NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

**Press Release**

**Web: nyc.gov/html/law/home.html**

*For Immediate Release*

# STATE'S HIGHEST COURT BACKS CITY IN THREE NEW LEGAL DECISIONS, INCLUDING TWO POLICE CASES AND A FAMILY COURT MATTER

**Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov**

New York, May 11, 2004 – The New York State Court of Appeals – the State's highest court – backed the New York City Law Department unanimously in three new legal decisions today. Two of the decisions involved police cases and a third involved a Family Court matter.

***Williams/Guerzon PD Case***

The first decision, *Williams v. City of New York and Guerzon v. City of New York*, involved two police cases that were decided together. The matter involved a tragic circumstance in which the families of two police officers, who had been killed by their prisoner in November 1989, sought to recover damages from the City of New York. Today, the Court of Appeals ruled unanimously (7-0) in favor of the City and affirmed the Appellate Division, Second Department's dismissal of the complaints. A jury at the trial court level had originally awarded more than $14 million to the families of both officers.

In today's ruling, the Court of Appeals held that the public employer's obligation under the State's Public Employee Safety and Health Act (PESHA) to furnish its employees with "employment and a place of employment which are free from recognized hazards…and which will provide reasonable and adequate protection" is inapplicable to the "special risks faced by police officers because of the nature of police work," including "where and under what conditions prisoners should be detained." The Court stressed that it "was unlikely" that the Legislature intended for PESHA to allow the second-guessing of the decisions of police supervisors in such matters. Such was the situation in this case, which involved a decision by the decedents' lieutenant squad commander to detain a prisoner in the squad's locker room by handcuffing his hands to a pipe mounted to a table. The Court also ruled that the duty of a building owner under the City's Administrative Code to keep the building "safe" had not been violated by City.

The lawsuits arose out of the unfortunate Nov. 13, 1989, killing of Detectives Keith Williams and Richard Guerzon, on Grand Central Parkway by a three-time convicted criminal. The police officers had been transporting the prisoner back to the Rikers Island correctional facility. He sat alone in the vehicle's back seat while handcuffed without a security belt. Prior to that, he had been detained in the detectives' squad locker room at the station house. This room served as the squad's short-term detention facility. The prisoner had been left alone there by the decedents for a period of time, although he was still in their custody. One, but not both, of the prisoner's hands had been handcuffed to the metal bar used to secure prisoners to the room's center table. While left alone, the prisoner managed surreptitiously to gain access to another detective's gun from a locker. He later killed the detectives while being transported. The plaintiffs had claimed that the locker room was improperly used for prisoner detention.

Assistant Appeals Division Chief Barry P. Schwartz, the attorney who represented the City on the appeals, stated: "This decision involved the tragic death of two dedicated officers. The City has great sympathy for the decedents' families. However, the Court's decision reflected a thoughtful and careful

analysis of the legislative intent of PESHA." Mr. Schwartz noted, as the Court of Appeals recognized, that "there is nothing either in the language or legislative history of the statute that indicates that its intent was to allow the second-guessing of decisions by police supervisors." From a legal standpoint, Mr. Schwartz also noted that the plaintiffs had: (1) never claimed that the prisoner detention decision here was made in bad faith; (2) that they did not show that the decision violated an immutable rule; and (3) that the plaintiffs' experts never testified that the locker room was unsafe for prisoner detention if both hands of a prisoner were handcuffed properly, as had been the lieutenant's intent. Finally, he noted that "there was no dispute that safety in the handling of a prisoner was ensured by any one – of the at least five – safety procedures which were known to all squad detectives."

Working on the legal brief with Barry Schwartz was Leonard Koerner, Chief Assistant Corporation Counsel and Chief of the Appeals Division of the New York City Law Department. Howard Singer, a Senior Counsel, and David Cheung, an Assistant Corporation Counsel, in the City's Tort Division represented the City at the trial. Deputy Chief of that Division's Special Litigation Unit Kenneth Sasmor assisted on the various substantive motions.

***McCormick PD Case***

The second case, *McCormick v. City of New York,* involved an April 1988 incident in which a police officer was tragically killed by friendly fire during the execution of a drug-related "no-knock" search warrant in an apartment in Manhattan. The Court of Appeals ruled unanimously today in favor of the City of New York by affirming the Appellate Division, First Department's dismissal of the complaint in this General Municipal Law (GML) section 205-e cause of action. GML section 205-e accords police officers or their heirs a right to sue for a line-of-duty injury or death that results from the negligence violation of the "requirements" of certain governmental "statutes, ordinances, rules, orders and requirements."

The Court ruled today that while a police officer injured or killed in the line of duty by a fellow officer may sue under GML section 205-e alleging violations of the Penal Law "where no criminal charges have been brought against a section 205-e defendant, a rebuttable presumption exists that the Penal Law has not been violated." The presumption can only be overcome by "compelling evidence." The Court also held that a section 205-e claim cannot be premised solely on a violation of the justification defenses found in the Penal Law or the Criminal Procedure Law, because: 1) they do not establish a standard of care upon which a civil cause of action can be based and 2) these defenses would also require a judge or jury to second-guess a police officer's split-second weighing of choices.

Although the Court held that a conviction is not necessary to find a violation of the Penal Law for purposes of GML section 205-e liability, the Court concluded that a plaintiff's burden of demonstrating a violation of a Penal Law statute is "substantial." The Court held that when a defendant has not been charged with a crime, the case should be dismissed before trial unless a plaintiff comes forward with "compelling evidence" demonstrating a material issue of fact. Under the facts of this case, the Court held that the defendant officers were, as a matter of law, justified in firing their weapons when confronted with a criminal suspect holding a gun and who then discharged that gun twice. The Court ruled that the affidavit of the plaintiff's expert, a former Chief of Police of Tallahassee, Fla., was insufficient to rebut the presumption, because his conclusion that the officers should have been able to subdue the criminal suspect using defensive disarming techniques – given the height and weight differential between the officers and the suspect – was speculative.

This personal injury and wrongful death action was brought by the wife of deceased New York City Police Officer, John F. McCormick, for an incident that occurred on April 27, 1988, in which Sergeant McCormick was accidentally and fatally shot by friendly fire during the execution of a drug-related "no-knock" search warrant in a Manhattan apartment. The plaintiff, Sergeant McCormick's wife, asserted that McCormick's fellow officers violated various Penal Law provisions related to the justified use of deadly physical force, assault, reckless endangerment, criminally negligent homicide and manslaughter.

Appeals Division Assistant Corporation Counsel Julie Steiner, who handled the appeals, noted: "This case also highlights the difficulties and dangers faced by officers on the job. Sergeant McCormick's death is a great tragedy for the City. While we have deep sympathy for the officer's family, we are confident that the Court reached the right legal conclusion." Ms. Steiner noted that, "Because the Penal Law provisions require the higher standard of proof beyond a reasonable doubt and because otherwise criminal conduct may be justified, the Court properly created a strong rebuttable presumption that the Penal Law was not violated, requiring compelling evidence from a plaintiff to defeat a defendant's motion

for summary judgment." She added, "This ensures that police officers are not wrongfully found liable for acts undertaken in life-threatening, split-second, in-the-line-of-duty situations."

Julie Steiner handled the appeal with assistance from Appeals Assistant Chief Barry Schwartz. Kenneth Becker, the current Chief of the World Trade Center Unit and the former Assistant Chief in the Special Litigation Unit of the Tort Division, represented the City on the motion in the Supreme Court. Deputy Chief of the Special Litigation Unit Kenneth Sasmor handled various pre-motion discovery matters.

***Robert J. and Kareem R. Family Court Cases***

A third case involving the City related to two separate Family Court cases that were decided together, since they raised the same legal issue. The cases were captioned: *In the Matter of Robert J. (Anonymous) and In the Matter of Kareem R. (Anonymous).* Family Court cases are often limited to the juvenile's first name and last initial in an effort to protect the identity of the juvenile.

In this decision, the Court of Appeals ruled unanimously today that the Family Court Act empowers Family Courts throughout the State to order the initial placement of a young person who has been adjudicated a juvenile delinquent with the State's Office of Children and Family Services (OCFS) for extending beyond the youth's 18th birthday even though the youth had not consented. In reaching its decision, the Court looked at the language of the statute, the relevant legislative history and the policy concerns underlying the statutory scheme.

Both youths involved in these cases had committed delinquent acts before they were 16 years old had been adjudicated juvenile delinquents and had been placed in probation. After each had violated the terms of his probation, Family Court had found that placement with OCSF was warranted, even though placement would extend beyond each of their 18th birthdays.

Noting that the overriding intent of the juvenile delinquency statute is to empower Family Court to intervene and positively impact the lives of troubled young people while protecting the public, the Court of Appeals observed that the New York State Legislature, in statutory changes enacted in 1982, had acted to strengthen probation as a viable option for older juveniles.

Under the statutory interpretation that the Court of Appeals rendered today, Family Court can attempt to keep a young person in the home environment and order probation (as occurred in these cases), rather than resorting to placement as the initial disposition, because placement can be tried later if probation proves ineffective.

By the same token, individuals approaching the age of 18 who are on probation have a greater incentive to adhere to the conditions imposed by Family Court, knowing that if they do not abide the conditions, placement remains an alternative available to the court. Under the interpretation recommended by the Legal Aid Society, which represented the youths, just the opposite would be true – a young person could ignore the conditions of probation without serious consequences because Family Court's only redress under Family Court Act § 352.2 would be to continue probation or grant a conditional discharge.

Dona B. Morris, a Senior Counsel in the Law Department's Appeals Division, represented the City on appeal. She was aided in developing the Family Court's argument by Kimberly Arena, the Law Department's Family Court Division's Disposition Specialist.

"The Law Department is pleased by this decision, which recognizes the essential purposes of the juvenile delinquency statutes," Morris noted. She added, "This clarifies a significant issue and enhances the powers of Family Court to promote the provision of appropriate rehabilitative services to older juveniles who had not previously been placed in custody but who may yet benefit from the services provided during a period of placement with OCSF."

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed

through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

# # #