between attorneys and clients, and the importance of the contingency system in general, the Court ultimately concluded that, in light of the applicable standard of review to resolve a motion to dismiss a petition, the facts and circumstances surrounding the revised retainer agreement had not been sufficiently developed to determine whether the agreement was unconscionable at the time it was made.

BROKERS

Rivkin v Century 21 Teran Realty LLC (10 NY3d 344)

In response to a certified question from the United States Court of Appeals for the Second Circuit, the Court explored the scope of the fiduciary duty owed by buyers' agents affiliated with a real estate brokerage firm. In this case, two different buyers' agents in the same firm unwittingly represented competing buyers bidding on the same property. The Court held that unless a real estate brokerage firm and principal specifically agree otherwise, the firm is not obligated to insure that its affiliated licensees forego making offers on behalf of other buyers for property on which the principal has already bid. An individual agent, however, may not represent multiple buyers bidding on the same property without making disclosure and obtaining consent.

CIVIL PROCEDURE

Tydings v Greenfield, Stein & Senior, LLP (11 NY3d 195)

Defendant law firm represented plaintiff in an accounting action brought against plaintiff in her former capacity as trustee. Defendant failed to assert a statute of limitations defense on plaintiff's behalf. The Surrogate ordered plaintiff to file an accounting, which she did. Plaintiff, represented by new counsel, later moved to dismiss objections to her accounting, relying on the statute of limitations. The Surrogate denied the motion on two alternative grounds: that plaintiff did not show the statute of limitations had expired, and that she had failed to assert it as an affirmative defense. The Appellate Division affirmed on the ground that she did not assert the statute as an affirmative defense, but was silent as to the other ground. Plaintiff then brought this legal malpractice action against defendant, claiming that the accounting proceeding would have been dismissed had defendant timely asserted the statute of limitations defense. The Court held that the complaint could not be dismissed because, when a trial court decides a case on two alternative grounds, and an appellate court affirms on only one of them, the losing party is not barred from relitigating the alternative holding that went unaddressed on appeal. The Court also held that the statute of limitations begins to run when a trustee resigns her position and yields the estate to a successor, and that such a defense would, in this case, have been a good one.

Morgenthau v Avion Resources Ltd. (11 NY3d 383)

In this case the issue was whether service of process on defendants in Brazil, according to CPLR 313, must additionally comply with Brazilian service procedures, requiring the issuance of letters rogatory. CPLR 313 does not require service of process according to the service procedures of the foreign locale wherein service was effectuated. Nor do any treaties or international agreements impose such a requirement. Finally, the doctrine of comity has never been applied by the Court to service of process issues. Accordingly, the Court held that service of process made in accord with CPLR 313 on foreign defendants constitutes proper service.

CONSTITUTIONAL LAW

Matter of People v Applied Card Sys., Inc. (11 NY3d 105)

At issue was the preemptive scope of the Federal Truth-in-Lending Act (TILA), which mandates that credit card issuers include certain disclosures in their applications and solicitations. The Attorney General alleged that a credit card issuer had violated New York's Executive Law and Consumer Protection Act by soliciting consumers in the subprime market with marketing materials that misrepresented, among other things, credit limits and the amount of initially available credit that these consumers would receive. The Court rejected respondents' argument that TILA's preemption provision governing disclosures in credit card applications and solicitations barred petitioner's suit. The express text of that provision indicated that preemption was limited to laws that related to the specific disclosures mandated by TILA. Petitioner's suit, in contrast, was based upon the more general duty to refrain from deceiving the public. Moreover, the Attorney General's success in the present case did not require any alteration of, or addition to, the TILA-required disclosures. The Court noted that the relevant deception concerned specific credit terms, such as credit limits, that were not presently addressed by TILA or its accompanying regulation, Regulation Z. In addition, the legislative history and administrative interpretation of the preemption provision established that TILA's disclosure requirements were not intended to displace state unfair trade practices laws, such as the Consumer Protection Act. The Court did hold, however, that res judicata prevented petitioner from recovering restitution on behalf of New York consumers who had opted into a class action settlement with respondents that was approved by a California court. As to that measure of relief, the Court held that the Attorney General was in privity with the New York members of the settlement class.

Boudreaux v State of La., Dept. of Transp. (11 NY3d 321)

Pursuant to CPLR article 54, plaintiffs attempted to docket in New York County a Louisiana state court judgment awarding damages against that state's Department of Transportation. However, plaintiffs' judgment was unenforceable in Louisiana due to constitutional and statutory limitations providing that a damages judgment entered against the state was only payable after the Legislature had appropriated the funds necessary to satisfy the judgment. The Court held that neither the Full Faith and Credit Clause of the United States Constitution nor CPLR article 54 required New York courts to enforce such a judgment in contravention of the laws of Louisiana. The Court further held that pursuant to the doctrine of comity, it would defer to the Constitution of Louisiana and the public policy embodied within a statute whose validity has been upheld by Louisiana courts.

CONTRACTS

Moran v Erk (11 NY3d 452)

Where a real estate contract contains an attorney approval contingency providing that the contract is "subject to" or "contingent upon" attorney approval within a specified time period and no further limitations on approval appear in the contract's language, an attorney for either party may timely disapprove the contract for any reason or for no stated reason.

CORPORATE LAW

Tzolis v Wolff (10 NY3d 100)

Members of a limited liability company may bring derivative suits even though there are no provisions governing such suits in the Limited Liability Company Law. The lack of statutory authorization is not decisive because derivative suits were originally created by court decisions, not by statutes, and the New York Legislature nowhere prohibited derivative suits on behalf of LLCs. The legislative history does not contain any statements of sufficient clarity to allow the Court to determine that the Legislature intended to eliminate the derivative remedy.

CRIMINAL LAW

People v Rawlins; People v Meekins (10 NY3d 136)

These appeals required the Court to resolve whether DNA and latent fingerprint comparison reports prepared by nontestifying experts are "testimonial" statements within the meaning of *Crawford v Washington* (541 US 36 [2004]). The People in both appeals argued for the adoption of an "absolute rule" that all business records by their nature are not testimonial. After analyzing constitutional requirements and the applicable *Crawford* cases, the Court set forth the approach to use in determining whether DNA and latent fingerprint comparison reports, as well as other reports of scientific procedures, are testimonial. The Court did not establish a bright line rule. Instead it must be determined whether these reports ("statements") are properly viewed as a surrogate for accusatory in-court testimony. This case-by-case analysis requires consideration of numerous factors (indicia of testimoniality), including whether the report's contents directly link defendant to criminal wrongdoing or amount to the type of ex parte communication the Confrontation Clause was designed to protect against.

People v Taveras; People v Jones (10 NY3d 227)

In these unrelated cases, defendants' appeals remained pending after defendants absconded for 8 and 18 years, respectively. During defendants' absence, the People failed to move to dismiss those appeals. Years later, defendants were returned to custody and they attempted to prosecute their still-pending appeals. This Court held that the fugitive disentitlement doctrine did not apply as an automatic forfeiture of defendants' right to appeal, but did delineate certain factors the Appellate Division could consider in determining whether the appeals should be allowed to proceed, including, among other things, whether defendants' flight caused "a significant interference with the operation of [the] appellate process."

People v White (10 NY3d 286)

In this appeal, the Court was asked to determine whether defendant's post-*Miranda* statements to the police after a brief period of un-Mirandized custodial interrogation, or its functional equivalent, should have been suppressed. Applying the factors articulated in

People v Paulman (5 NY3d 122 [2005]), the Court determined that the brevity of the initial pre-*Miranda* exchange—no longer than five minutes—was significant. The Court further held that because 15 to 20 minutes elapsed between defendant's pre-*Miranda* statement and his subsequent admission, the facts of this case established that such a break was long enough to allow defendant to return, in effect, to the status of one who is not under interrogation. Suppression was thus not required and the post-*Miranda* statements were properly received in evidence.

People v Hall (10 NY3d 303)

The Court concluded that the Fourth Amendment does not prohibit a visual cavity inspection if the police have a specific, factual basis to support a reasonable suspicion that contraband is hidden inside a body cavity. But where a physical intrusion into a body cavity is necessary, a warrant must be obtained in the absence of exigent circumstances. Here, the police were found to have engaged in an unreasonable manual body cavity search when, after they arrested defendant and had him disrobe for a visual body inspection, they pulled on an object protruding from his rectum, removing a plastic bag that was later found to contain crack cocaine.

People v Sparber (10 NY3d 457); *Matter of Garner v New York State Dept. of Correctional Servs.* (10 NY3d 358)

These cases concerned challenges to the imposition of post-release supervision (PRS) terms by way of court documents or by the Department of Correctional Services. The Court held that defendants have a statutory right, conferred by Criminal Procedure Law §§ 380.20 and 380.40, to have their PRS sentences imposed by a judge, in their presence, in open court. Imposition of such sentences by any other manner, therefore, was procedurally flawed. The Court further held, however, that the remedy for the procedural error of nonpronouncement was not expungement of the PRS term, but a resentencing proceeding at which the required pronouncement would be made by the trial court.

People v Luciano (10 NY3d 499)

The trial court, in its discretion, may order forfeiture of a peremptory challenge utilized in a discriminatory manner. In the particular case before the Court, however, the trial court had failed to exercise discretion when it forfeited defense counsel's peremptory challenge.

Matter of Suarez v Byrne (10 NY3d 523)

In 2005, the Court reversed defendant's conviction for depraved indifference murder on the ground of legal insufficiency and remitted for the Appellate Division to consider the proper remedy. The People advocated defendant's retrial for intentional manslaughter, while defendant argued that constitutional double jeopardy, statutory double jeopardy and collateral estoppel barred this remedy. The Appellate Division ruled in favor of the People, and the Court agreed. In particular, the Court concluded that constitutional double jeopardy

principles did not preclude defendant's retrial: the jurors in the first trial did not have a full opportunity to consider defendant's guilt or innocence of intentional manslaughter because, consistent with the trial judge's instruction, they ceased their deliberations after convicting him of the more serious crime of depraved indifference murder. In addition, the Court held that depraved indifference murder and intentional manslaughter are not inconsistent counts because a defendant can recklessly cause a grave risk of death while intentionally inflicting serious physical injury.

People v Finley; People v Salters (10 NY3d 647)

In these appeals, the Court concluded that small amounts of marihuana, less than 25 grams, do not constitute "dangerous contraband" as that term was used by the Legislature in defining the felony offense of promoting prison contraband in the first degree (Penal Law § 205.25). The test for determining whether a particular item of contraband is "dangerous" is whether its particular characteristics are such that there is a substantial probability that the item will be used in a manner that is likely to cause death or other serious injury. Because it was unlikely that such drastic results would occur from the possession of the small amounts of marihuana at issue in these companion cases, defendants' contraband convictions were ordered reduced to misdemeanors. The court noted that its decision was consistent with the Legislature's passage of the Marihuana Reform Act of 1977, which decriminalized the possession of 25 grams or less of marihuana.

People v Freycinet (11 NY3d 38)

At defendant's trial for the murder of his girlfriend, the People submitted the factual portion of the report of an autopsy performed on the girlfriend's body. Because the medical examiner who performed the autopsy was no longer employed by the Office of the Chief Medical Examiner (OCME), another forensic expert from that office authenticated the report and opined about the cause of death based on the facts in it. Defendant objected that he had a right under the Confrontation Clause (US Const Amend VI) to cross examine the physician who performed the autopsy and wrote the report. The Court, relying on its decision in *People v Rawlins* (10 NY3d 136 [2008]), held that the autopsy report was not testimonial and therefore not subject to the requirements of the Confrontation Clause. The Court based its conclusion on the fact that OCME is not a law enforcement agency, that the report was primarily an objective recitation of observed facts and that the report itself did not link defendant to the crime.

People v Kozlowski; People v Swartz (11 NY3d 223)

This case concerned the intersection of an internal investigation into corporate wrongdoing and criminal charges stemming from such activities. Defendants, the former CEO and CFO of Tyco International, Ltd., were convicted of stealing four multimillion dollar "bonuses" from their employer between 1999 and 2001. They argued that the trial court had erred in permitting the lead investigative attorney to give testimony regarding his conversations with defendant Swartz and other corporate personnel. In addition, defendants contended that a subpoena seeking attorneys' notes of interviews with Tyco directors made

during the course of the internal investigation was improperly quashed. The Court concluded that the attorney's testimony was not improper because it was simply a firsthand factual account of the relevant conversations and did not serve to convey a personal opinion as to defendants' guilt. Further, the Court held that defendants had made the minimal threshold showing necessary for enforcement of their subpoena by proffering facts that permitted an inference that the relevant notes might contain impeachment material. The Court next concluded, however, that the notes were entitled to a qualified privilege as trial preparation materials and that Supreme Court had not abused its discretion as a matter of law in refusing to order their pretrial production. Defendants had never established that they could not interview the directors at an earlier time or otherwise explained their failure to seek interviews with them. Finally, the Court rejected defendants' claim that Tyco's cooperation with the People had effected a waiver of the qualified privilege covering the notes. Although the company had produced certain privileged materials pre-dating the internal investigation to the People, as well as defendants, there was no evidence that the company had ever divulged the relevant notes to the prosecution.

People v Johnson (11 NY3d 416)

Defendant pleaded guilty to attempted promoting of a sexual performance by a child and was required to register as a sex offender under the Sex Offender Registration Act (SORA). County Court, relying on a numerical calculation made by the Board of Examiners of Sex Offenders, adjudicated defendant a level two (moderate) sex offender. The numerical calculation employed the SORA Risk Assessment Guidelines, which assess points for 15 risk factors. Defendant scored a total of 80 points, which placed him in the level two category because the total exceeded 70 points. Twenty of these points were for risk factor 7 because "[t]he offender's crime . . . was directed at a stranger." The Court reasoned that defendant, who possessed pornographic pictures of children he did not know, was properly assessed points under this risk factor based on the factor's plain language. However, the Court noted that while most offenders who target strangers pose a greater danger to the community, this is not necessarily so of those convicted for possessing child pornography. Therefore, while risk factor 7 makes sense for other sex offenses, its rationale fails in most child pornography cases. The Court concluded that defendant was not without recourse, because the lower court was not bound by the risk level indicated by the defendant's point total and could depart from the total where "there exists an aggravating or mitigating factor of a kind, or to a degree, that is otherwise not adequately taken into account by the guidelines" (Guidelines, at 4). Therefore, defendant could petition County Court for an order modifying his level two designation.

People v Hawkins (11 NY3d 484)

With preservation the key to Court of Appeals review, the Court reiterated that, in order to preserve a challenge to the legal sufficiency of a conviction, a defendant must move for a trial order of dismissal, and the argument must be specifically directed at the error being urged. General motions do not create questions of law for this Court's review.

People v Mills; People v Then (11 NY3d 527)

These appeals called upon the Court to interpret the Drug Law Reform Act of 2005 (the 2005 DLRA), which allows certain nonviolent A-II felons sentenced to indeterminate terms under the old Rockefeller Drug Laws to seek resentencing to determinate terms under the provisions of the Rockefeller Drug Law Reform Act of 2004. The Court held that in order to qualify for resentencing under the 2005 DLRA, class A-II felony drug offenders must not be eligible for parole within three years of their resentencing applications. Further, once a defendant has been released to parole supervision for a class A-II drug felony conviction, he or she no longer qualifies for 2005 DLRA relief for that particular conviction.

People v Jean-Baptiste (11 NY3d 539)

The issue raised by this appeal was whether the evidence introduced at trial was legally sufficient to establish the defendant's guilt of depraved indifference murder. The Court held that the present standard for depraved indifference murder, as set forth in *People v Feingold* (7 NY3d 288 [2006]), should be applied retroactively to cases brought on by direct appeal. As a result, the evidence was insufficient to support the defendant's conviction.

DAMAGES

McCurdy v State of New York (10 NY3d 234)

In this appeal, the Court was asked to decide the proper measure of damages when a condemnor takes a temporary easement that encumbers a vacant parcel's entire highway frontage. The Court held that damages in such a case should be awarded in line with the formula set out in *Village of Highland Falls v State of New York* (44 NY2d 505 [1978])—i.e., the rental value of the land encompassed within the temporary easement for so long as the easement is in effect plus, as consequential damages, the rental value of the parcel's unencumbered interior acreage for any period of time when highway access was blocked by the easement's use. A condemnee is entitled to consequential damages comprising the rental value of the parcel's unencumbered interior acreage for the easement's duration only if the condemnor does not meet its burden of proving the interval of actual obstruction, or the condemnee establishes that the mere existence of the temporary easement, in fact, did impede sale or development of the parcel for its highest and best use.

DEFAMATION

Mann v Abel (10 NY3d 271)

This libel action arose from a column written by defendant Abel and published by defendant *Westmore News*, an independent newspaper serving the Town of Rye, New York.

In the column, Abel wrote that plaintiff Mann, the Rye Town Attorney, among other things, was a "political hatchet" who "pulls the strings" of local government. This Court held that, as a matter of law, the statements complained of constituted non-actionable statements of opinion. The Court declined to adopt an analysis that would require courts first to search an article for particular factual statements and then to hold such statements actionable unless couched in figurative or hyperbolic language. Rather, the Court instructed that courts must consider the communication as a whole and, in particular, look to the over-all context in which the statements were made.

FAMILY LAW

Matter of Spencer v Spencer (10 NY3d 60)

Upon the expiration of a Connecticut child support order, mother filed a petition in New York seeking a new determination of child support. The Court held that the New York order granting additional child support was a modification of Connecticut's order, and that New York lacked subject matter jurisdiction because father continued to reside in Connecticut. In so holding, the Court rejected the "expired order" concept.

FEDERAL PREEMPTION

Financial Indus. Regulatory Auth., Inc. v Fiero (10 NY3d 12)

In the early 1990s, Fiero registered as a securities representative with the National Association of Securities Dealers (NASD) (subsequently called the "Financial Industry Regulatory Authority," or "FINRA"), a self-regulatory organization. Relatedly, Fiero Brothers—a broker-dealer firm owned by Fiero, the company's president and sole employee—became a member of NASD. NASD subsequently sanctioned Fiero and Fiero Brothers pursuant to the Securities Exchange Act of 1934 and SEC and NASD rules for carrying out a so-called "bear raid" to drive down the price of securities underwritten by another NASD member, causing that firm and its clearing firm to collapse while generating significant profits for the Fieros. The sanctions included a $1 million fine, which NASD subsequently sought to collect in an action in Supreme Court. The Court concluded that state courts do not possess the power to hear and decide such a controversy because section 27 of the Exchange Act (15 USC § 78aa) vests exclusive jurisdiction in federal district courts.

Cox v NAP Constr. Co., Inc. (10 NY3d 592)

The Court concluded that workers may bring state breach of contract claims to enforce a contractor's promise to pay prevailing wages under the United States Housing Act. The Housing Act neither expressly preempts state law claims nor provides for pervasive

regulation on the subject of laborers' remedies for purposes of implicitly preempting their state law claims. Furthermore, the state common-law remedies do not conflict with any federal statute. Finally, the Court concluded that workers were not barred from bringing their state law claims by failure to exhaust their administrative remedies, because there were no administrative remedies available to them. The regulations of the Department of Labor promulgated to enforce the Davis-Bacon Act (29 CFR 5.1 *et seq.*) only provide for enforcement of contractor promises by government agencies.

Helmsley-Spear, Inc. v Fishman (11 NY3d 470)

The defendant union in this case began a concerted effort to organize security officers working at the Empire State Building (ESB). As part of its effort, union members gathered outside the building while distributing leaflets and banging repeatedly on a container with a stick. Plaintiffs, the managing agent of the ESB and owners of nearby businesses, commenced a private nuisance cause of action against the union. This Court rejected the union's claim that plaintiffs' claim was preempted by the National Labor Relations Act, holding that Congress did not intend to preempt state courts from addressing the tortious conduct at issue.

FIXTURES

Matter of City of New York (Kaiser Woodcraft Corp.) (11 NY3d 353)

In eminent domain proceedings, improvements used for business purposes that would lose substantial value if removed qualify as compensable trade fixtures. In this case the Court clarified that "value" is not synonymous with "cost." Thus, a claimed item is not compensable as a trade fixture merely because it is worth less used than it was new, or would be worth less on the secondhand market. Instead, removal must lead to a devaluation of the item's functional utility.

INDEMNIFICATION

Brooks v Judlau Contr., Inc. (11 NY3d 204)

The Court was asked to determine whether General Obligations Law § 5-322.1 permits a general contractor—who has been found to be partially at fault—to enforce an indemnification provision against its subcontractor for that portion of damages attributable to the negligence of the subcontractor. The Court held that the indemnification provision did not violate section 5-322.1 because it did not require the subcontractor to indemnify the general contractor for the general contractor's own negligence, but instead required the subcontractor to indemnify the general contractor for damages caused solely by the subcontractor's own negligence.

INSURANCE LAW

Bi-Economy Mkt., Inc. v Harleysville Ins. Co. of N.Y. (10 NY3d 187)

A meat market which ceased business following a devastating fire brought an action against its insurer for breach of a commercial property insurance contract after the insurer failed to pay in full its claims for actual damages and lost business income. Applying the principle of law that in breach of contract actions a plaintiff may recover general damages that are the natural and probable consequence of the breach, the Court held that the insured's claim for consequential damages was reasonably foreseeable and contemplated by the parties, and thus could not be dismissed on summary judgment. The Court observed that the purpose of business interruption coverage would have made the insurer aware that, if it breached its contractual obligations to investigate in good faith and pay covered claims, it would have to respond in damages to its insured for the loss of its business as a result of the breach.

TAG 380, LLC v ComMet 380, Inc. (10 NY3d 507)

After the September 11th terrorist attacks, defendant, the tenant of a large New York City commercial building, obtained an insurance policy expressly stating that "terrorism is excluded" from coverage. Defendant's lease required it to maintain insurance against damage from fire and other named perils enumerated in the New York Standard Fire Insurance Policy and Extended Coverage Endorsement. The Court held that defendant breached the lease by procuring insurance specifically excluding "terrorism" since the policy failed to meet the standards of Insurance Law § 3404, which required tenant to obtain insurance covering fire damage caused by third parties, including terrorists.

Fair Price Med. Supply Corp. v Travelers Indem. Co. (10 NY3d 556)

Under New York's No-Fault Law (Insurance Law art 51), an accident victim must submit a notice of claim to an insurer as soon as practicable and no later than 30 days after an accident. A carrier failing to deny a claim within this 30-day period is generally precluded from asserting a defense against payment, although there is a narrow exception from preclusion where no policy was in force or no accident occurred (*see Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195 [1997]). The Court declined to extend the *Chubb* exception to the claimed billing fraud in this case, where it was alleged that the billed-for services were never rendered, because there was an actual accident and actual injuries and coverage therefore legitimately came into existence.

LABOR AND EMPLOYMENT

Samiento v World Yacht Inc. (10 NY3d 70)

Plaintiffs, former and present restaurant servers, asserted that defendant World

Yacht Inc. violated Labor Law § 196-d by failing to properly remit monies collected as service charges, gratuities included in ticket prices, or automatic gratuities added at the time of purchase of dining cruise tickets. The Court held that although the service charges and automatic gratuities were not voluntary gratuities, such charges could constitute a "charge purported to be a gratuity for an employee" within the meaning of section 196-d because such charges were held out to the public as gratuities that normally would be paid to the servers.

Sanatass v Consolidated Inv. Co., Inc. (10 NY3d 333)

While plaintiff was installing a commercial air conditioning unit for a subtenant on leased premises, the lift he was using failed and the heavy unit fell on plaintiff, causing serious injuries. Although the lease required that the tenant advise the owner of any renovations or changes to the premises, the property owner had no knowledge of the work that was being undertaken at the time of the accident. Plaintiff brought this action against the owner of the building and the original tenant alleging violations of Labor Law §§ 240 (1) and 241 (6). In turn, the owner cross-claimed seeking contribution and indemnification from the original tenant and the subtenant under the lease agreement. After initially determining that plaintiff was engaged in work constituting an alteration of the premises, thereby entitling him to the protections of Labor Law § 240 (1), the Court concluded that the landlord's status as an out-of-possession owner without notice of the work being performed did not insulate the owner from being held strictly liable under the statute.

Goldman v White Plains Ctr. for Nursing Care, LLC (11 NY3d 173)

The Court was asked in this case whether the expiration of a two-year written employment contract necessarily gives rise to successive one-year implied contracts when the parties fail to renew the contract but the employee continues to work for the employer. Under the common law, the fact that an employee has continued to work for an employer after the conclusion of the employment term can give rise to an inference that the parties intended to renew the agreement for an additional year. But this inference does not arise if there is proof that the parties did not intend to allow the contract to renew automatically. Here, based on the interplay of several terms of the parties' written agreement, the Court concluded that automatic renewal was not intended and, therefore, the plaintiff became an at-will employee at the termination of the initial two-year period.

Stringer v Musacchia (11 NY3d 212)

Plaintiff agreed to travel to New York from Georgia to build a shed on certain premises located in Greene County and, in return, defendant consented to allow plaintiff to participate in a turkey hunt on the property. While attempting to place a rafter on the structure, plaintiff fell from a ladder and sustained injuries. The issue was whether plaintiff's Labor Law § 240 (1) action could survive defendant's motion to dismiss on the basis that plaintiff was not an "employee" covered by the statutory protections. The Court determined that this uncompensated, volunteer arrangement did not meet the requirements of an employee-employer relationship for purposes of the Labor Law.

MATRIMONIAL LAW

Graev v Graev (11 NY3d 262)

Plaintiff and defendant entered into a settlement agreement that was incorporated, but not merged, into a judgment of divorce. This settlement agreement listed "[t]he cohabitation of the Wife with an unrelated adult for a period of sixty (60) substantially consecutive days" as a "termination event," ending the husband's obligation to pay monthly spousal support. Concluding that the word "cohabitation" did not necessarily encompass "changed economic circumstances" and was ambiguous in the context of this agreement, the Court remitted the case to Supreme Court for consideration of extrinsic evidence as to the parties' intent.

Van Kipnis v Van Kipnis (11 NY3d 573)

Before they married in Paris, France, plaintiff and defendant executed a *Contrat de Mariage* wherein they agreed to opt out of the governing French community property scheme in favor of separate marital estates. During their 38-year marriage, the parties—who primarily resided in New York—did not commingle any assets, except for their joint ownership of two residences. When the wife commenced a matrimonial action seeking a divorce and equitable distribution, the husband contended that the prenuptial agreement precluded application of New York's Equitable Distribution Law to any assets other than the two parcels of real property held in joint names. The wife asserted that the contract was intended only to shield assets from creditors, not to effect property distribution in the event of a divorce. But the Court concluded that the parties had executed a valid foreign prenuptial contract that barred equitable distribution since the agreement unambiguously provided for the separate ownership of assets during the course of the marriage, rendering the assets separate property not subject to distribution under New York's statutory scheme.

MUNICIPAL CORPORATIONS

Matter of City of Utica v Town of Frankfort (10 NY3d 128)

In this special proceeding commenced pursuant to article 17 of the General Municipal Law, petitioner City of Utica sought to annex property from respondents Town of Frankfort and Herkimer County. Although the Court concluded that the Appellate Division correctly applied the proper standard of review in approving the annexation, the Court, citing the important and fundamental nature of the right to cast a secret vote or ballot, held that the Appellate Division erred as a matter of law when it dispensed with the required special election. Noting that such a conclusion goes beyond the Appellate Division's discretion, the Court also declined to recognize prior decisions of three Appellate Division Departments that had deemed the required special election unnecessary.

NATIVE AMERICANS

Matter of Spota v Jackson (10 NY3d 46)

Reviewing developments in decisional and statutory Indian law spanning close to two centuries, the Court concluded that New York Indian Law § 8 did not grant state courts the discretion to determine a nonmember's status as an "intruder" independent of an Indian nation, nor did the rights that tribes possess as attributes of their inherent sovereignty permit such a determination.

NOT-FOR-PROFIT CORPORATIONS

People v Grasso (11 NY3d 64)

In a lawsuit challenging the compensation paid by the New York Stock Exchange to its former Chairman and CEO as unreasonable and excessive, the Attorney General asserted six causes of action—two statutory claims premised on provisions of the Not-For-Profit Corporation Law and four nonstatutory claims. The Court dismissed the four nonstatutory causes of action because they circumvented the fault-based scheme created by the Not-For-Profit Corporation Law.

PARTNERSHIP LAW

Appleton Acquisition, LLC v National Hous. Partnership (10 NY3d 250)

Under Partnership Law § 121-1102 (c), when a limited partnership merges with another entity, a limited partner who objects to the merger is entitled to receive the fair market value of his or her partnership interest and, if the value cannot be agreed upon, may initiate a special appraisal proceeding to resolve the dispute. But the statute precludes a limited partner from attacking the validity of the merger. The issue in this case was whether limited partners who did not pursue an appraisal proceeding could nonetheless challenge the validity of the merger after it occurred on the ground that the merger was predicated on fraud and illegal acts by a general partner. The Court answered in the negative, concluding that the statute precluded an attack on the merger itself and that the limited partners were restricted to pursuing their claims of fraud or illegality in an appraisal proceeding.

PRODUCTS LIABILITY

Adamo v Brown & Williamson Tobacco Corp. (11 NY3d 545)

Plaintiff smoked for over forty years and developed an ultimately fatal case of lung cancer. She filed suit against the tobacco companies that manufactured her preferred brands of cigarettes, alleging the companies were negligent in designing their product in that they should have used lower levels of tar and nicotine. In order to prevail on a negligent design claim, a plaintiff must demonstrate that "it was feasible to design the product in a safer manner" (*Voss v Black & Decker Mfg. Co.*, 59 NY2d 102, 108 [1983]). The Court concluded that this entails a showing that the alternative design provides the same "utility" as the less safe design. Since the only utility of cigarettes is to satisfy smokers' sensory demands, plaintiffs failed to meet their prima facie burden because they did not show that light cigarettes with lower nicotine and tar content satisfied those demands as well as regular cigarettes. Where the only function of a product is to satisfy consumers, as opposed to achieving an objectively assessable result, the plaintiff must demonstrate that the alternative safer design is as acceptable to consumers as the purportedly less safe product design.

PUBLIC OFFICERS

Matter of Feola v Carroll (10 NY3d 569)

In this CPLR article 78 proceeding, the Court held that petitioner, a police officer, was not entitled to a pretermination hearing after he was convicted of one count of endangering the welfare of a child. Summary dismissal was appropriate because conviction of that offense was demonstrative of petitioner's "lack of moral integrity" as referenced in *Matter of Duffy v Ward* (81 NY2d 127 [1993]).

Matter of Gormley v New York State Ethics Commn. (11 NY3d 423)

In this appeal, the Court considered whether a former state employee whose actions violated the lifetime ban under Public Officers Law § 73 (8) (a) (ii) can be assessed a civil penalty under Public Officers Law § 73 (18) for knowingly and intentionally violating the statute when the former employee did not know his conduct violated the lifetime ban and he did not intend to break the law. This Court held that given the Penal Law roots of the civil penalty provision, it is enough that the former employee was aware of the nature and circumstances regarding his conduct and had the conscious objective to engage in such conduct for a civil penalty to be imposed.

RACING AND WAGERING

Matter of Suffolk Regional Off-Track Betting Corp. v New York State Racing & Wagering Bd. (11 NY3d 559)

Deference to administrative agencies charged with enforcing a statute is not required when an issue is one of pure statutory analysis. Here, Racing, Pari-Mutuel Wagering and Breeding Law § 1017-a (now § 1017) requires off-track betting corporations (OTBs) to guarantee to regional harness tracks a minimum amount of nighttime revenues (maintenance of effort payments), against which the OTBs cannot credit any daytime revenues paid to the tracks. Such maintenance of effort payments must be calculated on a track-by-track, not regional, basis. Finally, the plain language of Racing, Pari-Mutuel Wagering and Breeding Law § 1017 (now § 1016) requires OTBs to make dark day payments (days on which there is no thoroughbred racing conducted within the state) to harness tracks that remain closed for business on the dark day.

RELIGIOUS CORPORATIONS AND ASSOCIATIONS

Matter of Venigalla v Nori (11 NY3d 55)

The Hindu Temple Society of North America was incorporated in 1970 under article 9 of the Religious Corporations Law. In that same year it adopted bylaws calling for election of trustees by members; those bylaws were never implemented and were forgotten. A board of trustees governed the Society and filled its own vacancies when they came up. In 1978, the board adopted new bylaws explicitly allowing the board to fill vacancies. Section 182 of article 9 of the Religious Corporations Law provides: "Any vacancies occurring in the said board of trustees shall be supplied by the remaining trustees." In 2001, petitioners demanded that elections prescribed by the 1970 bylaws take place. The Court held that the portion of the Society's bylaws which contradicted the Religious Corporations Law was invalid from inception. As an alternate ground for decision, the Court held that the non-use of the bylaws for a considerable amount of time caused the bylaws to become defunct.

Episcopal Diocese of Rochester v Harnish (11 NY3d 340)

In this church property dispute between defendant All Saints Protestant Episcopal Church and plaintiff Episcopal Diocese of Rochester, the Court considered whether All Saints held its real and personal property in trust for the benefit of the Diocese and non-party Protestant Episcopal Church in the United States of America ("National Church"), such that upon All Saints' separation from the Diocese, the property reverted to the Diocese or the National Church. Applying the neutral principles doctrine, as a court seeking to resolve a church property dispute must, the Court noted that nothing in the deeds, All Saints' certificate of incorporation or the Religious Corporations Law established a trust in favor of either the Diocese or the National Church. However, in holding that an express trust had been established, the Court determined that under the Dennis Canons, adopted in 1979 by

the General Convention of the National Church, All Saints, which had agreed to abide by all "canonical and legal enactments," held its property in trust for the Diocese and the National Church. The Court further held that All Saints agreed to abide by the express trust established by the Dennis Canons either upon its incorporation or upon recognition as a parish in spiritual union with the Diocese.

RENT REGULATION

Riverside Syndicate, Inc. v Munroe (10 NY3d 18)

Tenants rented three apartments on Riverside Drive in Manhattan. In a settlement of an earlier proceeding, the parties agreed that tenants would be recognized "as lawful, legal tenants of the subject premises at a monthly rental rate of $2,000.00." That rent was in excess of the maximum rent allowed by the rent stabilization laws. The agreement further provided that the tenants would waive all right to challenge the legality of the rent, and that regardless of primary residence the tenants could use the apartments as a second home. The landlord brought this eviction proceeding and moved for a declaratory judgment holding that the agreement violated public policy and was void. The Court held that the agreement violated the Rent Stabilization Code (9 NYCRR) § 2520.13, which prohibits tenants from waiving benefits provided by the Rent Stabilization Law except in certain circumstances not applicable in this case.

Pultz v Economakis (10 NY3d 542)

Defendants, a married couple and the owners of a 15-unit apartment building that contained six rent-stabilized units, sought to recover possession of the rent-stabilized units in order to use the entire premises as the personal residence of the husband owner. Plaintiff tenants brought a declaratory judgment action, seeking to prevent defendants from recovering the units and instituting holdover proceedings against them. Plaintiffs argued, among other things, that prior Division of Housing and Community Renewal (DHCR) approval is required under Rent Stabilization Code (9 NYCRR) § 2524.5 (a) (1), which applies when the owner attempts to withdraw apartments from the rental market or requires the units for business use. Rejecting plaintiffs' arguments, the Court held that under the plain language of the Rent Stabilization Law (Administrative Code of City of NY § 26-511 [c] [9] [b]) and the Rent Stabilization Code (9 NYCRR 2524.4 [a] [1], [3]), defendants were not required to obtain DHCR approval before seeking to recover possession of the six rent-stabilized units for personal use and occupancy.

Katz Park Ave. Corp. v Jagger (11 NY3d 314)

In this eviction action, the Court held that a foreign national living in the United States on a B-2, or "tourist," visa generally cannot meet the primary residence requirement of the Rent Stabilization Code (RSC). One of the requirements for a B-2 visa is that the recipient have a principal, actual dwelling place outside the United States, which she has no intention of abandoning. The RSC requires that the resident of a rent-stabilized apartment

use that apartment as her primary residence. The Court reasoned that it is logically inconsistent for a single person to have a principal actual dwelling place abroad and a primary residence in New York.

SCOPE OF RELEASE

Pludeman v Northern Leasing Sys., Inc. (10 NY3d 486)

The issue before the Court was whether plaintiffs sufficiently pleaded a cause of action for fraud against various corporate defendants pursuant to CPLR 3016 (b), which provides that in an action for fraud, the complaint must set forth in detail the allegedly fraudulent conduct. Plaintiffs alleged that defendants fraudulently concealed material and onerous lease terms in the parties' equipment leases. However, plaintiffs did not allege specific details of each individual defendant's conduct. The Court, nonetheless, held that plaintiffs sufficiently pleaded a cause of action for fraud because the complaint alleged facts sufficient to permit a reasonable inference of the alleged conduct. Specifically, the very nature of the fraud alleged here, a nationwide scheme that took place over years, gave rise to the reasonable inference that defendants knew of or were involved in the fraud.

AG Capital Funding Partners, L.P. v State St. Bank & Trust Co. (11 NY3d 146)

This appeal arose out of the issuance of a series of debt securities by Loewen Group International, Inc. and Loewen Group, Inc. (collectively Loewen), which filed for bankruptcy protection in 1996. Holders of the debt securities sued defendant State Street, Loewen's indenture trustee on each debt issue, alleging that State Street's failure to deliver to the collateral trustee registration statements required to secure the debt caused them to settle their claims in Loewen's bankruptcy for less than if the registration statements had been delivered. The question before the Court was whether plaintiffs have viable claims against State Street for breach of contract, violation of the federal Trust Indenture Act, breach of fiduciary duty and negligence. Noting that a release executed in conjunction with Loewen's bankruptcy settlement freed State Street from any claim that would entitle it to indemnification from Loewen, and that each indenture contained indemnification clauses providing that Loewen need not "indemnify against any loss or liability to the extent incurred by [State Street] through its negligence," the Court held that plaintiffs' contract and Trust Indenture Act claims were barred by the release. The Court further held that no breach of fiduciary duty occurred. Finally, because negligence claims were not barred by the release and because there was an issue of fact as to whether State Street owed and violated a duty of care to plaintiffs, the Court reinstated plaintiffs' negligence claim against State Street.

TAXATION

Matter of Adult Home at Erie Sta., Inc. v Assessor & Bd. of Assessment Review of City of Middletown; Matter of Regional Economic Community Action Program, Inc. v Bernaski (10 NY3d 205)

Two charitable organizations in the City of Middletown sought exemptions under Real Property Tax Law § 420-a for residential properties they owned, claiming the properties were used solely for charitable purposes. The City denied both applications, arguing that neither institution's use was sufficiently charitable to qualify for the exemption. One, Adult Home at Erie Station, Inc. (AHESI), operated an adult care facility and residence for mostly low income elderly people; AHESI received less than market rent for 90% of its units, although only 50% of the residents subsisted solely on Social Security benefits. The other, Regional Economic Community Action Program (RECAP), provided life skills and job training to the homeless and others. One RECAP program involved the participants living in housing owned by the charity while receiving these services; through a combination of government funds and participant payments, RECAP received a market rent for these properties. The Court held that both institutions qualified for the charitable use exemption. Regarding AHESI, the Court held that providing below market housing to the impoverished elderly was a charitable activity and that, given the way in which the rents were calculated, the 90% of the residents who were paying such rents were legitimate recipients of charity. While RECAP received market rents for its residences, this was not dispositive because its charitable purpose was not providing low cost housing. The Court reaffirmed *Matter of St. Luke's Hosp. v Boyland* (12 NY2d 135 [1962]), which held that property used for a purpose "reasonably incident" to an organization's charitable objectives was subject to section 420-a, and held that providing program participants with decent housing was incident to RECAP's mission to provide job and life skills training.

Matter of Disney Enters., Inc. v Tax Appeals Trib. of State of N.Y. (10 NY3d 392)

Rejecting a challenge to New York's franchise tax apportionment formula, which uses the in-state receipts of all members of a corporate group filing a combined return when calculating the combined group's New York tax, the Court determined that the formula does not amount to a tax on the individual members of the group in violation of federal law, but rather is a fair and appropriate method of calculating the group's combined taxable activities within the state.

TORTS

Ornstein v New York City Health & Hosps. Corp. (10 NY3d 1)

While working as a nurse in a hospital, plaintiff was stuck with a hypodermic needle that had been left in the bed of a patient with Acquired Immune Deficiency Syndrome. Because the needle contained blood, plaintiff received treatment for potential Human Immu-

noeficiency Virus (HIV) exposure and underwent HIV testing every three months for two years, repeatedly testing negative. After plaintiff commenced a negligent infliction of emotional distress action against the hospital and an intern, defendants obtained a ruling precluding plaintiff from obtaining damages for emotional distress she suffered beyond six months after the incident on the theory that it was unreasonable, as a matter of law, for any person who has tested HIV negative for six months to continue to fear infection. At trial, plaintiff prevailed on her claim but her compensation was limited to the emotional distress damages she incurred during the initial six-month period following the exposure incident. On appeal, this Court held that the restriction of plaintiff's damages had been improper, declining to adopt a bright line rule limiting recovery for emotional distress damages in HIV exposure cases to the initial six months following exposure.

Marmelstein v Kehillat New Hempstead: Rav Aron Jofen Community Synagogue (11 NY3d 15)

Plaintiff, a competent adult, engaged in a consensual three-and-a-half-year sexual relationship with a rabbi. After the relationship ended, plaintiff instituted a breach of fiduciary duty claim against the cleric, contending he had enticed her to succumb to his advances using fraud and deceit. The Court held that, even assuming that plaintiff's claim was not foreclosed by First Amendment restrictions on judicial interference in the clergy-congregant relationship, plaintiff lacked sufficient proof that the rabbi owed her a fiduciary duty under the common law as she had failed to allege facts indicating that the rabbi exercised the requisite degree of control and dominance over her. In the absence of a prima facie showing that a fiduciary obligation existed, no cause of action for a voluntary sexual affair between consenting adults lies.

TRUSTS

Matter of Abraham XX (11 NY3d 429)

In a case addressing the scope of the State's right to Medicaid reimbursement pursuant to the terms of a Supplemental Needs Trust, the Court held that the State may recover the total lifetime benefits paid on behalf of the trust beneficiary to the extent assets remained in the trust at the time of the beneficiary's death.

WILLS

Matter of Piel (10 NY3d 163)

Relying on *Matter of Best* (66 NY2d 151 [1985]), the Court held that a nonmarital child adopted out of the family by strangers at birth does not presumptively share in a class

gift to the biological parent's issue established in the biological grandmother's irrevocable trusts.

WORKERS' COMPENSATION

Fleming v Graham (10 NY3d 296)

The Court was asked to decide whether a plaintiff's facial injuries constituted a "permanent and severe facial disfigurement" for purposes of qualifying as a "grave injury" under Workers' Compensation Law § 11. The Court held that a disfigurement is severe if a reasonable person viewing the plaintiff's face in its greatly altered state would regard the condition as abhorrently distressing, highly objectionable, shocking, or extremely unsightly. Because plaintiff's facial scars showed a steady progression toward significant recovery and the permanency of the scars could be reversed, the Court held that plaintiff's disfigurement was not "severe."

Matter of Ramroop v Flexo-Craft Print., Inc. (11 NY3d 160)

The Court considered whether claimant, an undocumented alien who sustained a compensable hand injury, was entitled to recover "additional compensation" under Workers' Compensation Law § 15 (3) (v) after his schedule award was fully paid. In holding that claimant could not recover "additional compensation," the Court noted that even if claimant satisfied the first statutory requirement—that the impairment of his wage-earning capacity was due solely to the compensable injury he sustained—he could not meet the statute's second requirement that he participate in a "Board approved rehabilitation program" because such programs are not available to individuals, such as claimant, who are not legally employable in the United States.

ZONING

Matter of 9th & 10th St. L.L.C. v Board of Stds. & Appeals of City of N.Y. (10 NY3d 264)

Petitioner acquired a lot occupied by a former school building. The deed under which petitioner took title restricted development of the property to "a 'Community Facility Use' as such use is defined in the New York City Zoning Resolution." Included among the uses permitted by the Zoning Resolution is "[c]ollege or school student dormitories" (Zoning Resolution § 22-13). Petitioner submitted an application to build a 19-story dormitory configured much like an apartment building. The Department took the position that a college or school student dormitory is not just a building used to house students, but is also operated by or on behalf of a college or school. Because petitioner had not presented evidence that an academic institution would actually use the proposed dormitory, the De-

partment refused to approve the application. Petitioner appealed unsuccessfully to the Board of Standards and Appeals, and then filed this CPLR article 78 proceeding to annul the Board's determination. The Court of Appeals held that the Department's actions were not arbitrary and capricious because there was reason to doubt that the building could ever be used for a lawful purpose.

IV. Appendices

APPENDICES

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APPENDIX 1

JUDGES OF THE COURT OF APPEALS

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

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

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

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

Hon. Robert S. Smith
Associate Judge of the Court of Appeals

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

Hon. Theodore T. Jones, Jr.
Associate Judge of the Court of Appeals

APPENDIX 2

PERTINENT CLERK'S OFFICE TELEPHONE NUMBERS

Court of Appeals Switchboard: (518) 455-7700

Questions Concerning Motions:
Heather Davis, Esq. (518) 455-7705

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

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

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

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

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

SUMMARY OF TOTAL APPEALS DECIDED IN 2008 BY JURISDICTIONAL PREDICATE

January 1, 2008 through December 31, 2008

BASIS OF JURISDICTION: ALL APPEALS	TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Dissents in Appellate Division	12	12	2	1	0	27
Permission of Court of Appeals or Judge thereof	59	32	19	0	0	110
Permission of Appellate Division or Justice thereof	33	21	4	1	0	59
Constitutional Question	6	2	0	0	0	8
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	1	0	0	20	21
Totals	**110**	**68**	**25**	**2**	**20**	**225**

BASIS OF JURISDICTION: CIVIL APPEALS	TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Dissents in Appellate Division	12	12	2	1	0	27
Permission of Court of Appeals	33	30	9	0	0	72
Permission of Appellate Division	22	19	2	1	0	44
Constitutional Question	6	2	0	0	0	8
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other [1]	0	1	0	0	20	21
Totals	**73**	**64**	**13**	**2**	**20**	**172**

BASIS OF JURISDICTION: CRIMINAL APPEALS	TYPE OF DISPOSITION					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Permission of Court of Appeals Judge	26	2	10	0	0	38
Permission of Appellate Division Justice	11	2	2	0	0	15
Other [1]	0	0	0	0	0	0
Totals	**37**	**4**	**12**	**0**	**0**	**53**

[1] Includes anomalies which did not result in an affirmance, reversal, modification or dismissal (e.g. judicial suspensions, acceptance of a case for review pursuant to Rule 500.27).

APPENDIX 4

COMPARATIVE STATISTICAL ANALYSIS FOR APPEALS DECIDED IN 2008

ALL APPEALS - % CIVIL AND CRIMINAL

	2004	2005	2006	2007	2008
Civil	74% (136 of 185)	70% (137 of 196)	67% (127 of 189)	73% (135 of 185)	76% (172 of 225)
Criminal	26% (49 of 185)	30% (59 of 196)	33% (62 of 189)	27% (50 of 185)	24% (53 of 225)

CIVIL APPEALS - TYPE OF DISPOSITION

	2004	2005	2006	2007	2008
Affirmed	51%	49%	57%	46%	42%
Reversed	33%	31%	21%	22%	37%
Modified	4%	9%	8%	14%	8%
Dismissed	1%	--	--	--	1%
Other **(e.g. judicial suspension; Rule 500.27 certified question)**	11%	11%	14%	18%	12%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	2004	2005	2006	2007	2008
Affirmed	76%	69%	69%	66%	70%
Reversed	14%	24%	16%	30%	7%
Modified	4%	5%	12%	4%	23%
Dismissed	6%	2%	3%	--	--

CIVIL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2004	2005	2006	2007	2008
Appellate Division Dissents	22.8% (31 of 136)	12.4% (17 of 137)	15% (19 of 127)	16% (22 of 135)	15.7% (27 of 172)
Court of Appeals Leave Grants	51.5% (70 of 136)	50.4% (69 of 137)	42.5% (54 of 127)	39% (53 of 135)	42% (72 of 172)
Appellate Division Leave Grants	10% (13 of 130)	19.7% (27 of 137)	21% (27 of 127)	21% (28 of 135	25.6% (44 of 172)
Constitutional Question	4.4% (6 of 136)	5.8% (8 of 137)	8.7% (11 of 127)	6% (8 of 135)	4.7% (8 of 172)
Stipulation for Judgment Absolute	--	.6% (1 of 173)	--	--	--
CPLR 5601(d)	.74% (1 of 136)	--	--	1.5% (2 of 135)	.6% (1 of 172)
Supreme Court Remand	--	--	--	--	--
Judiciary Law § 44 [1]	3% (4 of 136)	5.1% (7 of 137)	2% (3 of 127)	3.7% (5 of 135)	4% (7 of 172)
Certified Question from Federal Court (Rule 500.27) [2]	8% (11 of 136)	5.8% (8 of 137)	10% (13 of 127)	12.6% (17 of 135)	7.6% (13 of 172)
Other	--	--	--	--	--

[1] Includes judicial suspension matters

[2] Includes decisions accepting/declining certification

APPENDIX 5

APPENDIX 6

CRIMINAL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	2004	2005	2006	2007	2008
Permission of Court of Appeals Judge	65% (32 of 49)	85% (50 of 59)	85% (53 of 62)	76% (38 of 50)	72% (38 of 53)
Permission of Appellate Division Justice	29% (14 of 49)	13% (8 of 59)	15% (9 of 62)	22% (11 of 50)	28% (15 of 53)
Other	6% (3 of 49)	2% (1 of 59)	--	2%[1] (1 of 50)	--

[1] People v Taylor, capital appeal

MOTION STATISTICS (2004 - 2008)

Motions Undecided as of January 1, 2008 - 180

Motion Numbers Used in 2008 -1421

Motions Undecided as of December 31, 2008 - 169

Motions Dispositions During 2008 - 1459

	2004	2005	2006	2007	2008
Motion Numbers Used for Calendar Year	1199	1344	1401	1481	1421
Motions Decided for Calendar Year	1222	1289	1289	1440	1459
Motions for leave to appeal	905*	967*	1021*	1100*	1097*
granted	75	61	61	77	74
denied	644	697	764	824	830
dismissed	182	203	192	192	189
withdrawn	4	6	4	7	4
Motions to dismiss appeals	6	6	8	11	8
granted	3	3	4	6	1
denied	2	2	4	4	6
dismissed	0	0	0	1	1
withdrawn	1	1	0	0	0
Sua Sponte and Court's Own motion dismissals	98	81	92	89	97
TOTAL DISMISSAL OF APPEALS	101	84	96	95	98
Motions for reargument of appeal	14	21	16	27	28
granted	0	0	0	1	0
Motions for reargument of motion	44	38	62	41	61
granted	1	1	1	2	0
Motions for assignment of counsel	43	44	52	48	48
granted	41	43	51	47	46
Legal Aid	8	10	9	8	13
denied	2	1	0	0	2
dismissed	0	0	1	1	0

APPENDIX 7

APPENDIX 7 (continued)

	2004	2005	2006	2007	2008
Motions to waive rule compliance	1	1	0	0	0
granted	0	0	0	0	0
Motions for poor person status	122	140	177	213	182
granted	0	0	0	4	8
denied	0	1	0	0	0
dismissed	122	139	177	209	174
Motions to vacate dismissal/preclusion	1	1	3	4	6
granted	0	0	3	2	4
Motions for calendar preference	0	4	0	1	0
granted	0	0	0	0	0
Motions for amicus curiae status	93	95	119	108	110
granted	88	93	114	100	102
Motions for Executive Law § 71 Order (AG)	1	0	2	2	0
Motions for leave to intervene	2	2	2	3	3
granted	0	1	2	3	2
Motions to stay/vacate stay	14	22	21	17	30
granted	5	1	2	2	1
denied	0	4	4	1	4
dismissed	9	17	17	14	25
withdrawn	0	0	2	0	0
Motions for CPL 460.30 extension	26	33	32	27	27
granted	24	25	27	20	26
Motions to strike appendix or brief	10	7	6	8	12
granted	2	2	1	3	4
Motions to amend remittitur	0	1	1	2	0
granted	0	0	0	0	0
Motions for miscellaneous relief	14	5	6	14	6
granted	4	1	0	2	1
denied	6	4	5	9	4
dismissed	4	0	1	2	1
withdrawn	0	0	0	1	0
Withdrawals/substitution of counsel	1	2	1	0	0
granted	1	1	1	0	0
denied	0	1	0	0	0

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

CRIMINAL LEAVE APPLICATIONS ENTERTAINED BY COURT OF APPEALS JUDGES

	2004	2005	2006	2007	2008
TOTAL APPLICATIONS ASSIGNED:	2570	2473	2458	2382	2687
TOTAL APPLICATIONS DECIDED:[1]	2644	2383	2436	2371	2637
TOTAL APPLICATIONS GRANTED:	46	42	52	36	53
TOTAL APPLICATIONS DENIED:	2407	2109	2166	2126	2355
TOTAL APPLICATIONS DISMISSED:	176	228	212	205	220
TOTAL APPLICATIONS WITHDRAWN:	15	4	6	4	9
TOTAL PEOPLE'S APPLICATIONS:	48	44	47	46	60
(a) GRANTED:	9	5	5	3	7
(b) DENIED:	33	37	35	40	51
(c) DISMISSED:	1	1	3	2	1
(d) WITHDRAWN:	5	1	4	1	1
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	367	353	355	349 [2]	400 [3]
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	7	6	7	5	8

[1] Includes some applications assigned in previous year.

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

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

APPENDIX 8

APPENDIX 9

2008

THRESHOLD REVIEW OF SUBJECT MATTER JURISDICTION BY THE COURT OF APPEALS

SSD (sua sponte dismissal) - Rule 500.10

	2004	2005	2006	2007	2008
Total Number of Inquiry Letters Sent	73	90*	74	75	70
Appeals Withdrawn or Discontinued on Stipulation	4	1	1	5	3
Dismissed by Court sua sponte or on motion	53	55	52	44	52
Transferred sua sponte to Appellate Division	1	5	4	3	1
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)	5	5	5	9	8
Jurisdistion Retained - appeals decided	2	1	1	2	2
Inquiries Pending	8	21	11	12	4

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

COMPARATIVE ANALYSIS OF OFFICE FOR PROFESSIONAL MATTERS STATISTICS

2004-2008

TOPIC	2004	2005	2006	2007	2008
Attorneys Admitted (OCA) [1]	8415	8515	8643	8906	9686
Certificates of Admission	128	119	134	75	130
Clerkship Certificates	10	3	2	7	7
Petitions for Waiver	171 [2]	191 [3]	189 [4]	195 [5]	241 [6]
Written Inquiries	98	102	67	104	91
Disciplinary Orders/Name Changes	1469 [7]	899 [7]	1921 [7]	1565 [7]	1207 [7]

[1] The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (see Judiciary Law § 468).
[2] Includes correspondence to 3 law schools reviewing their LL.M. programs under Rule 520.6.
[3] Includes correspondence to 7 law schools reviewing their LL.M. programs under Rule 520.6.
[4] Includes correspondence to 11 law schools reviewing their LL.M. programs under Rule 520.6.
[5] Includes correspondence to 5 law schools reviewing their LL.M. programs under Rule 520.6.
[6] Includes correspondence to 14 law schools reviewing their LL.M. programs under Rule 520.6
[7] Includes orders involving multiple attorneys' violation of the registration requirements (Judiciary Law § 468-a).

APPENDIX 10

APPENDIX 11

NONJUDICIAL STAFF

Alexander, Jeremy D. - Senior Court Attorney, Court of Appeals (resigned 08/14/08)

Ali, Vivian - Principal Stenographer, Court of Appeals

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

Ata, David W. - Law Clerk to Judge Smith

Atwell, Angela M. - Senior Services Aide

Austin, Louis C. - Senior Court Building Guard

Bahr, Harold E. - Principal Law Clerk to Chief Judge Kaye (resigned 12/10/08)

Belsito, Anthony M. - Senior Court Attorney, Court of Appeals (resigned 05/21/08)

Bohannon, Lisa - Senior Court Analyst

Bowman, Jennifer L. - Court Building Guard

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

Breitenbach, Katherine G. - Court Attorney, Court of Appeals

Brizzie, Gary J. - Principal Custodial Aide

Byrne, Cynthia D. - Criminal Leave Applications Clerk

Calacone, Stephen F. - Clerical Research Aide

Carro, Christine - Secretary to Judge Ciparick

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

Cohen, John Althouse - Court Attorney, Court of Appeals

Appendix 11 (Continued)

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

Coleman, Lillian M. - Principal Custodial Aide

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

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

Couser, Lisa A. - Senior Court Building Guard (resigned 10/20/08)

Cross, Robert J. - Senior Court Building Guard

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

Davis, Heather A. - Chief Motion Clerk

Donelin, AnneMarie - Secretary to Chief Judge Kaye

Donnelly, William E. - Assistant Building Superintendent I

Dragonette, John M. - Senior Court Building Guard

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

Duncan, Priscilla - Secretary to Judge Read

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

Dunne, Brian J. - Senior Law Clerk to Judge Read

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

Edwards, Kevin P. - Senior Court Building Guard (resigned 07/09/08)

Elkind, Diana - Senior Law Clerk to Judge Smith

Emigh, Brian J. - Building Manager

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

Appendix 11 (Continued)

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

Fernandez, Cristina L. - Law Clerk to Judge Ciparick

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

Fitzpatrick, Rosemarie - Assistant Secretary to Chief Judge Kaye

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

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

Fleury, Joshua P. - Senior Court Attorney, Court of Appeals; Senior Law Clerk to Judge Pigott (resigned 08/14/08)

Fludd, Christopher - Senior Court Building Guard

Ford, Daisy G. - Senior Court Attorney, Court of Appeals; Principal Law Clerk to Judge Read

Fusaro, Scott M. - Senior Court Attorney, Court of Appeals

Galvin, Martin C. - Law Clerk to Judge Ciparick

Garcia, Heather A. - Security Attendant, Court of Appeals

Gaston, Johnny L. - Court Building Guard

Gerber, Matthew L. - Senior Security Attendant, Court of Appeals (resigned 07/23/08)

Gilbert, Marianne - Principal Stenographer, Court of Appeals

Goergen, Erik A. - Principal Law Clerk to Judge Pigott (resigned 08/01/08)

Gonzalez, Juan C. - Principal Law Clerk to Judge Jones (resigned 08/08/08)

Green Neale, Rebecca - Senior Court Attorney, Court of Appeals

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

Haas, Tammy L. - Principal Assistant Building Superintendent

Appendix 11 (Continued)

Hancock, Dora N. - Secretary to Judge Jones

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

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

Irby, Sandra H. - Senior Court Attorney, Court of Appeals

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

Irwin, Nancy J. - Senior Stenographer, Court of Appeals

Kaiser, Warren - PC Analyst

Kane, Suzanne M. - Stenographer, Court of Appeals

Kearns, Ronald J. - HVAC Assistant Building Superintendent

King, Bradley T. - Senior Law Clerk to Judge Ciparick

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

Kong, Yongjun - Principal Custodial Aide

Lawrence, Bryan D. - Principal Local Area Network Administrator

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

Leonard, Donna M. - Senior Court Building Guard (resigned 10/20/08)

Levin, Justin C. - Principal Court Attorney, Court of Appeals (resigned 08/14/08)

Lyon, Gordon W. - Principal Law Clerk to Judge Pigott

MacVean, Rachael M. - Senior Court Attorney, Court of Appeals

Mayo, Michael J. - Deputy Building Superintendent

McCormick, Cynthia A. - Senior Management Analyst, Court of Appeals

Appendix 11 (Continued)

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

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

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

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

Mitchell, Mark G. - Court Attorney, Court of Appeals

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

Muller, Joseph J. - Security Attendant, Court of Appeals

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

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

Nyland, Margaret P. - Senior Court Attorney, Court of Appeals

Pepper, Francis W. - Principal Custodial Aide

Pfeiffer, Justin D. - Senior Court Attorney, Court of Appeals

Polechronis, Ralia E. - Senior Law Clerk to Chief Judge Kaye (resigned 12/31/08)

Pollack, Lee M. - Principal Law Clerk to Judge Smith

Prois, Barbara A. - Principal Law Clerk to Judge Read (resigned 08/13/08)

Rath, Gerard S. - Principal Law Clerk to Judge Ciparick (resigned 02/20/08)

Ravida, Tina - Principal Custodial Aide (retired 12/31/08)

Rebold, Jonathan E. - Senior Law Clerk to Chief Judge Kaye (resigned 12/31/08)

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

Reddy, Anne C. - Principal Law Clerk to Chief Judge Kaye (resigned 12/31/08)

Appendix 11 (Continued)

Rosborough, IV, Robert S. - Court Attorney, Court of Appeals

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

Soloveichik, Yitzchak E. - Law Clerk to Judge Smith (resigned 07/31/08)

Somerville, Robert - Senior Court Building Guard

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

Spiewak, Keith J. - Local Area Network Administrator

Stein, Emily D. - Senior Court Attorney, Court of Appeals (resigned 08/14/08)

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

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

Tang, Douglas L. - Law Clerk to Judge Jones

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

Tierney, Inez M. - Principal Court Analyst

Timko, Molly J. - Court Attorney, Court of Appeals

VanDeloo, James F. - Senior Assistant Building Superintendent

Waddell, Maureen A. - Secretary to Judge Pigott

Waithe, Nelvon H. - Court Building Guard

Warenchak, Andrew R. - Principal Custodial Aide

Wasserbach, Debra C. - Secretary to Judge Graffeo

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

Wilson, Anne - Court Attorney, Court of Appeals

Wodzinski, Esther T. - Secretary to Judge Smith