

**2006**

**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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**Stuart M. Cohen  
Clerk of the Court  
Court of Appeals**



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*State of New York  
Court of Appeals*



*Robert S. Smith  
Judge*

*Court of Appeals Hall  
Albany, New York 12207*

March, 2007

2006 was my third year on the Court, and this is my first opportunity to write the foreword to the Annual Report. The year was for all of us another year of pride and pleasure in being part of this wonderful institution, but it was also a year of loss, because of the retirement of two beloved colleagues. The quiet dignity and unique moral strength of George Bundy Smith, and the fertile intellect, endless energy and bottomless good will of Albert Rosenblatt will never be forgotten, and will always be missed. Our best consolation is the delight we take in our two new colleagues, Judges Eugene Pigott and Theodore Jones.

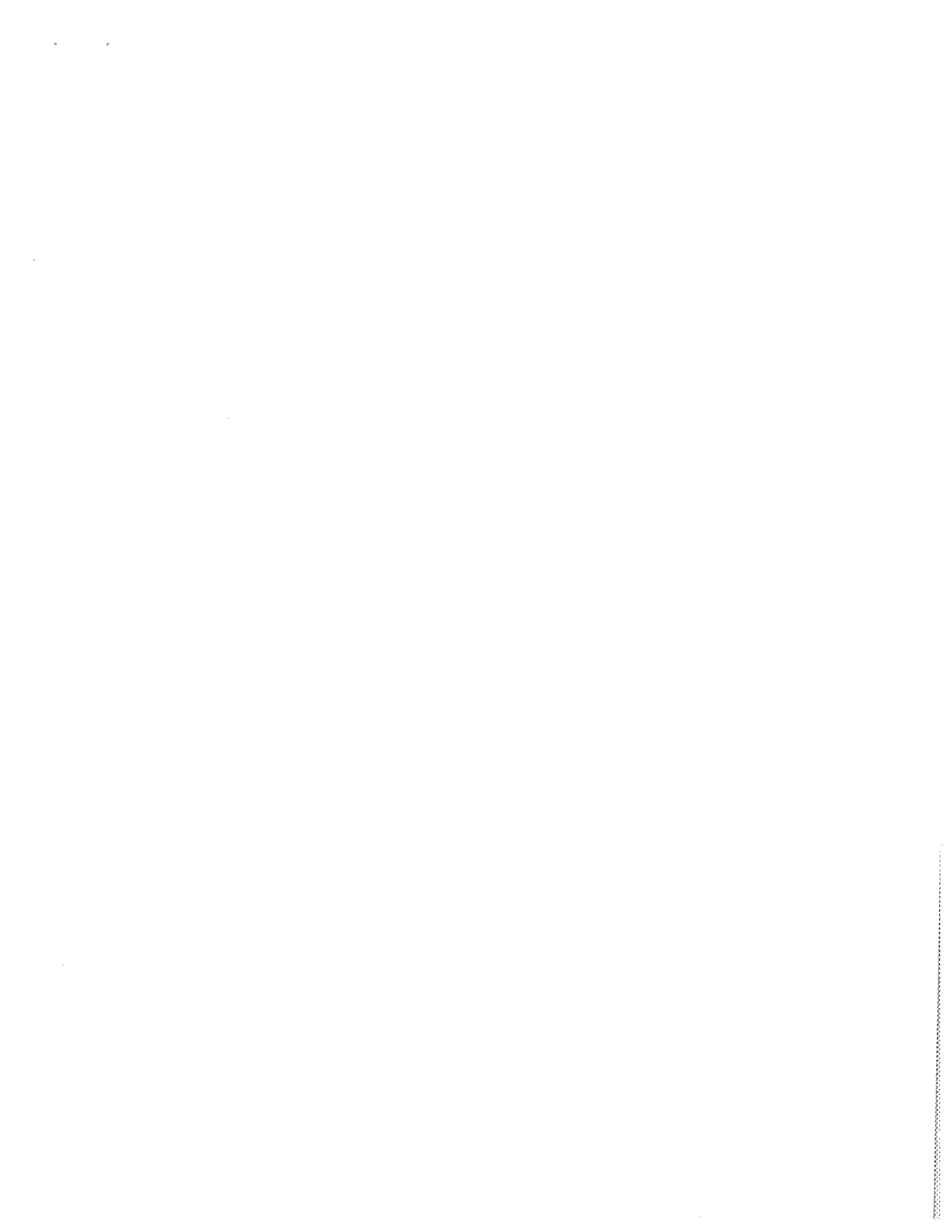
Among the highlights of the year were a series of entertaining and successful presentations in our Lecture Series, on subjects as diverse as free speech, opera and architecture; the celebration of one of Judge Rosenblatt's great legacies to the Court, the biography project, which brought to Albany hundreds of descendants of our distinguished predecessors; and the Court's first ever Suffolk County session, part of our continuing efforts to become better acquainted with judges, lawyers and ordinary people all over the State.

But most of the Court's work, was, as it always is, less glamorous, and most of it virtually invisible to the public. Nothing has astonished me more in my brief tenure on the Court than the extraordinary competence and efficiency with which tasks that may seem routine, but are in reality complicated and difficult -- tasks ranging from the preparation of carefully reasoned legal memorandums to the smooth and silent arrangement of the logistics that assure the security and comfort of us all -- are carried on day by day. We can never say thank you to our staff often enough.

As 2007 begins, we all rejoice in the best news the Court has had in many years: the reappointment of our incomparable Chief Judge, the Hon. Judith S. Kaye. None of her present colleagues has ever served with another chief; perhaps none of us -- perhaps no citizen of this State -- can really imagine another one. It is a great relief that we have not lost her.

A handwritten signature in cursive script, reading "Robert S. Smith".

Robert S. Smith



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**Introduction**

This is the eleventh time I have had the honor of presenting an Annual Report to Chief Judge Judith S. Kaye. The entire staff of the Court of Appeals joins me in congratulating the Chief Judge on her extraordinary tenure, and on her historic reappointment by the Governor.

As has each of its predecessors, this Report catalogs the accomplishments and challenges, the highs and lows, of the Court of Appeals in 2006. This was a year of transition, witnessing the departure of Senior Associate Judge George Bundy Smith at the end of his fourteen-year term, and that of Associate Judge Albert M. Rosenblatt through age-related mandatory retirement. Both Judges are sorely missed. I congratulate the former Presiding Justice of the Appellate Division, Fourth Department, Eugene F. Pigott, Jr., on his appointment to the Court in October 2006, and former Supreme Court Justice Theodore T. Jones, Jr. on his appointment to the Court in January 2007.

Over and above its key decision-making function, in 2006 the Court of Appeals expanded its efforts to increase understanding of the role of New York's highest court. In addition to the annual Law Day celebration on the front steps of the Courthouse, 2006 saw the inauguration of the Court of Appeals Lecture Series with three outstanding programs on law and society, all open to the public. The lecture series included presentations by the late Kermit Hall, President of the State University of New York at Albany, Susan N. Herman, Centennial Professor of Law at Brooklyn Law School, Francesca Zambello, an internationally renowned director of opera and theater, and eminent architects Henry N. Cobb and Paul Spencer Byard.

Also in 2006, the Court hosted for the first time a dinner for the Judges of the United States Court of Appeals for the Second Circuit and welcomed back to Court of Appeals Hall more than 240 descendants of former and present Judges of the Court. In May 2006, the Court traveled to Central Islip, in Suffolk County, to hear an afternoon of oral argument, widely attended by members of the community, and meet with the bars of Nassau and Suffolk Counties.

This Annual Report is likewise an effort to enlighten. The 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 in 2006. The second describes various functions of the Clerk's Office and summarizes the administrative accomplishments of the year. The third section highlights selected decisions of 2006. 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 fourteen-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 to this Court. 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 Albany sessions, the Court meets each morning in conference to discuss the appeals argued the afternoon before, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters. Afternoons are devoted to hearing oral argument, and evenings to preparing for the following day.

Between Albany sessions, the Judges return to their home chambers throughout the State, where they continue their work of studying briefs, writing opinions and preparing for the next Albany session. During these home chambers sessions, 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 appeal 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 expeditiously, often the day after oral argument is heard.

In 2006, the Court and its Judges disposed of more than 4,000 matters, including 189 appeals, 1,397 motions and 2,436 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 143 notices of appeal filed in 2006, 74 were subject to Rule 500.10 inquiries. All but 17 were dismissed sua sponte or on motion, withdrawn or transferred to the Appellate

Division. Eleven 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 293 appeals filed in 2006, 52 (17.7%) were initially selected to receive SSM consideration, a significant increase from the percentage initially so selected in 2005 (9.5%). Thirty-nine were civil matters and 13 were criminal matters. Nine appeals initially selected to receive SSM consideration in 2006 were directed to full briefing and oral argument. Of the 189 appeals decided in 2006, 34 (18%) were decided upon SSM review (14.8% were so decided in 2005; 9.7% were so decided in 2004). Twenty-three were civil matters and 11 were criminal matters.

Of the 52 appeals initially selected in 2006 to receive SSM consideration, 27 were taken from orders or judgments of the Appellate Division, First Department. Eight of these were appeals as of right based on a double dissent below, ten were by Appellate Division leave grant and nine were by leave of this Court.

#### **4. Promptness in Deciding Appeals**

In 2006, 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 35 days; for all appeals, the average time from argument or submission to disposition was 30 days. The average period from filing a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately six months, roughly the same as in previous years. The average period from readiness (all papers served and filed) to calendaring for oral argument was approximately 1.7 months, again about the same as in previous years.

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 2006 (including SSM appeals tracked to normal course) was 225 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 2006 the Court maintained its long tradition of exceptional currency in calendaring and deciding appeals.

### **B. The Court's 2006 Docket**

#### **1. Filings**

Two hundred and ninety-three (293) notices of appeal and orders granting leave to appeal were filed in 2006 (284 were filed in 2005). Two hundred and twenty-six (226) filings were civil matters (compared to 213 in 2005), and 67 were criminal matters (compared to 71 in 2005). The Appellate Division Departments issued 36 of the orders granting leave to appeal filed in 2006 (28 were civil, eight were criminal). Of these, the First Department issued 20 (16 civil and four criminal).

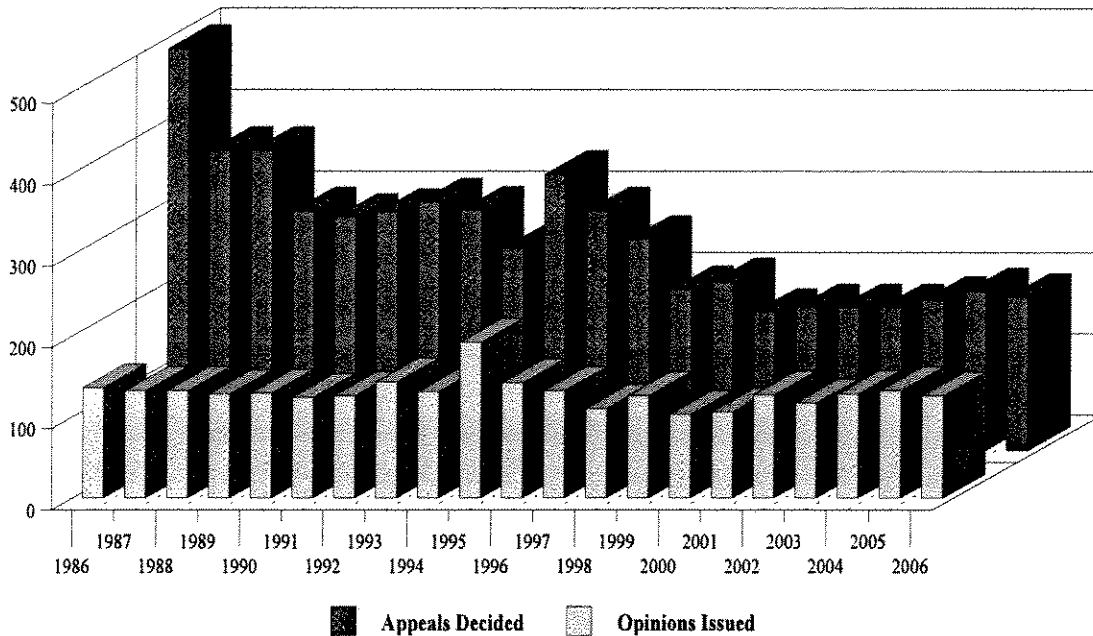
Motion filings increased in 2006. During the year, 1,401 motions were filed, 4.1% more than the 1,344 filed in 2005. Motions for leave to appeal also increased from 967 in 2005 to 1021 in 2006. Criminal leave applications were down slightly in 2006. Two thousand four hundred fifty-eight (2,458) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 15 fewer than in 2005. On average, each Judge was assigned 355 such applications during the year.

## 2. Dispositions

### (a) Appeals and Writings

In 2006, the Court decided 189 appeals (127 civil and 62 criminal, compared to 137 civil and 59 criminal in 2005). Of these appeals, 150 were decided without dissent. The Court issued 124 signed opinions, two per curiam opinions, 35 dissenting opinions, 13 concurring opinions, 51 memoranda and 18 decision list entries. The chart below 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  
1986-2006



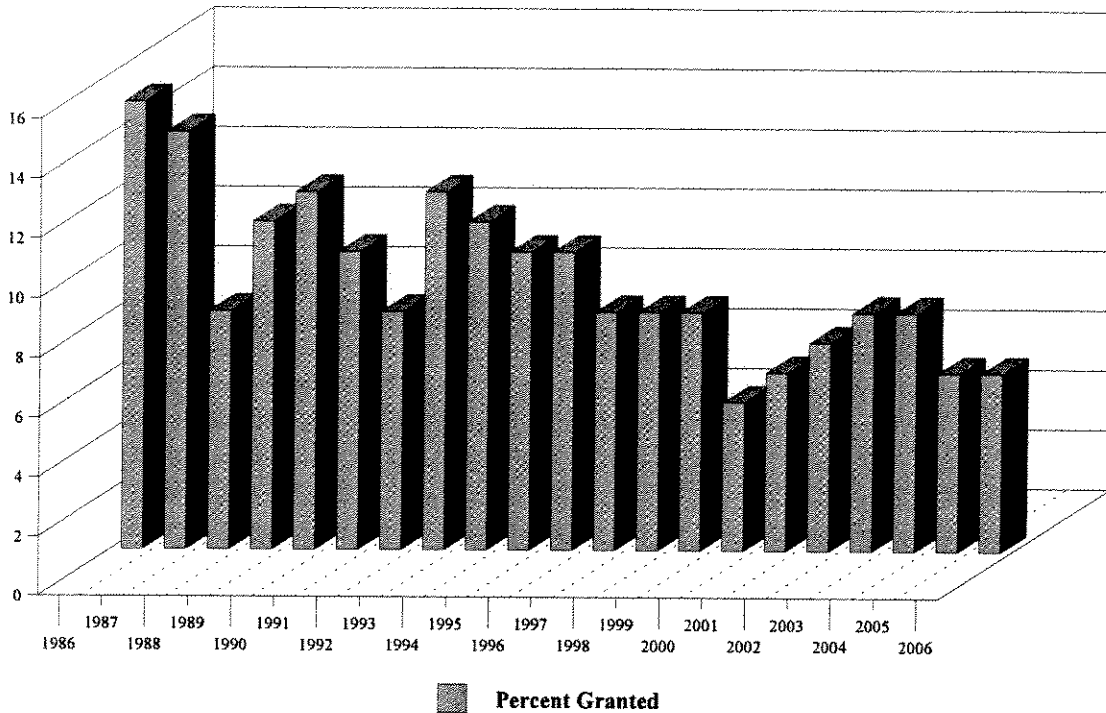
### (b) Motions

The Court decided 1,397 motions in 2006 -- 108 more than in 2005. 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 62 days, while the average time from return date to disposition for all motions was 51 days.

The Court decided 1,017 motions for leave to appeal in civil cases during the year, 56 more than in 2005. Of these, the Court granted 6.0% (down from 6.4% in 2005), denied 75.1% (up from 72.5% in 2005) and dismissed for jurisdictional defects 18.9% (down from 21.1% in

2005). The chart below reflects 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  
1986-2006**



Sixty-one motions for leave to appeal were granted in 2006, covering a wide range of subjects. The Court granted leave in consumer protection matters to address the New Car Lemon Law, the sale of outdated products on supermarket shelves, and deceptive sales practices. Grants involving insurance issues included no-fault automobile insurance payments, the measure of damages under a fire insurance policy, and the interplay between insurance regulations governing priority of payments and those addressing the payment of no-fault claims. Tort issues spanned the duty of care the Transit Authority owed to its passengers, the privity necessary to maintain a negligent misrepresentation cause of action, legal malpractice, and landlords' liability for failure to cover metal radiators. Civil Service issues included whether waiver of the right to negotiate a particular term in a contract continued past the expiration of the contract, whether a public employer engaged in an improper practice by denying an employee's request for union representation during an investigatory interview, and whether an employee was entitled to a *de novo* review of the charges against him because of the employer's *ex parte* communication with the hearing officer.

Other grants involved arbitration, emergency shelter allowances under the Social Services Law, support of a surrendered special-needs child, liability under the Uniform

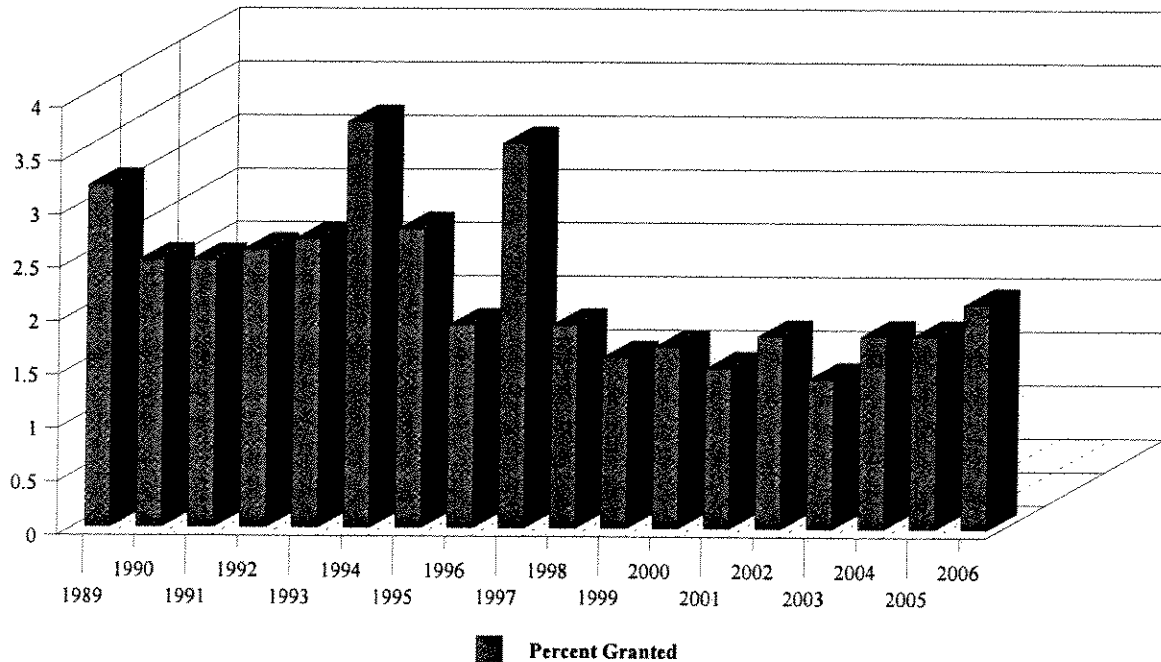
Commercial Code regarding the restrictive endorsement of a check, a limited partnership's capacity to sue, the Workers' Compensation Law, consequential damages in eminent domain proceedings, the Unjust Conviction and Imprisonment Act of 1984, composition of juries in city court criminal actions, recording of mortgages, and the Labor Law provision governing fees for the provision of cash wages.

Given that this Court hears the majority of appeals by its own permission, and that the issues considered are usually novel and of statewide importance, in recent years, the Court has taken steps to encourage appropriate requests for permission to file amicus curiae submissions on both pending appeals and motions for leave to appeal in civil cases. In 2006, 119 motions for amicus curiae relief were filed, 114 of which were granted. This compares with 44 such motions and 29 such grants in 1986.

**(c) CPL 460.20 Applications**

Individual Judges of the Court granted 52 of the 2,436 applications for leave to appeal in criminal cases decided in 2006 -- up from 42 in 2005. Two hundred and twelve applications were dismissed for lack of jurisdiction, and six were withdrawn. Five of 47 applications filed by the People were granted. The chart below reflects the percentage of applications for leave to appeal granted in criminal cases over the past eighteen years.

**Criminal Leave Applications Granted by Year  
1989-2006**



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 2006, 250 applications for leave to appeal from such orders were assigned to Judges of the Court, up from 242 in 2005. One such application was 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 2006, on average, 54 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 2006, the Court reviewed two determinations of the State Commission on Judicial Conduct, accepting the recommended sanctions (one of removal and one of censure). Pursuant to Judiciary Law § 44(8), the Court ordered the suspension of two judges, one with pay and one without 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 22 NYCRR 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 2006, the average period from receipt of initial

certification papers to the Court's order accepting or rejecting review was 29 days. The average period from acceptance of a certification to disposition was eight months.

Two cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2005. In 2006, the Court answered the questions certified in those cases. Also in 2006, the Court accepted eight cases involving questions certified by the United States Court of Appeals for the Second Circuit. Three cases were decided during the year and five remained pending at the end of 2006.

As an additional aid to comity and judicial economy, the Chief Judge of the New York Court of Appeals and the Chief Judge of the Court of Appeals for the Second Circuit reactivated the New York State-Federal Judicial Council to address issues of mutual concern and to sponsor educational programs for the Bench and Bar. Associate Judge Albert M. Rosenblatt served as Chair of the Council until his retirement on December 31, 2006. Senior Associate Judge Carmen Beauchamp Ciparick joined the Council in January 2007.

#### **(f) Capital Appeals**

The State Constitution and the death penalty statute (L 1995, ch 1) provide a direct appeal to the Court of Appeals from a judgment of conviction and capital sentence. In June 2004, in *People v Stephen LaValle* (3 NY3d 88), the Court declared the death penalty could not be imposed in New York owing to a fatal defect in the “deadlock jury” instruction.

In 2006, no capital appeals were filed, heard or decided. *People v John Taylor* remained pending. In August 2006, the Capital Defender Office filed the appellant’s opening brief on this appeal. Completion of briefing by both parties is scheduled for June 2007.

#### **C. Court Rules**

There were no changes to any Court rules during 2006 (*see* 22 NYCRR part 500 through part 540).



## **II. Administrative Functions and Accomplishments**

### **A. Court of Appeals Hall**

Court of Appeals Hall has been the Court's home for ninety 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. In 2006, many of the Court's invaluable portraits were rehung in the first floor public rooms, following restoration of canvases and frames. In November 2006, a temporary exhibit of paintings of historic New York courthouses by prominent New York attorney Whitney North Seymour, Jr. was hung in the Attorneys' Lounge.

### **B. Case Management**

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Prisoner Applications Clerk, several secretaries, court attendants and 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.

Throughout 2006, members of the Clerk's staff continued to monitor the transition to the Court's new Rules of Practice, which became effective September 1, 2005. The Clerk's staff also continued to work with the Office of Court Administration in updating the Court's

electronic case management system. I extend my particular thanks to our Clerk's personnel and the Office of Court Administration's Department of Technology for their work on this project.

Counsel and self-represented litigants can find a wealth of Court of Appeals practice aids on the Court's internet web site (<http://www.nycourts.gov/courts/appeals>). Additionally, members of the Clerk's Office staff respond -- in person, by telephone and in writing -- to inquiries and requests for information from attorneys, litigants, the public, academicians and 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.

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

The Public Information Office also provides information concerning the work and history of New York's highest court to all segments of the public -- from school children to members of the Bar. Throughout the year, the Public Information Officer and other members of the Clerk's 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 latest decisions are posted on the Court of Appeals internet web site within minutes after their official release. In 2006, the web site offered six live web casts: the Chief Judge's State of the Judiciary address, oral argument simulcasts of two high-profile cases and the first three installments of the popular Court of Appeals Lecture Series. The comprehensive site also posts information about the Court, its Judges and history, summaries of pending cases and other news, as well as more than a year's worth of Court of Appeals decisions. The web site provides helpful information, as well, about the Court's practice -- including its rules, prior Annual Reports, civil and criminal jurisdictional outlines, session calendars, and a form for use

by pro se litigants -- and contains links to other judiciary-related web sites. The text and webcast of Chief Judge Kaye's 2007 State of the Judiciary address are posted on the home page and the text of prior addresses can be reached through the "Court News" link.

Nearly 679,000 visits to the Court of Appeals web site were recorded in 2006, on average approximately 1,860 visits per day. The address of the Court of Appeals web site is: <http://www.nycourts.gov/courts/appeals>.

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

#### **D. Office for Professional Matters**

The Court Attorney for Professional Matters manages the Office for Professional Matters, supported by a secretary. The Court's records complement the official registry of attorneys maintained by the Office of Court Administration, which answers public inquiries about the status of attorneys. The office prepares certificates of admission upon request and maintains a file of certificates of commencement of clerkship. Additionally, the Court Attorney drafts preliminary reports to the Court on matters relating to attorney admission and disciplinary cases, petitions for waiver of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law and the Rules for the Licensing of Legal Consultants, and proposed rule changes ultimately decided by the Court. The Court did not amend any Rules in 2006.

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.

#### **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 2005 through December Decision Days 2006, Central Staff completed 1049 motion reports, 79 SSD reports, 29 SSM reports and seven reports regarding certified questions. Throughout 2006, Central Staff maintained currency in its work.

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. In 2006, the staff completed its work for the Court on a biography project involving all Court of Appeals Judges.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed in 2006 were graduates of Albany, the State University of New York at Buffalo, the University of California at Davis, the University of Connecticut, Fordham University, St. John's University, Syracuse University, Western New England College, Willamette University and New York law schools. Staff attorneys hired for work beginning in 2007 will represent Albany, the State University of New York at Buffalo, Cornell, Hastings, the University of Florida, and Touro University law schools.

During 2006, the Chief Court Attorney finished his one-year term as Chair of the American Bar Association's Council of Appellate Staff Attorneys.

## **F. Library**

The law library supports the legal information needs of the Court. The Chief Legal Reference Attorney provides extensive legal and general research and reference services to the Judges of the Court, their law clerks and the Clerk's Office staff, using a full range of traditional and technologically-enhanced strategies that provide timely access to the sources of the law.

Collection development in the Court of Appeals Hall library and in the home chambers libraries continued in 2006 -- newly-published works falling within the Court's collection development policy were acquired, and seldom-used and superseded materials were deaccessioned. Databases play an ever-increasing role in the provision of legal and nonlegal information to the Court, and currently include Lexis/Nexis, Westlaw, LRS, the Making of Modern Law and HeinOnline. In 2006, the Court benefitted greatly from enhanced desktop access via the New York State Library's electronic gateway to legal and nonlegal databases, particularly the instantaneous access to scholarly journals--some dating to the 1600s--provided through JSTOR and similar databases.

In 2006, the library staff continued to maintain and augment the Court's 21 in-house ISYS:web databases, the most important of which is the full-text reports (1996-2006) database that now contains almost 14,000 documents. Work continued on the pre-1996 reports database that reached almost 9,000 documents in 2006, and on the bill jackets database that now contains over 2,000 imaged documents. Bill jacket PDF files are also transmitted to the Office of Court Administration for inclusion in its Library and Information Network (LION) system.

I thank the New York State Library, New York State Archives, Albany Law School Library, New York Legislative Library, Albany Public Library and Capital District Library Council for continuing to facilitate the Court's access to materials not part of our collection.

The Chief Legal Reference Attorney is a member of the Court's CLE Committee. She revised and updated a two-hour program on *Constitutional, Statutory and Regulatory Intent, and Common Law Derivation* and developed a new program that examines the wide array of

databases available to the Court of Appeals both by direct subscription and via the New York State Library's gateway. These programs, together with a one-hour interactive presentation on *ISYS:web Databases* and a library staff member's one-credit program on *Corel Presentations*, have been certified under the Office of Court Administration's Continuing Legal Education regulations and were offered to Judges' law clerks and staff attorneys in 2006. The Chief Legal Reference Attorney coordinated the CLE training provided by Lexis and Westlaw to the Court's law clerks and attorneys.

The Chief Legal Reference Attorney participated in planning the Court of Appeals Lecture Series, instituted in 2006, and prepared ancillary exhibits for the Courtroom Anteroom -- one on the *Lemmon Slave Case* (26 Barb 270 [1857]) and the other on *People v Chester Gillette* (191 NY 107 [1908]), which novelist Theodore Dreiser used as the basis for his classic work, *An American Tragedy*. The Chief Legal Reference Attorney is also 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 Special Committee on the Society's web site (<http://www.courts.state.ny.us/history>). In September, she represented the Society at the Annual Conference of the American Society of State and Local History and was a panel member for two programs sponsored by the Court History Group.

#### **G. Continuing Legal Education Committee**

The Continuing Legal Education (CLE) Committee coordinates professional training for Court of Appeals and Law Reporting Bureau 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.

During 2006, the CLE Committee provided 15 programs -- including new staff training and orientation -- totaling 24 credit hours for Court of Appeals attorneys. Law Reporting Bureau attorneys participated in many of the offered programs. Court of Appeals and Law Reporting Bureau attorneys also attended classes offered by the Appellate Division, Third Department and the Judicial Institute. Through the Institute's monthly simulcast programs, an additional six programs totaling six credit hours were provided to Court of Appeals and Law Reporting Bureau attorneys. In addition, several attorneys at the Court of Appeals and the Law Reporting Bureau attended the Institute's two-day Legal Update seminar.

#### **H. Management and Operations**

Aided by a 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 all its ancillary agencies was performed within the 2006-2007 fiscal year budget appropriation of \$14,681,024, 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 2007-2008 for the Court and its ancillary agencies is \$14,925,900, an increase of 1.6% over the current year's appropriation. The 2007-2008 personal services request of \$12,015,983 reflects an increase of \$79,550 from the current year's appropriation, which includes funding for salary increases for all eligible nonjudicial employees in accordance with collective bargaining contracts and administrative provisions, temporary services and overtime services.

The 2007-2008 nonpersonal services request of \$2,909,917 is \$165,326, or 6.03%, over the current year's adjusted appropriation. The nonpersonal services request includes adjustments in Judges' travel expense (\$6,091), Judges' staff travel expense (\$12,558), court administration and support services (\$32,680), legal reference materials (\$110,924)--in which a high level of inflation prevails, and building maintenance operations (\$3,073).

Notwithstanding necessary increases in travel, administration and support services, building maintenance operations and legal reference materials, the budget request for fiscal year 2007-2008 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 2006, the Court reported filing fees of \$315 for each of 114 civil appeals, totaling \$35,910. Also, the Court reported filing fees of \$45 for each of 818 motions, totaling \$36,810. The \$72,720 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 (\$2,854) and miscellaneous collections (\$4,830.58). For calendar year 2006, revenue collections totaled \$80,404.58.

### **J. Computer Operations**

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Principal PC Analyst, 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 Judges' home chambers with Court of Appeals Hall. Also included are two web sites: an intranet web site available to Court employees only and the Court's internet site located at <http://www.nycourts.gov/courts/appeals>.

In 2006, the Department produced six live web casts, archived on the internet web site, of high-profile oral arguments and Court ceremonies and events. The Court of Appeals internet site also offers immediate access to the latest decisions on cases and motions handed down by the Court, and other pertinent information of interest to the public, including the Rules of the Court and the Court's calendar. Nearly 679,000 visits to the web site were recorded in 2006 -- an increase of almost 223,000 visits over the previous year.

The Department arranged simulcast presentations and teleconferences throughout the year to bring meetings and Continuing Legal Education (CLE) sessions from all over the state to Court employees in Albany.

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. Maintenance calls to the help desk are approximately 300 for the year. In 2006, Judges and their staff received new OCA-specified laptop computers. The replaced equipment was recycled to other locations within the Unified Court System.

### **K. Security Services**

The Court Security Unit is composed of a Chief Security Attendant, Deputy Chief Security Attendant, four Senior Court Attendants, six Senior Court Building Guards and two

Court Building Guards. The Chief, Deputy Chief and Senior Court Attendants are all 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 Court. 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 2006. Additionally, the officers provided security escorts, when necessary, to the Judges of the Court, both in the Albany area and throughout the state.

The Security staff participated in various training programs throughout the year. All officers successfully completed their annual firearms, baton and OC (pepper spray) training. Additionally, a program held at the Court trained officers, building guards and maintenance staff in first aid, CPR and the use of the Automatic External Defibrillator (AED). A full supply of first aid materials including an AED, oxygen and blood pressure equipment is maintained in the Security office. At various times during the year, staff provided necessary first aid until the arrival of paramedics from the City of Albany.

#### **L. Personnel**

The following personnel changes occurred during 2006:

##### **APPOINTMENTS:**

Stevens, Mark P. - employed as Chief Security Attendant, Court of Appeals in March 2006.

Brizzie, Gary J. - employed as Senior Custodial Aide in May 2006.

Irwin, Nancy J. - employed as Senior Stenographer, Court of Appeals (temporary) in May 2006.

Caza, Jason - employed as Court Building Guard in July 2006.

Couser, Lisa A. - employed as Court Building Guard in July 2006.

Mastracco, Marcus J. - employed as Assistant Deputy Clerk, Court of Appeals in September 2006.

Cross, Robert J. - employed as Court Building Guard in December 2006.



Mulyca, Jonathan A. - employed as Clerical Assistant, Court of Appeals in December 2006.

#### PROMOTIONS:

Engel, Hope B. - promoted to Senior Deputy Chief Court Attorney in February 2006.

Welch, Joseph H. - promoted to Senior Clerical Assistant in February 2006.

VanDeloo, James F. - promoted to Senior Assistant Building Superintendent in March 2006.

Leonard, Donna M. - promoted to Senior Court Building Guard in March 2006.

Austin, Louis C. - promoted to Senior Court Building Guard in May 2006.

Brizzie, Gary J. - promoted to Principal Custodial Aide in November 2006.

#### RESIGNATIONS AND RETIREMENTS:

Strait, Donald R. - Court Building Guard, resigned in March 2006.

Irwin, Nancy J. - Senior Stenographer, Court of Appeals (temporary), assignment completed in May 2006.

Maier, Joseph J. - Assistant Building Superintendent, retired in June 2006, after 22 years and four months of service.

Alexander, Jr., Carroll P. - Senior Court Building Guard, retired in July 2006.

Costello, James A. - Assistant Deputy Clerk, Court of Appeals, resigned in September 2006.

Caza, Jason - Court Building Guard, resigned in October 2006.

Shufelt, Jr., Theodore J. - Senior Assistant Building Superintendent, retired in October 2006, after 35 years and 8 months of service.

## CENTRAL LEGAL RESEARCH STAFF

### **Appointments:**

Jeremy D. Alexander, Anthony M. Belsito, Joshua P. Fleury, Daisy G. Ford, Juan C. Gonzalez and Emily D. Stein were appointed Court Attorneys in August 2006.

### **Promotions:**

Victoria L. Choy, Erik A. Goergen, E. Andrew Long and Barbara A. Prois were promoted to Senior Court Attorneys in August 2006. Justin C. Levin was promoted from Court Attorney to Senior Law Clerk to Court of Appeals Judge in August 2006, and served as Senior Law Clerk to Judge Rosenblatt through December 2006, returning to Central Legal Research Staff as Senior Court Attorney. Veronica Ann Benigno was promoted from Senior Court Attorney to Principal Law Clerk to Court of Appeals Judge in September 2006, and served as Principal Law Clerk to Judge Rosenblatt through December 2006.

### **Completion of Clerkships:**

Principal Court Attorney Barbara B. Mistishen completed her Central Staff clerkship in September 2006. Senior Court Attorneys Fawn A. Arnold and William L. Lawrence completed their Central Staff clerkships in July 2006. Senior Court Attorneys Norman W. Kee and Brian M. Quinn completed their Central Staff clerkships in August 2006.

## ACKNOWLEDGMENT

As with most tasks at the Court of Appeals, the production of the Annual Report is a cooperative effort. Each year, members of the Clerk's staff contribute by providing numerical data, narrative reports, and editing and proofreading services. I thank each of them, and mention especially Andrea Ignazio, who prepared the detailed appendices, Lisa Bohannon, who designed the cover and took the photograph, and Marjorie McCoy, who edited the Report. I also thank the many members of the Clerk's staff who provided proofreading services, particularly Susan Dautel, Heather Davis, Margery Corbin Eddy, Hope Engel, Marcus Mastracco, Paul McGrath and Inez Tierney. Finally, I thank Brian Emigh, who oversaw production. A complete list of Clerk's Office, Building Maintenance and Judges' staffs appears in Appendix 11.

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. I particularly thank Carroll Alexander, James Costello, Joseph Maier and Theodore Shufelt, whose names are listed in Appendix 11 for the last time.

Finally, I acknowledge with gratitude the many individuals in the Office of Court Administration and throughout the Unified Court System who provide expert assistance and timely information to the Court and its staff.

I mark with sadness the passing in 2006 of our former Consultation Clerk John J. Mathews, who served the Court for more than forty years.

### III. 2006: Year in Review

This section -- Court of Appeals decisions handed down in 2006 -- reflects the range of constitutional, statutory, regulatory and common-law issues reaching the Court each year.

#### CONSTITUTIONAL LAW

*Matter of Council of the City of N.Y. v Bloomberg* (6 NY3d 380)

New York City's Equal Benefits Law, enacted in 2004 over the Mayor's veto, required certain City contractors to provide their employees' domestic partners with benefits equal to those provided to spouses. The Mayor declined to enforce the law, arguing it was preempted by both State and Federal legislation and therefore unconstitutional. A Court of Appeals majority determined that the Mayor was entitled to raise the invalidity of the law in defense to a proceeding brought by the Council to compel enforcement because a court may not order a government officer to perform an unconstitutional act. Applying its precedent, the Court held that the Equal Benefits Law was preempted by State competitive-bidding legislation. In addition, the Court concluded that the law violated ERISA, a Federal statute which, as interpreted by the Supreme Court of the United States, broadly preempts State legislation regulating employee benefit plans.

*Hernandez v Robles* (7 NY3d 338)

Plaintiffs, 44 same-sex couples, argued that New York's Domestic Relations Law violates the due process and equal protection clauses of the New York State Constitution by denying them the right to marry. A divided Court determined that the law was constitutional, and that the decision whether to permit same-sex couples to marry was, therefore, for the Legislature, not the Court. The Court concluded that the reservation of marriage to same-sex couples was rationally defensible: a rational legislature could decide that it was more important to foster long-term, stable relationships between heterosexuals than between homosexuals, because the heterosexual relationships naturally lead to the birth of children, while homosexual relationships do not. A rational legislature could also find, absent conclusive evidence to the contrary, that children would generally fare better, other things being equal, if they were raised by parents of both sexes. Relying on this analysis of the rationality of the challenged distinction, the Court determined that there was no fundamental right to same-sex marriage under the due process clause, and that New York's law violated neither due process nor equal protection guarantees.

*Catholic Charities of Diocese of Albany v Serio* (7 NY3d 510)

Plaintiffs, ten employers affiliated with religious organizations, challenged the constitutionality of the provisions of the Women's Health and Wellness Act (WHWA) requiring that employer health insurance contracts providing prescription drug coverage must include coverage for the cost of prescription contraceptives. The WHWA provides a narrow exemption for "religious employers" that allows them to request an insurance contract without coverage for

contraceptives, contrary to their religious tenets. Plaintiffs were morally opposed to the use of contraceptives but did not qualify as "religious employers." The Court developed a new test to evaluate claims under the State Free Exercise Clause: when balancing the State interest advanced by challenged legislation with the interests of a party seeking a religious exemption, courts must grant substantial deference to the judgment of the Legislature. The party claiming an exemption bears the burden of demonstrating that the challenged legislation, as applied, is an unreasonable interference with religious freedom. The Court determined the plaintiffs had not made this showing. The Court further held that, as a neutral law of general applicability, the statute does not violate the Federal Free Exercise Clause. Likewise, the WHWA does not create an official preference for one religious denomination over another and, therefore, does not violate the Federal Establishment Clause.

*Campaign for Fiscal Equity, Inc. v State of New York* (8 NY3d 14)

A majority of the Court of Appeals held that the Governor's proposed State Education Reform Plan of 2004 reasonably concluded that additional annual operating funds in the amount of \$1.93 billion would ensure children in the New York City public schools the opportunity for a sound basic education guaranteed by the State Constitution. The State's use of a cost-effectiveness filter is rationally defensible, given the very large variation in spending between school districts in the State, and the weightings for children with special needs have record support. The Court held that judicial deference to the State's budget plan -- appropriately adjusted with reference to the latest version of the Geographic Cost of Education Index and inflation since 2004 -- is justified by the judiciary's limited access to the controlling economic and social facts underlying funding needs and by respect for the separation of powers. Supreme Court should not have endorsed recommendations by a panel of referees in which the cost of a sound basic education was calculated anew, when the State's budget plan had already reasonably calculated that cost. The Court held that it was unnecessary to direct the Governor and Legislature to implement a capital improvement plan in that the Legislature has set forth a capital construction program designed to allow the State to remedy deficiencies in New York City school facilities. Finally, the Court concluded that Supreme Court's requirements of State costing-out studies every four years and of a comprehensive "sound basic education" plan, to be prepared by the New York City Department of Education, were properly struck since minimally adequate accountability mechanisms are already in place for the evaluation of New York City schools.

## COMMERCIAL LAW

*Boss v American Express Fin. Advisors, Inc.* (6 NY3d 242)

Plaintiffs argued that the forum-selection clauses in their Minnesota employment contracts were void as against public policy. The Court determined that the forum-selection clauses did not violate the public policy of New York State, and an out-of-state forum-selection clause not void for New York public policy reasons is enforceable in New York courts.

*LeChase Data/Telecom Servs., LLC v Goebert* (6 NY3d 281)

In this appeal, the Court of Appeals was asked to decide what kind of "notice" disqualifies a factor -- a company that lends money to others on the security of their accounts receivable -- from exemption from Lien Law liability as a "purchaser in good faith for value and without notice" (Lien Law § 72[1]). The Court concluded that UCC 1-201(25) supplies the proper standard of notice, and that actual knowledge of diversion of trust assets is not required in order to deprive a factor of the protection of the exception in Lien Law § 72(1) for a good-faith purchaser.

*Deutsche Bank Sec., Inc. v Montana Bd. of Invs.* (7 NY3d 65)

The Court of Appeals held that sophisticated institutional traders who knowingly enter New York, electronically or otherwise, to negotiate and conclude substantial transactions are within the embrace of the New York long-arm statute. Additionally, the Court ruled that where a lawsuit arises from a commercial transaction in which another State or its agent has knowingly projected itself into New York to take advantage of our financial markets, New York courts need not dismiss the action as a matter of comity.

*Sung Hwan Co., Ltd. v Rite Aid Corp.* (7 NY3d 78)

Plaintiff had sued defendant in Korea based on economic loss resulting from plaintiff's purchase of defendant's listeria-tainted ice cream for sale in its stores. Defendant did not appear in the Korean proceeding, but instead challenged New York's recognition of the Korean judgment entered after its default. The Court held that the fact that New York did not recognize a tort for economic loss did not foreclose use of CPLR 302(a)(3) as a basis for Korea's exercise of personal jurisdiction over defendant. Thus, as the criteria in CPLR article 53 had been met, and enforcement of the foreign judgment was not otherwise repugnant to the notion of fairness, well-settled comity principles required enforcement of the Korean judgment without delving further into the merits of the underlying proceeding.

*Automobile Ins. Co. of Hartford v Cook* (7 NY3d 131)

Cook shot and killed a man inside his home in self defense. His insurer brought this declaratory judgment action to ascertain whether it had a duty to defend him in the underlying wrongful death action under the homeowner's policy. The complaint alleged that Cook both negligently and intentionally shot decedent. Noting the breadth of an insurer's duty to defend, the Court held that the allegations that Cook negligently caused decedent's death would be covered as an occurrence under the policy. Thus, the insurer was obligated to provide a defense.

*King v Fox* (7 NY3d 181)

The United States Court of Appeals for the Second Circuit certified three questions to the Court regarding the ratification of an attorneys' fee agreement. This Court answered that an attorneys' fee agreement may be ratified during a period of continuous representation if a client has full understanding of the facts and circumstances making the agreement voidable and has acquiesced to its terms, even where attorney misconduct may have induced the ratification. The Court also held that an existing fee arrangement that might otherwise be considered

unconscionable may be ratified where a sophisticated client knowingly and voluntarily affirms the agreement, so long as the client has both a full understanding of the facts rendering the agreement voidable and knowledge of his or her rights as a client.

*Welsbach Elec. Corp. v MasTec N. Am., Inc.* (7 NY3d 624)

At issue was whether New York's public policy against contractual pay-if-paid provisions, which create a condition precedent that a subcontractor will not be paid unless the contractor has been paid, is so fundamental that it overrides a choice-of-law clause. The subcontractor, a Delaware corporation, and the general contractor, a Florida corporation, agreed that Florida law would govern the subcontract. Florida allows pay-if-paid contracts, but the Court of Appeals has held that Lien Law § 34, which governs waiver of mechanics' liens, prohibits them (*see West-Fair Electric Contractors v Aetna Casualty & Surety Co.*, 87 NY2d 148 [1995]). After surveying New York's history concerning mechanics' liens, the Court noted that the first enactment of the mechanics' lien law in 1830 allowed subcontractors to waive their right to file a lien. That law changed in 1975 with Lien Law § 34, which declared such waivers void as against New York public policy. The Court recognized that the Legislature enacted Lien Law § 34 to "protect New York subcontractors from the oppressive use of bargaining power." Because neither party was a New York corporation and both were sophisticated commercial entities that knowingly and voluntarily entered into the contract, the Court concluded that the subcontractor failed to sustain "its 'heavy burden' of proving that application of Florida law would be offensive to a fundamental public policy of this State."

*Matter of DaimlerChrysler Corp. v Spitzer* (7 NY3d 653)

Resolving a controversy between motor vehicle manufacturers and New York's Attorney General concerning the proper interpretation of the New Car Lemon Law, the Court held that the purchaser of a new motor vehicle is entitled to seek relief under the statute when the consumer can show that the same substantial defect continued to exist after the vehicle was brought in for repairs four or more times within the time period prescribed in the statute, regardless of whether the vehicle had been fixed by the time the case proceeded to arbitration or trial.

*Boslow Family Ltd. Partnership v Glickenhau & Co.* (7 NY3d 664)

Plaintiff executed an initial certificate of limited partnership. Unbeknownst to plaintiff, its counsel failed to file the initial certificate with the Department of State as required by Partnership Law § 121-201(b). Plaintiff thereafter entered into an agreement with defendant which granted defendant authority to manage plaintiff's investment account in exchange for a management fee. Plaintiff closed its account with defendant because it was not satisfied with defendant's services, and thereafter commenced an action against defendant for, among other things, breach of contract and negligence in managing the account. During discovery, plaintiff and defendant learned that the initial certificate had never been filed. Defendant moved to dismiss the action on the ground that plaintiff did not have capacity to contract or bring suit on the agreement because it had not complied with the mandatory formation requirements of Partnership Law § 121-201(b). The Court held that, having derived a benefit from its contract with plaintiff, defendant was estopped from questioning the validity of the agreement or

plaintiff's right to sue thereon.

## CRIMINAL LAW

### *People v Bloomfield* (6 NY3d 165)

Defendants were charged with, among other things, 17 counts of falsifying business records in the first degree in violation of Penal Law § 175.15. The charges stemmed from their participation in a scheme to create offshore shell companies so that a group of American investors could trade Regulation S securities. The Appellate Division had held that defendants' involvement in the creation of a letter that fraudulently stated that a Liberian diplomat, rather than the American investors, was the president of the offshore companies could not give rise to a charge of falsifying business records since the subject letters were held in counsel's London office rather than at the companies' headquarters. The Court of Appeals reversed, holding that the Appellate Division gave too much credence to the location of the fraudulent documents, and stating "[t]o apply the statute in any other way would undermine its purpose by inviting purveyors of fraudulent corporate documents to seek refuge in the filing cabinets of their attorneys."

### *People v DaCosta* (6 NY3d 181)

While being chased by the police, defendant scaled a fence and ran across a major highway during rush-hour traffic. Although defendant crossed the roadway without injury, the officer in pursuit was struck by a car and killed. In reviewing the sufficiency of the evidence supporting defendant's manslaughter conviction arising from the death of the officer, the Court addressed the issue of causation, holding that a defendant can be held accountable for homicide if the defendant's conduct set in motion a chain of events that resulted in death in circumstances where that result was reasonably foreseeable, as was the case here.

### *People v Lopez* (6 NY3d 248)

In three cases, the Court of Appeals determined that a defendant who has validly waived the right to appeal cannot ask the Appellate Division to invoke its interest-of-justice jurisdiction to reduce the sentence. The Court underscored that the colloquy giving rise to the appeal waiver must establish that the defendant clearly understood the nature of the right being relinquished.

### *People v Baumann & Sons Buses, Inc.* (6 NY3d 404)

The Court dismissed defendant's appeal arising out of an alleged violation of the Town of Islip's anti-noise ordinance because no motion to dismiss the charge had been brought before the trial court. Although a challenge to the facial sufficiency of an accusatory instrument is exempt from the preservation requirement, a claim that the statute under which the defendant is charged is unconstitutional must be preserved for Court of Appeals review. Accordingly, the reversal below was not on the law, and this Court did not have jurisdiction over the appeal.



*People v Boyer* (6 NY3d 427)

A majority of the Court held that where a police officer's initial viewing of a suspect is not so clear and reliable that the officer's subsequent identification of the suspect could not, as a matter of law, have been the product of undue suggestiveness, the identification does not fall within the "confirmatory identification" exception. The prosecution must serve upon the defendant notice of the witness's prior identification pursuant to CPL 710.30(1)(b) or be precluded from introducing any testimony regarding such identification at trial.

*People v Moore* (6 NY3d 496)

Here, a majority of the Court ruled that an anonymous tip describing an individual with a gun, coupled with an individual's walking away from the scene when the police arrive to investigate, did not provide the police reasonable suspicion to conduct a gunpoint stop.

*People v Bosier* (6 NY3d 523)

Defendant threatened to kill complainant, rendering him unavailable to testify at trial. On appeal, defendant argued that Supreme Court's rulings, after a *Sirois* hearing, allowing the prosecution to introduce selective portions of complainant's grand jury testimony as evidence-in-chief but denying defendant's request to introduce additional grand jury testimony of complainant for impeachment purposes, were error and deprived defendant of his constitutional rights to a fair trial and to present a defense. The Court of Appeals held that Supreme Court did not abuse its discretion in the rulings at issue. In support of its holding, the Court noted that a defendant who tampers with a witness is entitled to a fair trial, and if, through his misconduct, a defendant procures the unavailability of a witness, the trial judge has discretion to allow the introduction of the unavailable witness's statements for impeachment purposes where there is a possibility that, if the statements were not allowed, the jury would be misled into giving too much weight to the statements offered by the prosecution. Applying these principles, the Court concluded that where, as here, the inconsistency in complainant's testimony did not go to the heart of the prosecution's case and might have been credibly explained if complainant had been present, the trial court's decision to exclude the impeaching testimony was not an abuse of discretion.

*People v Burton* (6 NY3d 584)

The issue in this drug possession case was whether the motion court erred in denying defendant's suppression application without a hearing based on a determination that defendant's allegations were insufficient to establish standing to bring the application under Criminal Procedure Law § 710.60. The Court held that defendant was not required to admit possession of contraband in order to comply with the statutory pleading requirement, but could rely, in part, on the People's proof to show that questions of fact concerning the propriety of the search of defendant's person warranted a hearing.

*People v Garson* (6 NY3d 604)

A majority of the Court held that evidence presented to a grand jury that a judge accepted a benefit for violation of his duty as a public servant, as defined by the Rules Governing Judicial Conduct (22 NYCRR Part 100), is legally sufficient to support charges of receiving reward for

official misconduct in the second degree under Penal Law § 200.25. The Rules set forth a constitutionally mandated duty of the judiciary. When combined with evidence of receiving a reward, violation of that duty may serve as a basis for prosecution under Penal Law § 200.25.

*People v Williams* (7 NY3d 15)

Prosecuted for the sale and possession of a controlled substance, defendant moved to suppress physical evidence taken from him when he was arrested, claiming that the arrest was without probable cause. The People's only witness at the suppression hearing was a detective who was the subject of a contemporaneous perjury investigation, a fact not disclosed to defendant, in violation of *Brady v Maryland* (373 US 83 [1963]). After defendant's suppression motion was denied, the perjury investigation was brought to the court's attention. Upon defendant's motion, a new suppression hearing was ordered, at which the People were permitted to call an additional witness. The trial court again denied defendant's suppression motion. A majority of the Court of Appeals held that the trial court did not err in permitting a new witness to testify after reopening the suppression hearing. The Court reasoned that *Brady's* purpose is to prevent a miscarriage of justice by ensuring that the best available evidence is presented during a suppression hearing, a goal that was enhanced by the trial court's decision to allow the parties to call additional witnesses at the reopened hearing.

*People v Drake* (7 NY3d 28)

On this appeal, a split Court clarified that when an expert witness testifies about psychological factors affecting the reliability of eyewitness identification, the jury must be permitted to apply that testimony to the facts of the case in determining the accuracy of proffered identifications.

*People v Feingold* (7 NY3d 288)

Defendant attempted to commit suicide in his apartment. Sealing his apartment door with tape, defendant blew out the pilot lights of his stove, turned on the gas, took tranquilizers and fell asleep in front of the oven, expecting the gas to kill him. Later, a spark ignited the gas, causing an explosion that damaged the walls of defendant's apartment as well as a number of neighboring apartments. Defendant sustained serious injuries, but survived. No one else was seriously injured. In a bench trial, Supreme Court found that defendant's state of mind was not one of depraved indifference but, nevertheless, relying on *People v Register* (60 NY2d 270 [1983]), convicted him of reckless endangerment in the first degree. The Appellate Division affirmed. Overruling *Register* and *People v Sanchez* (98 NY2d 373 [2002]), a majority of this Court held that depraved indifference to human life was the culpable mental state necessary to support defendant's conviction for first-degree reckless endangerment. Because the trier of fact found that defendant did not have the mens rea of depraved indifference to human life, defendant was not properly convicted of first-degree reckless endangerment.

*People v Utsey* (7 NY3d 398)

In 2004, the Legislature enacted the Drug Law Reform Act, which ameliorated some of the harsh sanctions mandated under the Rockefeller Drug Laws. Analyzing the plain language

of the statute, the Court determined that the Legislature did not intend to give retroactive effect to its reduced sentencing provisions.

*People v Grant* (7 NY3d 421)

A majority of the Court of Appeals determined that when a defendant does not testify at trial as the result of an erroneous *Sandoval* ruling allowing introduction of his prior convictions for purposes of impeachment, the ruling is subject to harmless-error analysis.

*Matter of Schwartz v Morgenthau* (7 NY3d 427)

Petitioner pleaded guilty in Federal court to insider trading, and was sentenced to prison followed by supervised release. He was ordered to pay restitution at least 90 days prior to the end of his supervised release. In an unrelated criminal case in State court, petitioner pleaded guilty to a scheme to defraud, and was sentenced to an indeterminate prison term of one to three years to be served concurrently with his Federal sentence. He also agreed to pay restitution and to forfeit additional monies to the district attorney, which monies the parties stipulated would be distributed in accordance with CPLR 1349. The Court of Appeals rejected petitioner's claim that CPLR 1349(2)(c) required the district attorney to apply the State forfeiture payment to satisfy petitioner's remaining Federal restitution obligations, concluding that petitioner did not have standing to enforce CPLR 1349. Petitioner's purported injury -- the windfall he failed to realize when the district attorney turned down his request to apply the State forfeiture to satisfy his Federal restitution obligations -- did not fall within the zone of interest CPLR 1349 protects. Additionally, petitioner failed to allege, much less prove, that he lacked funds to pay his Federal restitution obligations. In contrast, any unpaid victims of his other crimes would have standing as the intended beneficiaries of the statute.

*Policano v Herbert* (7 NY3d 588)

The inmate who brought this habeas corpus proceeding was accused of shooting a victim to death at close range. The trial court submitted one count of depraved indifference murder and one count of intentional murder to the jury, which convicted on the depraved indifference count. In this certified question, the United States Court of Appeals for the Second Circuit asked this Court whether New York law on the date when the inmate's conviction became final (June 2001) would have permitted a jury to find that the elements of depraved indifference were satisfied beyond a reasonable doubt. A divided Court of Appeals concluded that *People v Register* (60 NY2d 270 [1983], *cert denied* 466 US 953 [1984]) defined New York law in June 2001 and that, under *Register* and on this record, the jury was permitted to find the inmate guilty of depraved indifference murder. Subsequent to the Court's decision in *People v Sanchez* (98 NY2d 373 [2002]), New York law governing the legal sufficiency of the evidence needed to establish depraved indifference murder changed. The Court ruled, however, that these subsequent decisions altering the evidentiary basis for depraved indifference murder were not to be applied retroactively.

*People v Romero* (7 NY3d 633)

In this homicide case, after detailing the development of weight of the evidence review

from its common-law antecedents through the adoption of the modern Criminal Procedure Law, the Court reaffirmed that, as the court primarily vested with such review power, the Appellate Division should employ the two-step weight of the evidence analysis articulated in *People v Bleakley* (69 NY2d 490 [1987]).

*People v Cagle* (7 NY3d 647)

A second felony offender subject to enhanced punishment is one whose sentence for a prior felony was imposed not more than ten years prior to commission of the felony for which he or she now stands convicted; excluded from the ten years are any periods during which the person was "incarcerated." An offender is considered "incarcerated" under Penal Law § 70.06 (1)(b)(v) until completion of his or her sentence of imprisonment and release to parole. Thus, an offender serving a portion of his or her sentence in a day-reporting program remains incarcerated for purposes of the second felony offender statute.

*People v Bradley* (8 NY3d 124)

This case called on the Court to determine whether a witness's statement to police officers responding to a 911 call qualified as "testimonial" hearsay, inadmissible at trial unless the defendant was afforded the right to confront the witness. In *Davis v Washington* (126 S Ct 2266 [2006]), the Supreme Court held that statements in response to police questioning are non-testimonial if their primary purpose is to enable police to address an ongoing emergency. Here, a police officer encountered a woman, visibly shaken and bleeding, at the door of an apartment. When the officer asked her what had happened, she said that her boyfriend had thrown her through a glass door. The Court held that, viewed objectively, the officer's question was intended to address a potential emergency, not to investigate a possible crime. Accordingly, the statement was non-testimonial and admissible at trial, even though the victim did not testify.

## EVIDENCE

*Parker v Mobil Oil Corp.* (7 NY3d 434)

Plaintiff, a gas station attendant, commenced this action against the defendant oil companies alleging that he developed acute myelogenous leukemia (AML) as a result of his exposure during his employment to benzene in gasoline. In support of his theory, plaintiff offered the opinions of two experts that his AML resulted from his occupational exposure to benzene. The Court ruled that the opinions were not subject to analysis under *Frye v United States* (293 F 1013 [DC Cir 1923]) because they were not based on novel scientific theories. Rather, the proper question was whether the expert opinions led to a reliable opinion on causation without quantifying plaintiff's exposure to benzene or using a dose-response relationship. The Court held that an exact quantification of exposure was not necessary to establish causation, but that the experts' opinions were nonetheless insufficient to establish that exposure to benzene in gasoline caused plaintiff's AML.

## FAMILY LAW

*Matter of Shondel J. v Mark D.* (7 NY3d 320)

In this paternity suit, the Family Court hearing examiner ordered a DNA test before determining whether respondent, the ostensible father, had held himself out as the child's parent. The DNA test was negative, and the examiner dismissed the suit. However, Family Court decided that the child's best interests required respondent to continue to pay child support, and the Appellate Division agreed. A majority of the Court of Appeals applied estoppel principles, concluding that because respondent had represented that he was the father of the child and the child had formed a bond with him in justifiable reliance, and to her detriment, on that representation, respondent could not now be absolved from child support obligations.

*Keane v Keane* (8 NY3d 115)

In a line of matrimonial cases, the Court established that professional licenses can be marital property subject to distribution at divorce, but future income from a distributed license should not be counted in determining the amount of maintenance to be paid. The theory behind this principle is that relevant future income was already included in determining the value of the license for distribution purposes and was, therefore, already distributed with the license. The issue in this case was whether rental income produced by a parcel of real property already distributed should similarly be excluded in establishing maintenance. The Court concluded that the trial judge had the discretion to take the rental income into account in setting the maintenance award. Real or personal property is different from professional licenses, the Court said, because property is tangible and has an existence separate from the income it may produce, whereas the value of a professional license is indistinguishable from the earnings derived from it.

## GUARDIANSHIP

*Matter of M.B.* (6 NY3d 437)

In March 2003, the Legislature enacted the Health Care Decisions Act for Persons with Mental Retardation, which clarified that guardians of mentally retarded persons have authority to make health care decisions, including the decision to end life-sustaining treatment, under narrowly-prescribed circumstances. Based on the text and history of the legislation, the Court concluded that the provisions of the Act apply to guardians appointed prior to its effective date.

## LABOR LAW

*Matter of Professional Staff Congress-City Univ. of N.Y. v New York State Pub. Empl. Rel. Bd.* (7 NY3d 458)

In this improper practice proceeding brought by a union, the issue was whether the Public Employment Relations Board (PERB) abused its discretion when, in dismissing the charge, it concluded that the union's waiver of the right to negotiate certain subjects remained in effect

after expiration of the parties' collective bargaining agreement. The Court held that PERB's determination that the waiver was part of the status quo to be continued while a new agreement was negotiated was consistent with the Taylor Law and PERB precedent.

*Matter of Angello v Labor Ready, Inc.* (7 NY3d 579)

Here, the Court of Appeals held that an employer cannot deduct from an employee's wages a service fee charged for the cashing of a voucher that the employee receives in lieu of a paycheck. Under Labor Law § 193, deductions are permitted only for certain enumerated benefits and benefits similar to those enumerated. The Court concluded that the deductions at issue were not similar to the enumerated benefits and, thus, were contrary to the language, purpose and legislative history of the statute.

### **MENTAL HEALTH LAW**

*Matter of Jamie R. v Consilvio* (6 NY3d 138)

Expanding on its decision in *Matter of Norman D.* (3 NY3d 150 [2004]), the Court again addressed the scope of a Mental Hygiene Law § 9.35 rehearing and review proceeding involving an insanity acquittee, concluding that a patient can raise the fundamental liberty issue of the propriety of confinement in the custody of the Office of Mental Health, but cannot use the procedure to challenge placement in a secure facility.

*State of N.Y. ex rel. Harkavy v Consilvio* (7 NY3d 607)

Petitioners were nearing the completion of their prison sentences for various felony sex offenses when they were evaluated and subsequently committed to a psychiatric facility pursuant to Mental Hygiene Law § 9.27. The State reasoned that the Mental Hygiene Law was the appropriate statutory scheme to involuntarily commit petitioners since the petitioners had ostensibly completed their sentences before they were admitted to the psychiatric facilities. The Court held, however, that since petitioners were in fact undergoing a term of imprisonment when they were evaluated, the State should have followed the commitment procedures provided in Correction Law § 402, which affords procedural protections such as notice and an opportunity to be heard.

### **MUNICIPAL LAW**

*Matter of Comptroller of City of N.Y. v Mayor of City of N.Y.* (7 NY3d 256)

New York City entered into a concession contract to offer Snapple beverages for sale in vending machines on City property in exchange for Snapple's marketing and promotion of the City's brand. The City presented the vending, but not the marketing, portion of the agreement to the New York City Franchise and Concession Review Committee (FCRC) for approval, and the City Comptroller challenged the contract's validity. The Court agreed with the Comptroller that under the New York City Charter, concession agreements involving even intangible

intellectual property must be submitted to the FCRC, but rejected the Comptroller's effort to invalidate this particular contract. The Comptroller is statutorily required to register City contracts certified to be valid by the Mayor and cannot second-guess the Mayor's facially sufficient certification.

*Matter of Dolce v Nassau County Traffic and Parking Violations Agency* (7 NY3d 492)

After being issued a traffic violation returnable to the Nassau County Traffic and Parking Violations Agency (TPVA), petitioner asserted that the TPVA lacked jurisdiction to adjudicate certain parking and traffic violations, because there was no duplicate filing of the simplified information in the Nassau County District Court. Looking to the language of the TPVA enabling legislation and its legislative history, the Court held that the TPVA acquired jurisdiction to adjudicate certain parking and traffic violations by being an arm of the Nassau County District Court.

## **PUBLIC HEALTH LAW**

*Colavito v New York Organ Donor Network, Inc.* (8 NY3d 43)

For the first time, the Court of Appeals addressed New York's Uniform Anatomical Gift Act (Public Health Law article 43). Plaintiff, a specified donee of his deceased friend's kidneys, asserted that he had a property right in the anatomical gift, and sought to enforce that right against defendants for delivering one of the kidneys to someone else. The United States Court of Appeals for the Second Circuit certified questions to this Court relating to whether a specified donee has rights that support a common-law conversion action or a statutory claim under Public Health Law articles 43 and 43-A. The Court explained that no property rights in a deceased body or organs existed in the common law; therefore, a donee of an anatomical gift does not have a cause of action for conversion. The Court then turned to articles 43 and 43-A of the Public Health Law, grounding its decision on article 43's definition of a qualified specified donee. Because plaintiff in this case was medically incompatible with the donated kidneys and could not use either organ, the Court held that he had no private right of action against defendants under the Public Health Law.

## **REAL PROPERTY**

*Matter of City of New York (Grand Lafayette Props. LLC)* (6 NY3d 540)

In this case involving a landowner's challenge to an eminent domain vesting procedure brought by the City of New York to obtain property for a public improvement project involving the City's water system, the Court explained the two-step condemnation process that a municipality must follow to obtain title to real property for public use under the Eminent Domain Procedure Law.

*Walling v Przybylo* (7 NY3d 228)

Plaintiffs brought an action to quiet title to a disputed land parcel physically located on defendants' property that had been adversely possessed by plaintiffs. Defendants argued that actual knowledge of the true title owner defeats a claim of adverse possession. This Court held that actual knowledge does not defeat a claim of adverse possession. The Court reinforced the rule that challengers to an adverse possession claim must actively assert their rights within the statutory time period of 10 years. Having failed to do so, defendants could not claim, after the statutory period had run, that the adverse possessors had actual knowledge of the true owners.

*Matter of Eadie v Town Bd. Of Town of N. Greenbush* (7 NY3d 306)

With certain exceptions, Town zoning regulations can be amended by a majority vote of the town board. One exception is contained in Town Law § 265 (1) (b), which requires that amendments be approved by a super-majority vote where the zoning change is the subject of a formal protest to the board, signed by owners of 20% or more of the land within 100 feet of the land proposed for rezoning. One issue in this case was whether a developer could defeat the super-majority requirement by maintaining a buffer zone of its own land, not subject to the rezoning, around the rezoned land. The Court held that this type of buffer zone was consistent with the plain language of the Town Law and promotes the fairness and predictability of the super-majority voting requirement. The Court also held that a challenge to the rezoning under the State Environmental Quality Review Act (SEQRA) was timely, because it was brought within four months after the rezoning, although more than four months after the Town completed its SEQRA review process.

*Great N. Ins. Co. v Interior Constr. Corp.* (7 NY3d 412)

Interpreting a commercial lease, the Court held that a provision requiring the tenant to indemnify the landlord for all accident or injury claims except those caused solely by the landlord's negligence, and to procure insurance for that purpose, was enforceable. The Court rejected the argument that the clause violated the prohibition in General Obligations Law § 5-321 against exempting landlords from liability to third parties. Because the lease did not shield the landlord from liability to third parties, but merely allocated the risk of loss between the tenant and landlord, the clause did not conflict with the statute.

*Lake George Assoc. v State of New York* (7 NY3d 475)

Claimant, a commercial property owner, sought consequential damages based on the State's condemnation of part of claimant's land for a highway improvement project. As part of the project, the State reestablished access roads over claimant's and its neighbors' land. In the process, the State obtained permanent easements over the neighboring parcels for access to the adjacent highways but did not explicitly grant cross-vehicular access rights to each landowner. The Court held that the failure to convey rights to cross the neighbors' land in the easements did not subvert claimant's legal right of access to the public roads since the State had simultaneously appropriated the land under Highway Law § 10 (24-d), which enables the State to reestablish such access. Thus, an enforceable legal right of access existed and claimant was not entitled to consequential damages.



*Matter of MERSCORP, Inc. v Romaine* (8 NY3d 90)

Petitioners MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc. (collectively "MERS") commenced this hybrid proceeding in the nature of mandamus to compel the Suffolk County Clerk to record and index mortgages, assignments and discharge instruments that name MERS as the lender's nominee or the mortgagee of record, and to declare those instruments acceptable for recording and indexing. In 1993, the MERS registration system was created to track ownership interests in residential mortgages. Under MERS, the original lender names MERS as its nominee or the mortgagee of record when the mortgage is filed with the county clerk. Assignments of mortgages to other MERS members are not recorded but, rather, are tracked on the MERS private system. Relying on an informal opinion, the Suffolk County Clerk refused to accept all MERS mortgage documents. Recognizing that the clerk's duty to record and index is ministerial, a majority of the Court held that county clerks are compelled to accept MERS documents.

## TORTS

*Matter of Brisson v County of Onondaga* (6 NY3d 273)

Claimant, a county employee, sustained injuries when struck from behind by a van while he was picking up a "Men Working" sign from the shoulder of a road. When claimant's attorney settled a third-party action against the driver and owner of the van, he sent a letter to the county expressing his understanding that the county had no lien or right to a payment holiday. The county attorney replied that this understanding was "not entirely correct," but he did not withdraw the county's consent to the settlement. A majority of the Court held that a self-insured employer or workers' compensation carrier must preserve its right to an offset expressly and unambiguously when consenting to settlement of a third-party action, regardless of an existing lien against the claimant's recovery. The Court further concluded that substantial evidence supported the Workers' Compensation Board's finding that the county had not done so in this case.

*Balbuena v IDR Realty LLC* (6 NY3d 338)

Plaintiffs, undocumented aliens, brought negligence and Labor Law claims in which they sought damages for injuries sustained while working for construction companies in New York State. The issue before the Court was whether plaintiffs' immigration status precluded them from recovering lost earnings. A majority of the Court concluded that, in the absence of proof that plaintiffs had submitted fraudulent work authorization documents to obtain employment, the claims for lost wages were not barred either by State law or the Federal Immigration Reform and Control Act of 1986, although proof of plaintiffs' immigration status would be one factor the jury could consider in determining the propriety of a lost earnings award.

*Bard v Jahnke* (6 NY3d 592)

A self-employed carpenter was repairing ripped cow mattresses inside a section of a dairy

farm's free-stall barn when he was injured by a hornless "cleanup bull." The cows and heifers on the farm were bred by artificial insemination, and the cleanup bull was housed and roamed freely within this section of the barn so that he might impregnate cows stabled there who had failed to conceive by artificial insemination. When the carpenter sued the farmer for personal injuries, a majority of the Court approved the grant of summary judgment in favor of the farmer, concluding that, as defined in Agriculture and Markets Law § 108(7), a bull was a domestic animal and this particular bull had never before shown an inclination to behave in a way that put others at risk, a precondition for recovery.

*Hinlicky v Dreyfuss* (6 NY3d 636)

In deciding whether to allow plaintiff to undergo cardiac surgery without a cardiac evaluation, defendant anesthesiologist relied on a flow chart -- based on clinical practice guidelines -- which he sought to introduce into evidence in defense against a later malpractice action. The Court held that although the chart might not have been admissible as evidence of the standard of care, it was properly admitted as demonstrative evidence of the steps defendant had taken in clearing plaintiff for surgery.

*Zumpano v Quinn* (6 NY3d 666)

The Court of Appeals held that equitable estoppel could not be applied to toll the statute of limitations on plaintiffs' claims in these cases alleging clergy sexual abuse. Plaintiffs could not demonstrate any specific conduct by defendants that prevented them from bringing timely actions, as plaintiffs were long aware of the relevant facts and circumstances constituting the basis for their suits. Even assuming the existence and breach of a fiduciary duty by defendants, plaintiffs could not show that any actions or concealment by defendants caused their failure to file within the required time period.

*Semenetz v Sherling & Walden, Inc.* (7 NY3d 194)

A corporation that purchases another corporation's assets is not liable for the seller's torts, subject to four exceptions outlined in *Schumacher v Richards Shear Co.* (59 NY2d 239 [1983]). Plaintiff, whose infant son's hand was injured when caught in a sawmill, asked the Court to adopt a fifth exception -- the "product line" exception in cases of strict products liability. The Court joined the majority of courts nationwide declining to adopt this exception, which would impose economic strain on small manufacturers, place responsibility for defective products on parties that had not put them into the stream of commerce and mark a radical change from existing law implicating economic considerations better addressed by the Legislature.

*Morejon v Rais Constr. Co.* (7 NY3d 203)

The relatives of the decedent in this personal injury case alleged that the deceased had been hired by the defendant to deliver construction materials to a residence and was hit on the head by materials falling from the roof, eventually leading to his death. The trial court granted summary judgment for the plaintiffs on the basis of *res ipsa loquitur*, a doctrine allowing the jury to infer negligence in some cases where the actual factual circumstance or negligent act of the defendant is not directly provable. The Appellate Division reversed, holding that *res ipsa*

loquitur can never be a basis for granting a plaintiff summary judgment. The Court of Appeals noted that res ipsa loquitur is a species of circumstantial evidence and creates an inference, not a presumption. The doctrine therefore allows, rather than requires, a jury to find for a plaintiff in spite of the lack of direct proof. The Court held that there may indeed be rare cases in which a court could properly grant summary judgment to a plaintiff based on res ipsa loquitur, but this was not such a case because questions of fact remained for a jury to determine.

*Rivera v Nelson Realty, LLC.* (7 NY3d 530)

Plaintiff, an infant, was burned upon coming into contact with an uncovered radiator. Plaintiff and his mother brought suit against their landlord, alleging that the landlord's failure to provide radiator covers, despite repeated requests, violated a landowner's duty to maintain premises in a safe condition and a landlord's obligation to insulate all piping under New York City Administrative Code § 27-809. The Court rejected plaintiffs' claim that Multiple Dwelling Law § 78 and the common law impose upon landlords a duty to provide radiator covers. Further, the Court determined that Administrative Code § 27-809 does not apply to radiators. Accordingly, the Court determined that absent an express statutory requirement, any duty to protect children from uncovered radiators remains that of the tenant.

*Laratro v City of New York* (8 NY3d 79)

Plaintiff suffered a stroke at his office. A coworker and friend dialed 911 from a telephone a few feet away, and was advised by a 911 operator employed by New York City that an "ambulance will be there to help you as soon as possible." Plaintiff alleged that, because the operator transmitting this request negligently understated the seriousness of plaintiff's condition, the ambulance did not arrive for some time, thereby worsening the stroke's consequences. The Court rejected plaintiff's claim that a "special relationship" existed sufficient to impose municipal liability for the failure to deliver governmental services, because plaintiff, who was incapacitated at the time of the 911 call, had not established direct contact with the City or detrimental reliance on an undertaking by the City.

## TRUSTS AND ESTATES

*Matter of Heller* (6 NY3d 649)

The question before the Court of Appeals in this case was whether a trustee who is also a remainder beneficiary was foreclosed as a matter of law from electing unitrust status for the trust. Jacob Heller had created the trust at issue to benefit his wife and his children. Jacob's two sons eventually became trustees and elected unitrust status under Estates, Powers and Trusts Law § 11-2.4, which in this case meant that the wife's income would be reduced and the difference applied to the principal to the benefit of the remainder beneficiaries, including the trustees. The Court held that the Uniform Principal and Income Act (L 2001, ch 243) does not prohibit, as a matter of law, trustees who are remainder beneficiaries from choosing unitrust status, but that courts will carefully scrutinize such elections. The Court also held that the Uniform Principal and Income Act contemplates possible retroactive application of a unitrust election.

*Matter of Ferrara* (7 NY3d 244)

Decedent executed a will explicitly stating that he was not providing for any family members and that his entire estate was to go to The Salvation Army. A few months later, decedent's health declined and he signed a power of attorney making his brother and nephew his attorneys-in-fact. The form used was the durable statutory short form power of attorney under General Obligations Law § 5-1501(1). Section 5-1501(1)(M) permits an attorney-in-fact to give gifts to family members not to exceed the aggregate of \$10,000 to each person in any year. The form executed by decedent removed the \$10,000 limit, and the nephew transferred \$820,000 of decedent's assets to himself before decedent died. The Court held that General Obligations Law § 5-1502M imposes a duty on an attorney-in-fact to exercise enhanced gift-giving authority in the principal's best interest, interpreted within the provision as gifts to carry out the principal's financial, estate or tax plans. Here, the nephew clearly did not make gifts to himself for such purposes.

## **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  
Marcus Mastracco, 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 2006 BY JURISDICTIONAL PREDICATE**  
 January 1, 2006 through December 31, 2006

BASIS OF JURISDICTION: ALL APPEALS	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Dissents in Appellate Division	14	4	1	0	0	19
Permission of Court of Appeals or Judge thereof	74	20	11	2	0	107
Permission of Appellate Division or Justice thereof	20	12	3	1	0	36
Constitutional Question	8	1	2	0	0	11
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other <sup>1</sup>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>16</u>	<u>16</u>
<b>Totals</b>	<b>116</b>	<b>37</b>	<b>17</b>	<b>3</b>	<b>16</b>	<b>189</b>

BASIS OF JURISDICTION: CIVIL APPEALS	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Dissents in Appellate Division	14	4	1	0	0	19
Permission of Court of Appeals	38	12	4	0	0	54
Permission of Appellate Division	13	10	3	1	0	27
Constitutional Question	8	1	2	0	0	11
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other <sup>1</sup>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>16</u>	<u>16</u>
<b>Totals</b>	<b>73</b>	<b>27</b>	<b>10</b>	<b>1</b>	<b>16</b>	<b>127</b>

BASIS OF JURISDICTION: CRIMINAL APPEALS	TYPE OF DISPOSITION					Total
	Affirmance	Reversal	Modification	Dismissal	Other	
Permission of Court of Appeals Judge	36	8	7	2	0	53
Permission of Appellate Division Justice	7	2	0	0	0	9
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Totals</b>	<b>43</b>	<b>10</b>	<b>7</b>	<b>2</b>	<b>0</b>	<b>62</b>

<sup>1</sup> 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 2006

ALL APPEALS - % CIVIL AND CRIMINAL

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Civil	62% (109 of 176)	74% (130 of 176)	74% (136 of 185)	70% (137 of 196)	67% (127 of 189)
Criminal	38% (67 of 176)	26% (46 of 176)	26% (49 of 185)	30% (59 of 196)	33% (62 of 189)

CIVIL APPEALS - TYPE OF DISPOSITION

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Affirmed	40%	42%	51%	49%	57%
Reversed	37%	32%	33%	31%	21%
Modified	8%	8%	4%	9%	8%
Dismissed after Argument	2%	--	1%	--	--
Other (e.g. judicial suspension; Rule 500.27 certified question)	13%	18%	11%	11%	14%

CRIMINAL APPEALS - TYPE OF DISPOSITION

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Affirmed	69%	67%	76%	69%	69%
Reversed	28%	20%	14%	24%	16%
Modified	1.5%	9%	4%	5%	12%
Dismissed	1.5%	4%	6%	2%	3%

**CIVIL APPEALS DECIDED - JURISDICTIONAL PREDICATES**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
<b>Appellate Division Dissents</b>	16.5% (18 of 109)	16% (20 of 130)	22.75% (31 of 136)	12.4% (17 of 137)	15% (19 of 127)
<b>Court of Appeals Leave Grants</b>	55% (60 of 109)	50% (65 of 130)	51.5% (70 of 136)	50.4% (69 of 137)	43% (54 of 127)
<b>Appellate Division Leave Grants</b>	8.25% (9 of 109)	7% (9 of 130)	9.5% (13 of 136)	19.7% (27 of 137)	21% (27 of 127)
<b>Constitutional Question</b>	4.5% (5 of 109)	6% (8 of 130)	4.5% (6 of 136)	5.8% (8 of 137)	9% (11 of 127)
<b>Stipulation for Judgment Absolute</b>	--	--	--	.8% (1 of 137)	--
<b>CPLR 5601(d)</b>	3% (3 of 109)	2% (3 of 130)	.75% (1 of 136)	--	--
<b>Supreme Court Remand</b>	--	--	--	--	--
<b>Judiciary Law § 44<sup>1</sup></b>	8.25% (9 of 109)	6% (8 of 130)	3% (4 of 136)	5.1% (7 of 137)	2% (3 of 127)
<b>Certified Question from Federal Court (Rule 500.27)<sup>2</sup></b>	4.5% (5 of 109)	12% (16 of 130)	8% (11 of 136)	5.8% (8 of 137)	10% (13 of 127)
<b>Other</b>	--	1% (1 of 130)	--	--	--

<sup>1</sup> Includes judicial suspension matters

<sup>2</sup> Includes decisions accepting/declining certification

APPENDIX 6

CRIMINAL APPEALS DECIDED - JURISDICTIONAL PREDICATES

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Permission of Court of Appeals Judge	73.1% (49 of 67)	90% (41 of 46)	65% (32 of 49)	85% (50 of 59)	85% (53 of 62)
Permission of Appellate Division Justice	25.4% (17 of 67)	8% (4 of 46)	29% (14 of 49)	13% (8 of 59)	15% (9 of 62)
Other	1.5% (1 of 67)	2% (1 of 46)	6% (3 of 49)	2% <sup>1</sup> (1 of 59)	--

<sup>1</sup> People v Shulman, capital appeal

MOTION STATISTICS (2002 - 2006)

Motions Undecided as of January 1, 2006 - 170  
 Motion Numbers Used in 2006 - 1401  
 Motions Undecided as of December 31, 2006 - 172  
 Motion Dispositions During 2006 - 1397

	2002	2003	2004	2005	2006
Motion Numbers Used for Calendar Year	1381	1363	1199	1344	1401
Motions Decided for Calendar Year	1352	1377	1222	1289	1397
Motions for leave to appeal	1013*	1053*	905*	967*	1021*
granted	71	86	75	61	61
denied	724	774	644	697	764
dismissed	213	187	182	203	192
withdrawn	5	6	4	6	4
Motions to dismiss appeals	10	13	6	6	8
granted	2	7	3	3	4
denied	8	6	2	2	4
dismissed	0	0	0	0	0
withdrawn	0	0	1	1	0
Sua Sponte and Court's own motion dismissals	100	89	98	81	92
TOTAL DISMISSAL OF APPEALS	102	96	101	84	96
Motions for reargument of appeal	11	7	14	21	16
granted	0	0	0	0	0
Motions for reargument of motion	52	59	44	38	62
granted	3	0	1	1	1
Motions for assignment of counsel	40	38	43	44	61
granted	37	36	41	43	51
Legal Aid	10	12	8	10	9
denied	2	2	2	1	0
dismissed	1	0	0	0	1

APPENDIX 7 (continued)

	2002	2003	2004	2005	2006
Motions to waive rule compliance granted	2	0	1	1	0
Motions for poor person status	1	0	0	0	0
granted	53	82	122	140	177
denied	0	0	0	0	0
dismissed	0	0	0	1	1
Motions to vacate dismissal/preclusion	53	82	122	139	177
granted	1	1	1	1	3
granted	0	0	0	0	3
Motions for calendar preference	3	1	0	4	0
granted	1	0	0	0	0
Motions for amicus curiae status	112	105	93	95	119
granted	91	93	88	93	114
Motions for Executive Law § 71 Order (AG)	3	4	1	0	2
Motions for leave to intervene	1	4	2	2	2
granted	0	1	0	1	2
Motions to stay/vacate stay	21	26	14	22	21
granted	1	2	5	1	2
denied	4	3	0	4	0
dismissed	16	21	9	17	17
withdrawn	0	0	0	0	2
Motions for CPL 460.30 extension	37	37	26	33	32
granted	34	27	24	25	27
Motions to strike appendix or brief	8	5	10	7	6
granted	2	1	2	2	1
Motions to amend remittitur	0	0	0	1	1
granted	0	0	0	0	0
Motions for miscellaneous relief	14	15	14	5	6
granted	1	2	4	1	0
denied	9	8	6	4	5
dismissed	3	5	4	0	1
withdrawn	1	0	0	0	0
Withdrawals/substitution of counsel	0	3	1	2	1
granted	0	3	1	1	1
denied	0	0	0	1	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**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
TOTAL APPLICATIONS ASSIGNED:	2605	2557	2570	2473	2458
TOTAL APPLICATIONS DECIDED:	2724	2601	2644	2383	2436
TOTAL APPLICATIONS GRANTED:	46	37	46	42	52
TOTAL APPLICATIONS DENIED:	2493	2365	2407	2109	2166
TOTAL APPLICATIONS DISMISSED:	179	191	176	228	212
TOTAL APPLICATIONS WITHDRAWN:	6	8	15	4	6
TOTAL PEOPLE'S APPLICATIONS:	59	44	48	44	47
(a) GRANTED:	9	4	9	5	5
(b) DENIED:	45	36	33	37	35
(c) DISMISSED:	4	1	1	1	3
(d) WITHDRAWN:	1	3	5	1	4
AVERAGE NUMBER OF APPLICATIONS ASSIGNED TO EACH JUDGE	388	397	367	353	355
AVERAGE NUMBER OF GRANTS FOR EACH JUDGE	7	5	7	6	7

APPENDIX 9

2006

THRESHOLD REVIEW OF SUBJECT MATTER  
JURISDICTION BY THE COURT OF APPEALS

	SSD (sua sponte dismissal) - Rule 500.10					
	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	
Total Number of Inquiry Letters Sent	94	76	73	90*	74	
Appeals Withdrawn or Discontinued on Stipulation	3	2	4	1	1	
Dismissed by Court sua sponte	55	42	53	55	52	
Transferred sua sponte to Appellate Division	3	2	1	5	4	
Appeals allowed to proceed in normal course (A final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	9	3	5	5	5	
Jurisdiction Retained - appeals decided	0	4	2	1	1	
Inquiries Pending	13	14	8	21	11	

\* 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**

2002 - 2006

<u>TOPIC</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Attorneys Admitted (OCA) <sup>1</sup>	8006	8247	8415	8515	8643
Certificates of Admission	82	118	128	119	134
Clerkship Certificates	10	6	10	3	2
Petitions for Waiver	170 <sup>2</sup>	149 <sup>3</sup>	171 <sup>4</sup>	191 <sup>5</sup>	189 <sup>6</sup>
Written Inquiries	132	132	98	102	67
Disciplinary Orders/Name Changes	1636	796 <sup>7</sup>	1469 <sup>7</sup>	899 <sup>7</sup>	1921 <sup>7</sup>

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

<sup>2</sup> Includes correspondence to eight law schools reviewing their LL.M. programs under Rule 520.6.

<sup>3</sup> Includes correspondence to three law schools reviewing their LL.M. programs under Rule 520.6.

<sup>4</sup> Includes correspondence to three law schools reviewing their LL.M. programs under Rule 520.6.

<sup>5</sup> Includes correspondence to seven law schools reviewing their LL.M. programs under Rule 520.6.

<sup>6</sup> Includes correspondence to eleven law schools reviewing their LL.M. programs under Rule 520.6.

<sup>7</sup> Includes orders involving multiple attorneys' violation of the registration requirements (Judiciary Law § 468-a).

APPENDIX 11

NONJUDICIAL STAFF

Alexander, Jeremy D. - Court Attorney, Court of Appeals  
Alexander, Jr., Carroll B. - Senior Court Building Guard (retired 07/06/06)  
Ali, Vivian - Principal Stenographer, Court of Appeals  
Andrews, Barbara J. - Secretary to Judge G. B. Smith  
Arnold, Fawn A. - Senior Court Attorney, Court of Appeals (resigned 07/03/06)  
Asiello, John P. - Assistant Consultation Clerk, Court of Appeals  
Atwell, Angela M. - Senior Service Aide  
Austin, Louis C. - Senior Court Building Guard  
Bahr, Harold E. - Law Clerk to Chief Judge Kaye  
Bauman, Susan R. - Local Area Network Administrator  
Belsito, Anthony M. - Court Attorney, Court of Appeals  
Bennett, Megan Wolfe - Principal Law Clerk to Chief Judge Kaye (resigned 09/30/06)  
Benigno, Veronica Ann O. - Senior Court Attorney; Principal Law Clerk to Judge Rosenblatt (resigned 12/31/06)  
Betha, Laury A. - Senior Law Clerk to Judge G. B. Smith (resigned 11/16/06)  
Bohannon, Lisa - Principal Stenographer, Court of Appeals  
Branch, Jr., Clifton R. - Principal Law Clerk to Judge G. B. Smith (resigned 11/18/06)  
Brizzie, Gary J. - Principal Custodial Aide  
Brousseau, Cara Johnson - Principal Law Clerk to Judge Read

Appendix 11 (Continued)

Burststein, Devin J. - Senior Law Clerk to Chief Judge Kaye  
Byrne, Cynthia D. - Criminal Leave Applications Clerk  
Calacone, Stephen F. - Clerical Research Aide  
Capehart, Julie D. - Law Clerk to Judge R. S. Smith  
Carro, Christine - Secretary to Judge Ciparick  
Caza, Jason - Court Building Guard (resigned 10/04/06)  
Choy, Victoria L. - Senior Court Attorney, Court of Appeals  
Cleary, Lisa M. - Principal Stenographer, Court of Appeals  
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 (resigned 09/02/06)  
Couser, Lisa A. - Court Building Guard  
Cross, Robert J. - Court Building Guard  
Dautel, Susan S. - Assistant Deputy Clerk, Court of Appeals  
Davis, Heather A. - Chief Motion Clerk  
Donegin, AnneMarie - Secretary to Chief Judge Kaye  
Donnelly, William E. - Assistant Building Superintendent I  
Doyle, John E. - Senior Security Attendant, Court of Appeals  
Dragonette, John M. - Senior Court Building Guard

Appendix 11 (Continued)

Drury, Lisa A. - Law Clerk to Judge Read  
Duncan, Priscilla - Secretary to Judge Read  
Dunn, Matthew R. - Senior Principal Law Clerk to Judge Graffeo  
Eddy, Margery Corbin - Principal Court Attorney, Court of Appeals  
Edinger, Anne C. - Law Clerk to Chief Judge Kaye  
Edwards, Kevin P. - Senior Court Building Guard  
Emigh, Brian J. - Building Manager  
Engel, Hope B. - Senior Deputy Chief Court Attorney, Court of Appeals; Court Attorney for Professional Matters  
Farber, Evan K. - Senior Law Clerk to Judge R. S. Smith (resigned 08/01/06)  
Farrell, Laurence - Deputy Chief Security Attendant, Court of Appeals  
Fillion, Gail M. - Secretary to Chief Judge Kaye (resigned 09/28/06)  
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. - Court Attorney, Court of Appeals  
Fludd, Christopher - Senior Court Building Guard  
Ford, Daisy G. - Court Attorney, Court of Appeals  
Fraser, Dionne A. - Senior Law Clerk to Judge G. B. Smith (resigned 10/07/06)  
Gerber, Matthew L. - Senior Security Attendant, Court of Appeals  
Gilbert, Marianne - Principal Stenographer, Court of Appeals

Appendix 11 (Continued)

Goergen, Erik A. - Senior Court Attorney, Court of Appeals  
Gonzalez, Juan C. - Court Attorney, Court of Appeals  
Grogan, Bruce D. - Senior Principal Law Clerk to Judge Pigott  
Haas, Tammy L. - Principal Assistant Building Superintendent  
Heaney, Denise C. - Senior Security Attendant, Court of Appeals  
Heffron, Elaine J. - Secretary to Judge Graffeo (retired 12/18/06)  
Herrington, June A. - Principal Stenographer, Court of Appeals  
Ho, Dale - Law Clerk to Judge R. S. Smith  
Ignazio, Andrea R. - Principal Stenographer, Court of Appeals  
Irwin, Nancy J. - Senior Stenographer, Court of Appeals (resigned 05/31/06)  
Joyce, Jean - Senior Principal Law Clerk to Chief Judge Kaye (resigned 09/04/06)  
Kaplan, David J. - Senior Law Clerk to Judge Ciparick  
Kearns, Ronald J. - HVAC Assistant Building Superintendent  
Kee, Norman W. - Senior Court Attorney, Court of Appeals (resigned 08/12/06)  
Kerr, Timothy M. - Senior Law Clerk to Judge Rosenblatt (resigned 12/31/06)  
Klein, Andrew W. - Consultation Clerk, Court of Appeals  
Kong, Yongjun - Principal Custodial Aide  
Lawrence, Bryan D. - Principal PC Analyst  
Lawrence, William A. - Senior Court Attorney, Court of Appeals (resigned 07/01/06)  
LeCours, Lisa A. - Senior Principal Law Clerk to Judge Graffeo  
Lenart, Margaret S. - Principal Stenographer, Court of Appeals

Appendix 11 (Continued)

Leonard, Donna M. - Senior Court Building Guard  
Levin, Justin C. - Senior Law Clerk to Judge Rosenblatt; Senior Court Attorney, Court of Appeals  
Long, E. Andrew - Senior Court Attorney, Court of Appeals  
Long, Justin R. - Senior Law Clerk to Judge Rosenblatt (resigned 08/12/06)  
Lyon, Gordon W. - Senior Law Clerk to Judge Rosenblatt; Senior Law Clerk to Judge Pigott  
Maier, Sr., Joseph J. - Assistant Building Superintendent I (retired 06/02/06)  
Mandelbaum, Robert M. - Principal Law Clerk to Chief Judge Kaye (resigned 11/19/06)  
Mastracco, Marcus J. - Assistant Deputy Clerk, Court of Appeals  
Mayo, Michael J. - Deputy Building Superintendent  
McCormick, Cynthia A. - Management Analyst, Court of Appeals  
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  
Mistishen, Barbara B. - Principal Court Attorney, Court of Appeals (resigned 09/16/06)  
Moore, Travis R. - Senior Security Attendant, Court of Appeals  
Mulyca, Jonathan A. - Clerical Assistant, Court of Appeals  
Murray, Elizabeth F. - Chief Legal Reference Attorney, Court of Appeals  
O'Friel, Jennifer A. - Principal Law Clerk to Judge Ciparick  
Pepper, Francis W. - Principal Custodial Aide  
Prois, Barbara A. - Senior Court Attorney, Court of Appeals

Appendix 11 (Continued)

Quinn, Brian M. - Senior Court Attorney, Court of Appeals (resigned 08/12/06)  
Rath, Gerard S. - Senior Law Clerk to Judge Ciparick  
Ravida, Tina - Principal Custodial Aide  
Salazar, Dana Lynn - Senior Law Clerk to Judge Read  
Seeliger, Bruce - Senior Principal Law Clerk to Judge Read (resigned 04/08/06)  
Shaw, Linda M. - Stenographer, Court of Appeals  
Sherwin, Stephen P. - Principal Law Clerk to Judge Graffeo  
Shufelt, Sr., Theodore J. - Senior Assistant Building Superintendent (retired 10/31/06)  
Smith, Reed A. - Senior Law Clerk to Judge R. S. Smith  
Somerville, Robert - Senior Court Building Guard  
Spencer, Gary H. - Public Information Officer, Court of Appeals  
Spiewak, Keith J. - PC Analyst  
Strait, Donald R. - Court Building Guard (resigned 03/21/06)  
Stein, Emily D. - Court Attorney, Court of Appeals  
Stevens, Mark P. - Chief Security Attendant, Court of Appeals  
Stromecki, Kristie L. - Senior Law Clerk to Judge Pigott  
Tierney, Inez M. - Secretary to Judge Rosenblatt  
Unkeless, Elaine Rapp - Law Clerk to Chief Judge Kaye  
VanDeloo, James F. - Senior Assistant Building Superintendent  
Waddell, Maureen A. - Secretary to Judge Pigott  
Warechak, Andrew R. - Principal Custodial Aide

**Appendix 11 (Continued)**

**Wasserbach, Debra C. - Secretary to Judge Graffeo**

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

**Wodzinski, Esther T. - Secretary to Judge R. S. Smith**

**Yotam, Avshalom - Principal Law Clerk to Judge R. S. Smith (resigned 08/02/06)**