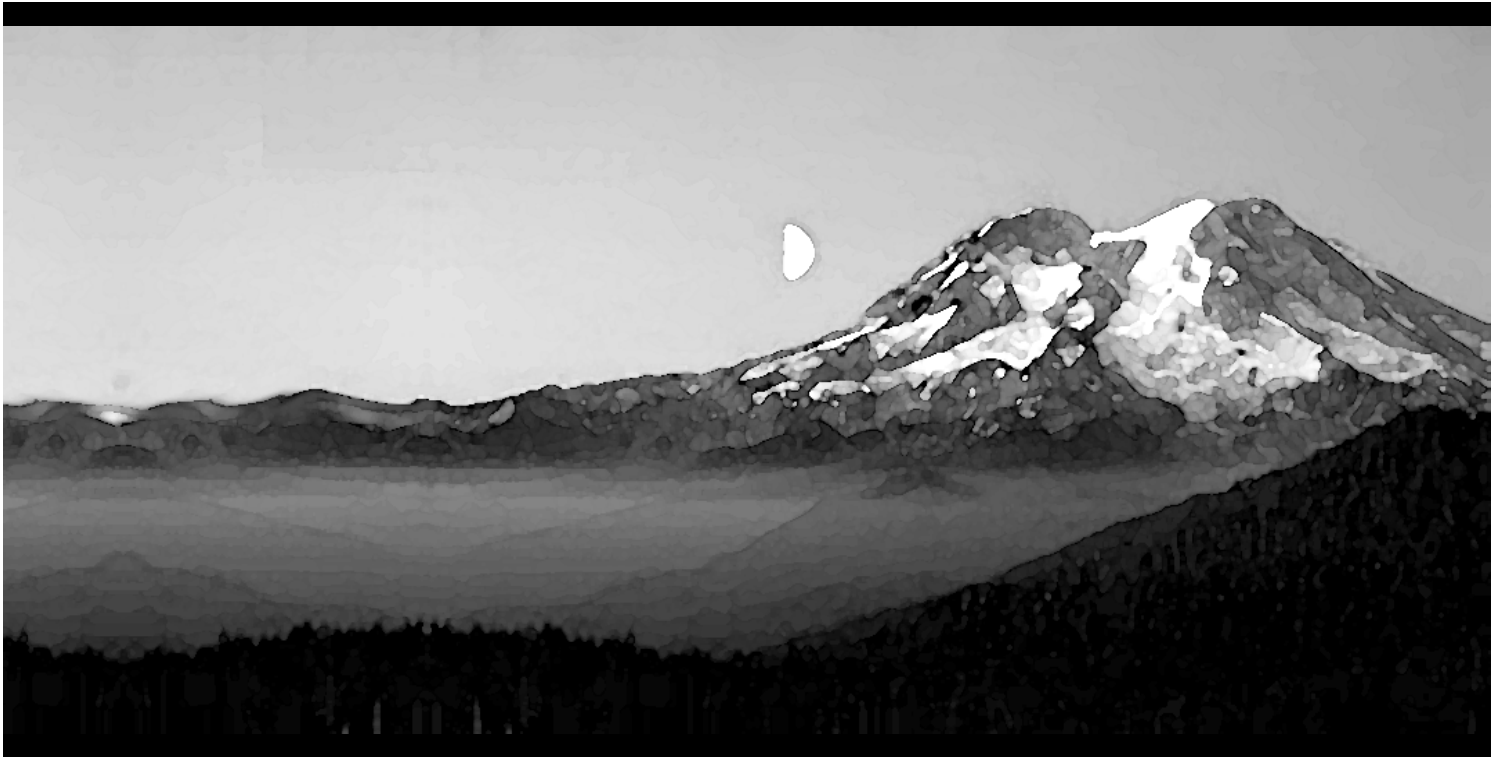


2 0 0 0



ANNUAL REPORT



Attorney General of Washington

Christine O. Gregoire, Attorney General

1125 Washington Street SE • PO Box 40100 • Olympia, WA 98504-0100

Welcome!

I'm pleased to present the Attorney General's Annual Report highlighting our activities and accomplishments for 2000.

The office serves clients in more than 230 state agencies, boards and commissions, as well as state community colleges and universities. This report summarizes major cases and issues the Attorney General's Office has been involved with in the past year on behalf of all Washingtonians.

Although this report can only give you a glimpse of the work the Attorney General's Office does every day, I hope it will demonstrate the depth of our commitment to the citizens of Washington State. Behind the facts and figures in this report are many dedicated, hardworking and talented staff members who have chosen a career in public service, and are serving the public well.

Whether we are standing up for the rights of consumers, protecting Washington's valuable environmental resources, standing up for our most vulnerable citizens, or providing legal counsel to a state agency, we are working to uphold the laws of the state and represent all who reside here.

On behalf of all of us at the Washington Attorney General's Office, it is my pleasure to present the Annual Report of 2000.

Sincerely,

Christine O. Gregoire
Attorney General

Contents

Office-Wide Initiatives	1
Youth Violence	1
NAAG Report	1
Crisis Response Box	1
Combating High Tech Crime	1
Computer Law Enforcement of Washington	1
High Tech Unit	2
Consumer and Criminal Justice Cyber Clearinghouse	2
Legislation	2
National Association of Attorneys General	2
NAAG Presidency	2
Seattle Summer Meeting	3
AG Employees Honored	3
United States Supreme Court Activity	3
Tobacco	4
Youth Tobacco Addiction Grant	4
Steward of Justice Award Recipients	4
Solicitor General Team	5
Protecting Consumers and Legitimate Business	8
Antitrust Division	9
Consumer Protection Division	10
Public Counsel Section	14
Preserving Washington’s Healthand Environment	17
Agriculture and Health Division	18
Ecology Division	20
Fish and Wildlife Division	24
Natural Resources Division	27
Protecting Public Funds	30
Bankruptcy and Collections Unit	31
Revenue Division	33
Torts Division	34
Strengthening Washington’s Education Systems	37
Education Division	38
University of Washington Division	39
Washington State University Division	41
Representing the Public	42
Criminal Justice Division	43
General Counsel Unit	49
General Legal Division	51
Labor and Industries Division	54
Labor and Personnel Division	56
Licensing and Employment Security Division	58
Social and Health Services Division	60
Transportation and Public Construction Division	65
Utilities and Transportation Division	67
Administration Division	69

Office-Wide Initiatives

Youth Violence

NAAG Report

In her role as President of the National Association of Attorneys General Washington Attorney General Christine Gregoire lead a nationwide effort to produce a report entitled *Bruised Inside, What Our Children Say about Youth Violence, What Causes It, and What We Should Do About It*. The report looked at the problem of youth violence from the perspective of those who see it first-hand – children, their teachers, school administrators and parents. Findings and recommendations in the report came from listening conferences held by NAAG and Attorneys General around the country.

The report found that many of the answers to youth violence lie ultimately with poor home lives and bullying or harassment by youth. The conversations with students also confirmed findings by various studies that many children who grow up with violence in the home use violence to solve their problems outside the home.

The report was distributed to the President, Congress, and state officials to help address youth violence and school safety issues in the wake of school tragedies.

Crisis Response Box

Attorney General Christine Gregoire and state Superintendent of Public Instruction Terry Bergeson partnered to release a new document aimed at helping schools prepare for a crisis.

The (“Bruised Inside”) report found that many of the answers to youth violence lie ultimately with poor home lives and bullying or harassment by youth.

The Crisis Response Box is a how-to guide that helps schools assemble the tools and resources they will need to respond to critical incidents such as school shootings. In early October, the “Box” was mailed to over 3,200 schools, districts, and school boards statewide.

School and law enforcement officials involved in school shooting incidents across the nation – including Littleton, Colo. and Pearl, Miss. – helped design the document based on the lessons they learned. It outlines what they wished they had at their fingertips when crisis hit their communities. The Box’s basic contents and directions were supplied to each school, which is responsible for its content and use.

Combating High Tech Crime

Computer Law Enforcement of Washington

Attorney General Gregoire joined with federal and local law enforcement to create a multi-agency team to fight crime on the Internet.

The partnership, called Computer Law Enforcement of Washington (CLEW), is a cooperative arrangement between the AG’s Office, the U.S. Attorney’s Office, the FBI, the Washington State Patrol, the Washington Association of Sheriffs and Police Chiefs and the Washington Association of Prosecuting Attorneys.

CLEW will:

- Provide a law enforcement response to complaints of high-tech crime 24 hours a day, seven days a week;

- Share expertise, resources and training to assist local law enforcement investigations and prosecutions of high-tech crimes;
- Seek funding for a computer forensics lab, which is essential for the investigation and prosecution of high-tech crimes;
- Formulate proposed legislation to help battle Internet crime.

The creation of CLEW is based on the concept that if law enforcement is going to do an effective job of protecting the public in the 21st Century, it has to adapt to the new, high-tech world.

High Tech Unit

The Washington Attorney General's Office formed a strike team of attorneys and investigators that will focus on Internet related crime. The new High Tech Unit includes a Consumer Protection Team and a Criminal Justice Team.

The unit will:

- Prosecute consumer protection and criminal cases;
- Lend its expertise to local law enforcement agencies;
- Oversee a cyber consumer resource center to help consumers file complaints on-line;
- Develop a first-in-the-nation mediation program where consumers and businesses can attempt to resolve conflicts on-line; and
- Work with industry to develop best practices which would protect consumer privacy and guard against such things as auction fraud.

Consumer and Criminal Justice Cyber Clearinghouse

The AG's Office partnered with the University of Washington to launch a clearinghouse website to help people avoid on-line fraud and crimes. The university's Center for Law, Commerce and Technology utilized the talents of UW faculty and staff to design the site, which will help protect citizens from fraud and other crimes.

The bill will strengthen the state's laws to better protect the most vulnerable citizens, such as the frail elderly, disabled persons and children, who are dependent on others for the basic necessities of life.

On the website kids and parents will find:

- Tips for safely surfing the net;
- What to do if someone is a victim of fraud or crime;
- How to file an on-line complaint with the office's new High Tech Unit; and
- Links to organizations that can help protect personal information from being bought or sold.

Legislation

Among the office's successes was a bill that creates a new crime of Criminal Mistreatment in the Third Degree. The bill will strengthen the state's laws to better protect the most vulnerable citizens, such as the frail elderly, disabled persons and children, who are dependent on others for the basic necessities of life. Criminal mistreatment would be committed when a person entrusted with the care of a dependent person or child, with criminal negligence creates a risk of substantial bodily harm by withholding the basic necessities of life.

Another successful bill revises the ballot title requirements for measures submitted to voters for their approval or rejection. The measure also gives the AG's Office five full days to prepare a ballot title.

National Association of Attorneys General NAAG Presidency

Attorney General Christine Gregoire completed her term as President of NAAG. Many of the year's accomplishments and the efforts she and her colleagues undertook were made on behalf of the nation's children.

Gregoire asked NAAG committee chairs to provide programs that would help kids deal with the threats and challenges they face in the new millennium. The chairs were encouraged to not only aim their messages at kids, but to

listen to them, involve them and ultimately empower them.

Some of those activities included Law Day/Earth Day mock trials, Consumer Week competitions, an Internet Conference, and listening conferences with kids, parents and teachers on the issue of youth violence.

Seattle Summer Meeting

State Attorneys General from around the country explored consumer privacy issues in Seattle in June at the National Association of Attorneys General Summer Meeting. The meeting was devoted entirely to the subject of privacy.

The Attorneys General created a Privacy Subcommittee that will convene a summit this spring on the role of the Attorney General and the Internet.

While the Summer Meeting marked the end of Gregoire's term as NAAG President, she remains a member of NAAG's Executive Board as Past President and will serve on the Internet Committee, Privacy Subcommittee and the Strategic Planning Committee.

AG Employees Honored

Two AG employees were honored at the NAAG Summer Meeting. Chief Deputy Attorney General Kathy Mix was honored, along with three other state chief deputy AGs, with NAAG's President Award for their work on the Multistate Best Practice Protocol.

AAG Dave Horn of the Consumer Protection Division in Seattle was honored with the Association's Marvin Award for his work on NAAG's

report, *Bruised Inside, What Our Children Say About Youth Violence, What Causes It and What We Need to Do About It*. The Marvin Award is given to staff members from AG offices throughout the country who have gone the extra mile to help NAAG.

The court held that Washington's rules covering tanker crew training, English language proficiency, navigation watch and accident reporting were "pre-empted by the comprehensive federal regulatory scheme governing oil tankers."

United States Supreme Court Activity

International Association of Independent Tanker Owners (Intertanko) v. Locke:

In a case argued before the court by the AG's Office on December 7, 1999, the court declined to uphold state regulations in an area where the regulatory authority of the

federal government had long been established.

The *Intertanko* case involved the issue of state-versus-federal authority to adopt safety regulations for oil tankers. The court held that Washington's rules covering tanker crew training, English language proficiency, navigation watch and accident reporting were "pre-empted by the comprehensive federal regulatory scheme governing oil tankers." In its opinion, the court noted that the state had enacted legislation "in an area where the federal interest has been manifest since the beginning of our Republic and is now well established."

After the *Intertanko* opinion was released in March, Attorney General Gregoire and Governor Gary Locke called on the Coast Guard to adopt new federal regulations that would fill the "gaps" in marine protection created by the decision.

Mark Selig, Superintendent, Special Commitment Center v. Andre Brigham Young:

In October, the U. S. Supreme Court heard arguments in a case involving a 9th Circuit Court of Appeals decision that casts doubt on the constitutionality of the state's Sexually Violent Predator Law as it applies to a 10-year resident of the state's Special Commitment Center (SCC) for sex offenders.

Andre Brigham Young claims he is being punished a second time because the Department of Social and Health Services, which operates the SCC, has failed to provide him with adequate treatment and subjected him to punitive conditions. Young is seeking release

from the SCC, claiming the sex predator law violates the Double Jeopardy and Ex Post Facto clauses of the U.S. Constitution by punishing him twice for the same crimes.

The state argues that a 1997 U.S. Supreme Court case upheld a Kansas statute that was virtually identical to Washington's sexual predator law. Young and others assert their confinement is such that they are treated like criminals rather than patients in a mental health facility and the statute is unconstitutional as applied to him. The state contends that if required treatment is not being provided, the proper remedy is to improve the treatment and not declare the statute invalid and release Young.

The 9th Circuit agreed that the language of the Washington law is valid but ruled that Young had alleged facts which, if true, would show that he was being punished. It sent the case back to the district court for a hearing on that question.

On January 17, 2001, the U. S. Supreme Court ruled the law is constitutional even if it is applied to individuals in a manner that is punitive.

Tobacco

Washington State received \$73.19 million in restitution from the tobacco industry in April 2000. The payment was

the first of the perpetual annual payments mandated by the 1998 Master Settlement Agreement between state attorneys general and the major tobacco manufacturers. Washington's annual restitution payments are due each April.

In addition, Washington has already received two of five initial payments, due each January through 2003, for approximately \$95 million. The state is expected to receive approximately \$4.5 billion in settlement payments through 2025.

Youth Tobacco Addiction Grant

Washington State has received a \$2.25 million grant to help battle tobacco use among young people. The grant, to be distributed in three \$750,000 installments over three years, comes from the American Legacy Foundation, which was created under the terms of the 1998 settlement reached between 46 attorneys general and the tobacco industry. Attorney General Gregoire is Chair of the Foundation Board.

Washington is one of 18 states that received grants announced by the Foundation, and is the recipient of one of the largest grant amounts awarded.

The grants will be used to expand and strengthen an organization known as Saving

Ourselves from Unfiltered Lies (SOUL). SOUL is a statewide youth movement against tobacco use formed at the first state Youth Tobacco Summit in October 1999. The grant money will allow young people from throughout the state to develop and conduct a wide variety of media campaigns to combat tobacco use among their peers.

Steward of Justice Award Recipients

The Stewards of Justice Award was created in 1998 by Attorney General Christine Gregoire to recognize employees who have made an extraordinary difference in people's lives, both professionally and personally.

The award winners are personally selected by the Attorney General and honored in front of his or her coworkers at staff conferences.

This year, three AG employees were honored by Gregoire for their dedication to their profession, their fellow employees and their community.

Recipients of the third annual Stewards of Justice Award were Teresa Kulik, Division Chief of Regional Services, Deputy AG Bruce Clausen, and Legal Assistant Jan Manberg of the Labor and Personnel Division.

Solicitor General Team

Summary of Responsibility

The Solicitor General Team was created in 1993. Its role is to provide the following services:

- Coordinate cases at the appellate levels in both state and federal courts, and conduct appellate assistance and review programs for the Attorney General's Office;
- Coordinate the office's involvement with cases in the United States Supreme Court;
- Be primarily responsible for the preparation of formal Attorney General Opinions;
- Coordinate the office's involvement with amicus curiae "friend of the court" briefs in all courts;
- Carry out the Attorney General's duties with respect to the preparation of ballot titles and explanatory statements, and represent the state in litigation involving the powers of initiative and referendum;
- Coordinate legal advice on issues of statewide significance;
- Serve as the office's primary resource on matters of public employee ethics and professional responsibility;

- Serve as the office's liaison to the state court system and the state bar association;
- Serve as legal counsel to the Office of Financial Management, the Executive Ethics Board, and the Administrator for the Courts.

In 2000, members of the team processed 58 initiative titles, consisting of 37 initiatives to the people, and 21 initiatives to the Legislature.

Legal Services Provided

A large part of the team's role is consulting with other divisions of the office concerning appellate practice, or coordinating the office's client advice on issues of statewide significance. The team has primary or exclusive responsibility for several major cases, and a secondary role in dozens of others. The Solicitor General

Team also provides a great deal of legal advice through the preparation of formal opinions and interpretative memoranda, consultation with other divisions, or directly to agencies.

Numbers/Trends

The team received notice of approximately 261 new appeals and formally consulted with other divisions concerning appeal questions or other strategies in approximately 125 cases.

The team arranged conferences with the Attorney General in 25 cases before the state supreme court.

The team coordinated practice arguments in 86 appellate cases.

Between December 1, 1999, and December 1, 2000, the office received 71 opinion requests for processing. Fifty-two were accepted and 19 were rejected because the requests involved matters in litigation, or were not within the scope of the statute on Attorney General Opinions. During the same period, the office cleared 54 opinions. Nine formal opinions were issued on subjects as diverse as the authority of boundary review boards to modify territory covered by annexation requests, the authority of the state Investment Board to invest funds in the Advanced College Tuition

Payment Program, and the projects on which municipalities may expend lodging tax revenues. Thirty-five were issued as informal opinions on a wide variety of topics. Two opinion requests were withdrawn, and eight requests were handled by a general letter but not by a written opinion.

Between January 1, 2000, and December 31, 2000, the team reviewed 123 requests for participation as amicus curiae or "friend of the court." Of the 123 requests, the office joined or authored 45 briefs. Nine briefs supported petitions for certiorari to the U. S. Supreme Court and 14 briefed the merits of cases accepted by the U. S. Supreme Court. The office was the sole or primary author of 17 briefs filed in various courts.

In 2000, members of the team processed 58 initiative titles, consisting of 37 initiatives to the people, and 21 initiatives to the Legislature. Seven of these measures were certified for the 2000 general election; six were initiatives to the people and one was a constitutional amendment. The team provided explanatory statements for the Voters Pamphlet on these seven measures. Four ballot titles were appealed to the superior court. Two were later withdrawn by the initiative sponsor.

Significant Cases And Issues

Initiative Measure No. 695: Initiative 695 was enacted in the 1999 general election and became effective January 1, 2000. The Solicitor General Team formed a work group with other assistant attorneys

general to address issues relating to the scope and implementation of Initiative 695. An issue paper was published that outlined some of the legal questions raised. Several lawsuits were filed challenging the constitutionality of Initiative 695. A new position was temporarily added to the Solicitor General Team to coordinate and lead the defense of these suits. A superior court decision invalidating Initiative 695 led to an appeal, which was argued in June 2000. In October, the state

The Solicitor General Team formed a work group with other assistant attorneys general to address issues relating to the scope and implementation of Initiative 695.

supreme court issued an opinion finding Initiative 695 unconstitutional on several grounds.

Initiative Measure No. 722: Initiative 722 was approved by the voters in the 2000 general election. The measure repeals state and local tax and fee increases enacted in 1999, and makes extensive revisions to the state's property tax system. As with Initiative 695, the

Solicitor General Team formed a work group with other assistant attorneys general to address issues relating to the scope and implementation of Initiative 722. Several lawsuits were filed as soon as the initiative was approved. A member of the Solicitor General Team and a member of the Revenue Division were assigned to represent the state's interests and to defend Initiative 722. As of the end of 2000, the litigation had been consolidated in Thurston County Superior Court, with motions for summary judgment scheduled for hearing in February 2001. A preliminary injunction has delayed implementation of Initiative 722 pending resolution of the litigation.

Sexually Violent Predator Law: The Solicitor General Team, working with an attorney from the Criminal Justice Division and a Special Assistant Attorney General from the King County Prosecutor's Office, defended Washington's civil commitment law for sexually violent predators against a challenge in the U. S. Supreme Court. The suit alleges that conditions of confinement at the institution housing sexually violent predators render Washington's civil commitment law a criminal law that violates constitutional protections against double punishment. The U. S. Supreme Court is reviewing a decision of the Ninth Circuit Court of Appeals holding that Washington's law could be divested of its civil nature and converted to a criminal law based on allegedly punitive conditions of confinement. On January 17, 2001, the U.S. Supreme Court ruled the law is constitutional even if it is

applied to individuals in a manner that is punitive.

**Amicus Brief Supporting
Constitutionality of**

California's Blanket Primary Election Law: A member of the Solicitor General Team was the primary author of a "friend of the court" brief in a U.S. Supreme Court case challenging the constitutionality of California's blanket primary law. The brief was submitted on behalf of Washington and Alaska, the two other states with a blanket primary election system.

**Amicus Brief Supporting
Constitutionality of RCW**

11.07.010: A member of the Solicitor General Team was the

primary author of a "friend of the court" brief in a U.S. Supreme Court case challenging the constitutionality of a state statute that prohibits non-probated assets from going to a former spouse after a marriage is dissolved. The issue was whether RCW 11.07.010 is preempted by the Employee Retirement Income Security Act (ERISA). The brief was submitted on behalf of Washington, Arkansas, Colorado, Massachusetts, Montana, Oklahoma, Utah, Vermont, and West Virginia.

**Use of Social Security Benefits
to Pay for Foster Care:**

The Solicitor General Team, working with attorneys from the Social and Health Services

Division, defended a challenge to DSHS's use of social security benefits to pay for a child's foster care. When a child is declared dependent and placed in foster care with the Department of Social and Health Services, the Department applies for social security benefits on behalf of the child. If DSHS is appointed by the Social Security Administration as the child's representative payee, it uses the benefits to pay for the cost of the child's foster care in accordance with the rules of the Social Security Administration. The Washington Supreme Court is reviewing a trial court decision that it was improper for the Department to use the benefits to pay for the cost of care.

Protecting Consumers and Legitimate Business

Antitrust Division

Summary of Responsibility

The Antitrust Division enforces state and federal laws protecting consumers and businesses from anticompetitive practices such as price-fixing, bid rigging, monopolization and other conduct that interferes with fair competition.

Legal Services Provided

The majority of the division's work focuses on representing consumers and state agencies in litigation seeking redress for violations of antitrust laws. The division also provides legal counsel to state agencies in antitrust-related matters. A significant component of the workload involves consumer and business education. The division also retains responsibility for oversight of certain health care matters including nonprofit hospital conversions and requests for antitrust immunity under health care statutes.

Numbers/Trends

The division recovered approximately \$2.2 million in consumer and state agency relief, in actions related to sales of toys, shoes and drugs. Additionally, significant injunctive or structural relief was achieved in two mergers involving the largest oil companies in the world. Further

relief was achieved in a hospital affiliation affecting the Seattle market.

Significant Cases and Their Impact

State v. Exxon Corporation and Mobil Corporation: Exxon Corporation merged with Mobil Corporation,

“The division recovered approximately \$2.2 million in consumer and state agency relief, in actions related to sales of toys, shoes and drugs.”

forming the largest oil company in the world. Exxon and Mobil both owned part of the Trans Alaskan Pipeline System, which is one of the major transportation links for crude oil destined for Washington State. Washington, along with the Federal Trade Commission (FTC), Oregon, California and Alaska, required Exxon to sell Mobil's interest in the pipeline

to a new entrant, Williams Pipeline. Exxon was required to sell Mobil's interest to ensure competitive pricing on oil shipments.

State v. BP Amoco P.L.C. and Atlantic Richfield Company: BP Amoco and Arco together owned the majority of crude oil exploration and producing acreage in Alaska. The vast majority of Washington's crude oil originates in Alaska. Along with the FTC, Oregon and California, Washington required BP to sell all of Arco's interest to a new competitor in Alaska. Phillips Petroleum has purchased all of Arco's Alaskan business interest.

State v. Mylan Labs, et. al.: Washington and several other states sued drug manufacturers for monopolizing and attempting to monopolize the active ingredient for an important medication. In settlement of this matter, the defendants have agreed to pay Washington approximately \$807,000 in *cy pres* distribution to consumers and approximately \$523,000 to governmental agencies for a total of \$1.33 million.

State v. Nine West Group, Inc.: Washington joined a multistate action which accused Nine West Group of illegal resale price maintenance of women's shoes. In settlement of this action, Washington will receive approximately \$633,000. The money will be distributed to

nonprofit organizations throughout the state for the benefit of women's health, education, welfare and safety.

State v. Toys "R" Us:

Washington's final payment in this matter will result in a toy distribution this year valued at approximately \$275,000. The toys will be used to provide 27 children's charities with toys, books and educational materials. Toys "R" Us settled a multistate lawsuit which was based on allegations that they colluded to restrict sales of popular toys to discount clubs. Washington received \$627,000

in toys and an additional \$267,000 to be used for toys, books or education materials for children.

Swedish/Providence Hospital

Affiliations: In an effort to ensure the parties remain as competitive as possible after their affiliation, the division required the parties to agree that no person can sit on the Swedish Board within a year of service as an officer or director of Providence. They also agreed that after the first three years of their joint venture they would not be required to notify each other of business opportu-

nities with third parties and also agreed that they will not notify each other of approaches by third parties unless the third party agrees.

Compact Discs: Washington and 44 other states and territories have sued major compact disc manufacturers and retailers for allegedly illegally maintaining the prices of compact discs at artificially high levels. The matter is currently proceeding in federal court in Portland, Maine, and has been consolidated with several private actions.

Consumer Protection Division

Summary of Responsibility

The Consumer Protection Division enforces consumer protection statutes by investigating and bringing legal actions to stop fraudulent and deceptive practices and to recover refunds, costs and penalties. It facilitates the resolution of consumer problems by notifying businesses of written complaints and informally mediating those complaints. The division also provides information to the public on consumer rights, fraudulent or predatory business activities, and issues alerts when consumers are targeted for fraudulent or illegal practices.

One of the division's key responsibilities is the administration of Washington's law for new motor vehicle warranty enforcement. Known as the "Lemon Law," this law helps

owners of new vehicles with continuing warranty repairs. Services provided include arbitration to resolve consumer and manufacturer warranty disputes, consumer and industry education and enforcement of manufacturer and dealer obligations.

Legal Services Provided

Overall Priorities: Priorities for the division in the last year continued to be areas involving vulnerable groups, such as youth and the elderly, and industries with practices that harm consumers. Some of the enforcement actions taken by the division involved sweepstakes companies, financial advice seminars, travel companies, computer companies and telemarketers who engage in deceptive practices.

Education: Educating the public about its rights and

responsibilities and reminding legitimate businesses of the proper way to do business in Washington are major services provided by the division. Consumer Protection continues to work closely with a variety of businesses and organizations including auto dealers, travel sellers and financial institutions.

Mediation: Seven Consumer Resource Centers (CRCs) located throughout the state, staffed by division employees, volunteers, and students, handle consumer inquiries and complaints against businesses. The staff notifies businesses of written complaints and attempts to informally mediate those complaints to settle disagreements between businesses and consumers. Approximately 60 percent of the complaints handled were partially or completely resolved.

Enforcement: If a business engages in conduct which involves unfair or deceptive trade practices, legal action may be taken to recover consumer refunds, assess civil penalties, and cover costs and attorney fees. The legal team also works closely with other agencies, such as the U.S. Department of Justice, the Federal Trade Commission and with federal and county prosecutors to refer cases, conduct investigations and prosecute individuals who step over the line into the criminal arena. Filing temporary restraining orders, freezing bank accounts and coordinating search warrants with the filing of civil complaints are all part of cooperative enforcement efforts.

Numbers/Trends

Consumers received more than \$13.8 million in restitution and savings as a result of legal action and complaints processed by the Consumer Protection Division and the Lemon Law Administration.

Of the total dollars collected as the result of actions taken against businesses, more than \$686,500 was paid as restitution to consumers. In addition, consumers saved nearly \$5.8 million from complaints filed with the Consumer Protection Division. Consumers also received close to \$8 million in awards and settlements with vehicle manufacturers through the Lemon Law Administration.

A total of 28,803 complaints, including 6,731 e-mails received regarding general consumer complaints, were processed in 2000 by the CRCs.

The centers also handled over 166,101 inquiries.

The Lemon Law Administration also helped consumers. Of the 299 arbitration requests filed in 2000, 79 percent of eligible disputes were resolved in the consumer's favor. As a result of the law and direct assistance to consumers provided through more than 20,971 telephone inquiries, 27,000 Lemon Law website "hits" and 427 e-mails, most disputes were resolved and did not go to arbitration.

**Consumers
received more than
\$13.8 million in
restitution and
savings as a result
of legal action and
complaints
processed by the
Consumer
Protection Division
and the Lemon Law
Administration.**

Significant Cases and Their Impact

Sweepstakes Companies: On Aug. 24, 2000, the division announced the final settlement in a series of four lawsuits filed against national sweepstakes promoters Publishers Clearinghouse, American Family Publishers, Time, Inc., doing business as Guaranteed and

Bonded, and United States Purchasing Exchange (USPE). All allegedly used deceptive tactics to make consumers believe they were a finalist and had won a sweepstakes contest or had a better chance of winning if they purchased a product.

As a result of those settlements, the four sweepstakes companies agreed to pay consumer restitution and fees, and also to follow new rules to keep from creating a false impression in vulnerable people that they are or will be winners in the sweepstakes contests.

In total, the sweepstakes companies will pay nearly \$54 million in restitution nationwide.

The settlements require the sweepstakes companies to:

- Provide clear and conspicuous "Sweepstakes Facts" in contest entry forms that include the odds of winning, and clearly state a person's chances of winning will not be increased by making a purchase;
- Offer a standard means of entering sweepstakes for free;
- Refrain from misrepresenting that consumers have won or are close to winning;
- Cut off high volume purchasers who may be confused or misled about their likelihood of winning, or misunderstand that buying will not help them win a prize;
- Fully disclose the nature and value of bonus items offered to purchasers;

- Maintain a toll-free telephone number for consumers to call if they wish to be placed on the company's "Do Not Contact" list.

In the past four years, more and more consumers complained to the AGO about sweepstakes companies. More than 650 complaints were received concerning the four companies sued by the AGO. The complaints came from people around Washington State who have played the sweepstakes, and from family members desperate to stop relatives, most of them elderly, from spending thousands of dollars trying to become a winner.

Wade Cook Financial: In October, the Consumer Protection Division, the Federal Trade Commission and the state Department of Financial Institutions announced a settlement with Wade Cook Financial and Wade Cook Seminars. The two companies allegedly sold "get rich quick" investment advice that wasn't backed up by results.

Under the terms of the settlement, Cook's companies will stop using deceptive practices and pay restitution to as many as 13,400 Washington consumers who paid a total of \$53.8 million to participate in Wade Cook seminars. Cook has personally guaranteed that he will pay the restitution if his companies are unable to. In addition to the restitution, the firms will pay Washington State \$136,000 for consumer education and to reimburse the state for its investigative costs.

The complaint filed against the firms alleged that Cook's

companies made false claims about the wealth he'd acquired and made illusory guarantees about possible success in the stock market using his methods. The state contended that Cook manipulated claims of financial success by not disclosing losing transactions, and that the companies falsely reported trading transactions.

Travel Sellers: The division achieved significant gains in its efforts to enforce consumer protection laws in the travel industry.

In March, stipulated judgments entered in King County Superior Court ordered Bothell-based Ultima Systems, Inc., to pay \$90,000 in restitution to consumers for violating its agreement to stop deceptive practices in the sale of travel club memberships in Washington and Oregon.

In March, stipulated judgments entered in King County Superior Court ordered Bothell-based Ultima Systems, Inc., to pay \$90,000 in restitution to consumers for violating its agreement to stop deceptive practices in the sale of travel club memberships in Washington and Oregon.

In these judgments, the company and two individuals, its owner and a manager, admitted breaking the law and violating a consent decree originally entered in the case in 1997. The state alleged the company engaged in unfair sales tactics, and misrepresented the amounts and availability of travel discounts.

Even after entry of the original consent decree, Ultima continued using "free prize" offers to entice customers to attend high-pressure sales presentations and misrepresented actual services provided to members.

In a related case, the division settled with a Lynnwood-based vacation club marketing firm, Vacation Marketing Systems, that was accused of engaging in the same conduct as Ultima. In fact, Vacation Marketing sold the same product - "The Advantage" travel club membership -- and employed the same customer service staff, and, until 1999, shared the same address and phone number with Ultima.

In papers filed in King County Superior Court by the Consumer Protection Division, Vacation Marketing Systems and its owner, Michael Vasey, were ordered to pay an undetermined amount of restitution to consumers and \$40,000 in fees. Civil penalties of \$100,000 will be suspended if the defendants keep their promise not to break consumer protection laws in the future.

In June, the state settled its case against Robin Leach, host of "Lifestyles of the Rich and Famous" and spokesman for a travel service whose "dream

vacations" proved to be nightmares for some consumers.

Leach was the pitchman for National Travel Services, one of three Florida travel companies sued by 12 separate states Attorneys General for allegedly misleading consumers into believing they had won or were entitled to a dream vacation.

Though he admitted no wrongdoing, Leach agreed to comply with Federal Trade Commission guidelines that require spokespersons to base endorsements on honest beliefs formed from personal knowledge or experience. The state contended that Leach did not investigate National Travel's vacation packages and therefore could not honestly claim the trips were the "vacation experience of a lifetime."

High-Tech Unit: In April, the division announced creation of a High-Tech Unit in conjunction with the Criminal Justice Division, and in coordination with local, state and federal law enforcement agencies and prosecutors. The unit is charged with enforcing the state's consumer protection laws by focusing on violations committed in cyberspace, supporting local police and prosecutors in investigating and prosecuting online crime and educating the public on online crime and how to avoid being victimized.

The unit in October filed its first two cases -- one against an Internet-based promoter of illegal pyramid and Ponzi schemes, and the other against a Redmond-based seller of web hosting services.

State attorneys accused Silverdale-based Detailshere.com of violating the state's Chain Distributor Schemes Act and Consumer Protection Act by operating the illegal pyramid and Ponzi schemes, all of which were cloaked in a variety of legitimate-sounding descriptions, such as "investment opportunities," "gifting programs," "art opportunities," and "offshore accounts."

In a separate action, the unit accused Redmond-based

**... the division
announced
creation of a High-
Tech Unit in
conjunction with
the Criminal
Justice Division,
and in
coordination with
local, state and
federal law
enforcement
agencies and
prosecutors.**

Matrixcubed Internet Services, which provides individuals and businesses with space on the Internet to house and maintain websites, of violating the state's Consumer Protection Act. The state's complaint alleges that Matrixcubed failed

to make refunds, provide its promised 24-hour technical support, provide services paid for and respond to complaints. The lawsuit also alleges that Matrixcubed misrepresented the number of Internet users who could simultaneously visit sites it hosts.

Computer Company: In September, a King County Superior Court judge issued a default judgment against Microworkz, a Lynnwood-based seller of computer equipment, for violating state consumer protection laws, including failing to deliver computer equipment as ordered. As a result of that judgment, the state was awarded \$1.53 million in penalties.

Microworkz entered the computer market in early 1999 when it introduced the Webzter, a computer that sold for between \$400 and \$6,000. Soon after, the company introduced a computer that sold for \$199 and was touted as providing basic functions such as e-mail, word processing and Internet services in a non-Windows environment. In addition to allegedly failing to deliver the equipment purchased, the company also failed to give refunds and honor warranties.

Predatory Lending/Equity Skimming: In June, the Consumer Protection Division settled with two individuals and a partnership who made a series of real estate loans to a co-defendant who allegedly used the loan proceeds to "skim" equity from residential properties. Most of the homes were purchased from

homeowners in financial distress. The buyer allegedly persuaded the homeowners to transfer title to him for little or no money down and to grant him a priority equity interest in the property. He then used the equity to obtain loans. The loans were repayable at 40 percent to 45 percent interest and structured so that the risks were placed entirely on sellers, who unwittingly had given

control of their equity to the buyer. Six sellers lost their equity when the buyer failed to make the loan payments, and the properties were sold to satisfy his debts.

The case against the lenders in State v. No Money Down Homes, Inc., et al. was resolved after a Spokane County Superior Court judge declined to

dismiss the state's complaint, which alleged the loan transactions were unfair and predatory. Shortly thereafter, the lenders entered into a consent decree with the division and paid \$270,000 in restitution and attorneys' fees and costs. They are also prohibited from acting as lenders, brokers, or providers of high cost, "hard money," real estate loans in the future.

Public Counsel Section

Summary of Responsibility

The Public Counsel Section represents consumers who would not otherwise have an effective voice regarding the rates, services and business practices of the investor-owned telephone, electric and natural gas utilities operating in the state. Cases are conducted and issues presented in proceedings before Washington's Utilities and Transportation Commission (WUTC), in state court, and in other forums as appropriate.

Legal Service Provided

The Public Counsel Section advocates for the interests of consumers in a variety of ways, including as a statutory party in major rate cases and all other cases before the WUTC, by presentations at WUTC bi-weekly business meetings, through technical study groups, court appeals, and by working with and providing information to the Legislature

and other policy makers. Public Counsel routinely seeks the advice of independent, expert consultants to analyze utility issues in areas such as accounting, economics, finance, engineering and rate design.

Public Counsel is an important voice for consumers on utility issues of technical complexity and an important resource for policy-makers seeking to understand the effects of decisions on Washington utility customers. The section is also an important participant in forums where the commission has asked interested parties to resolve utility regulation issues outside of the administrative litigation process. These "collaborative" or "technical advisory" committees meet regularly to reach consensus on specific issues.

The section maintains contact with the public through a citizen advisory committee, community organizations, personal contact, and letters and telephone calls from consumers in major rate cases.

The citizen advisory committee is appointed by the Attorney General to provide a sounding board for utility issues of concern to citizens. Its 15 members come from all over the state and from various backgrounds and interests. The committee meets five times a year to provide advice and to learn about current utility issues. In major rate cases, Public Counsel provides consumers with information about the positions of all parties and assists consumers in presenting their views, either in writing or in person, to the commission.

Significant Cases and Their Impact

Telecommunications

US West Yellow Pages: US West, now known as Qwest, petitioned the commission to end the "imputation" of excess yellow pages profits for the benefit of ratepayers. This case is worth at least \$800 million to customers as a one-time value. US West has requested that yellow pages revenue not be

considered for ratemaking purposes, a result which could cause residential rates to go up by about \$4 per month, or \$90 million a year. Public Counsel worked jointly with AARP and TRACER, a business customer group, on this case, taking the position that imputation should continue until the yellow pages business is fully transferred to a subsidiary and valued on a current basis, rather than as of 1984, with that value paid to ratepayers. After an evidentiary hearing and the filing of legal briefs, the WUTC ruled against Qwest. Qwest has now filed an appeal in state court. Public Counsel expects to file briefs on appeal in support of the commission's decision.

US West 1995 Rate Case Refund Settlement: At the end of 1997, the Washington Supreme Court upheld the commission's 1995 rate case decision reducing US West's rates by more than \$90 million and ordering the company to make over \$200 million in refunds to consumers. At the end of the refund process, Public Counsel and other parties raised questions about remaining unreturned funds. In 2000, a negotiated settlement was approved by the state court under which Qwest agreed to contribute \$26 million to projects designed to benefit telecommunications customers. The court approved distribution of funds to the following projects:

- E911 network improvements \$5.3 million
- Community voice mail \$650,000
- Telemedicine services \$3.9 million

- K-20 libraries projects \$5 million
- Community economic development \$5 million
- Consumer education and outreach \$2 million
- Provision of service to unserved areas \$900,000
- Network infrastructure improvements \$3.1 million

Public Counsel is an important voice for consumers on utility issues of technical complexity and an important resource for policy-makers seeking to understand the effects of decisions on Washington utility customers.

US West/Qwest Merger: US West, the state's largest local telephone company with over two million lines, and Qwest, the nation's fourth largest long distance company, announced a proposed merger to be completed in mid-2000 and requested approval from the WUTC. After the merger litigation began, Public Counsel, Qwest, US West and the commission staff entered into a settlement which imposed

conditions on the merger to ensure benefits for customers. The conditions include a three-year rate freeze, infrastructure improvements, protection against merger costs, customer specific service guarantees (bill credits for service failures), and a service quality program under which Qwest must pay up to \$20 million per year in credits to customers if it fails to meet service quality requirements.

MCI (Worldcom)/Sprint Merger: MCI (Worldcom) withdrew its application to the WUTC for merger approval with Sprint. The WUTC was among the first regulatory bodies to review the proposed merger. Several parties, including Public Counsel, opposed the merger in Washington. When the European Union and U.S. Department of Justice subsequently voiced concern over this merger reducing competition in the long distance market and concentrating market power for the internet backbone network, the companies withdrew their merger plans.

Energy

Avista Rate Cases: Avista (formerly Washington Water Power), serving electric and gas customers mostly in Spokane and Eastern Washington, filed a rate case seeking electric rate increases of 14 percent for residential and 7-8 percent for small and medium commercial and industrial customers (about \$20 million annually in increased rates). Avista simultaneously filed for an increase in gas rates of over \$4 million annually. Public Counsel presented expert witnesses and filed a nearly 100 page post-

hearing brief recommending a \$32 million reduction in electric rates and a \$1.1 million reduction in natural gas rates. The commission issued a decision reducing electric rates by \$3 million and deferring other issues.

Pacificorp Rate Case:

Pacificorp requested a \$25.8 million annual increase in its rates to be implemented over two years in November 1999. The requested increase would have raised rates 8.1 percent in the first year and 5.73 percent in the second year. Public Counsel and other parties reached a settlement with PacifiCorp in June 2000, in which the company will receive a 7 percent increase spread out over five years. The settlement also includes a provision for the adoption of a charge to fund energy efficiency and the development of a program to assist low-income customers in making payments. Credits to customers from the company's merger with Scottish Power last year, and the sale of the Centralia coal plant are expected to offset a significant portion of the rate increase. Pacificorp serves electric customers in Yakima, Walla Walla, Kittitas, Garfield, and Columbia counties in southeast Washington.

Centralia Sale: In spring 2000, all three major electric utilities

in Washington received WUTC approval to sell their interest in the Centralia coal-fired generating plant in Washington. Public Counsel had opposed the sale on the grounds that it would harm consumers by exposing them to significantly higher costs for power in the future. The commission did adopt our recommendation to retain more than 90 percent of the gain from the sale for Washington ratepayers. We continue to be concerned about the sale of low-cost resources in an era of dramatic increases in market prices for electricity.

Electric and Gas Utility Rules Review:

The commission is undertaking a comprehensive review of administrative rules (regulations) involving electric and gas utilities. Public Counsel is participating in the rulemaking, particularly emphasizing issues involving consumer protection rules.

Major Issues/ Events

Telecommunications: The telephone industry continues to require major attention. The movement towards a competitive industry, especially at the local level, has a long way to go and has created much litigation. Nearly five years ago Congress passed the landmark Telecommunications

Act of 1996, which requires local companies to open parts of their networks for the use of competitors, with payment at a fair price. In the wake of the Act, the WUTC has been examining universal service, access charges, and prices for unbundled elements, as well as competition issues. Service quality concerns persist, particularly for large local phone companies. Legislative activity on universal service and price cap proposals is of great importance to Washington customers. Major mergers involving Washington's largest local telephone companies, GTE (now "Verizon") and US West (now "Qwest"), have changed the landscape.

Electric Utilities: Public Counsel has monitored and commented the BPA rate case for its impact on the appropriate allocation of the benefits of the federal hydro system. In addition, the office has participated with other consumer groups in the stakeholder process related to the development of a Regional Transmission Organization for the West. Debate continues regarding restructuring the electric industry to introduce more competition, particularly in light of dramatic increases in customer bills and other developments in the restructured California market.

Preserving Washington's Health and Environment

Agriculture and Health Division

Summary of Responsibility

The Agriculture and Health Division provides legal advice and litigation services to several major state agencies, including the Department of Health (and its associated boards, commissions and committees); the State Board of Health; the Health Care Authority; the Department of Agriculture; 24 Commodity Commissions; the Department of Community, Trade and Economic Development (CTED); the Department of Financial Institutions; the Northwest Compact on Low Level Radioactive Waste Management; and the Columbia River Gorge Commission. The division also prosecutes enforcement actions brought by the Executive Ethics Board.

Legal Services Provided

The division provides a full range of legal representation to its clients, both legal advice and litigation services. The work involves the oversight of health care practitioners and facilities; regulation of activities posing threats to human health such as food processing, the conveyance of public drinking water, the application of pesticides and the disposal

of radioactive materials; and prosecuting actions against regulated financial organizations. Other major efforts include assisting CTED in implementing the Growth Management Act (GMA); interpreting and enforcing the 1995 Ethics Law; reviewing archaeological site permitting; reviewing distribution of economic assistance grants; and advising with respect to the promotion of business development, both within the state and internationally. Finally, the division advises and represents its agency clients in their implementation of legislative initiatives to promote community and economic development and public health.

Numbers/Trends

Most of the division's Department of Health litigation caseload involves administrative disciplinary actions against health professionals. While the number of cases has remained relatively constant with a great majority of cases resolved prior to hearing, those that go to hearing have become increasingly complex. Rising health care costs, particularly for prescription drugs, and problems with access to care, particularly in rural areas, are anticipated to require increasing attention from both the

Department of Health and the Health Care Authority.

The Department of Agriculture is responsible for controlling plant and animal pests that threaten the state's agricultural commodities. Given the increase in the number and extent of proliferation of such pests, we can anticipate increasing tensions between the need for control and environmental concerns.

The Department of Trade and Economic and Community Development administratively reorganized this year into two principle units, one focusing on the agency's trade mission and another on the agency's community development mission. On behalf of the agency, our involvement in Growth Management Act issues has decreased significantly over the past year while our involvement with the Energy Office in connection with power plant siting issues has increased significantly.

Significant Cases and Their Impact

Resist the List v. Selecky:

Though AIDS and symptomatic HIV disease had long been conditions which health care providers and labs were required to report to state or local

health departments, asymptomatic HIV disease had not. Effective September 1, 1999, the State Board of Health adopted rules which required the reporting of asymptomatic HIV disease. The rules represented a compromise, worked out over the course of approximately a year among health care providers, public health officials and the HIV/AIDS community. Many health care providers and public health officials had been in favor of reporting HIV positive individuals to local health departments by name (consistent with the procedure used for other sexually transmitted diseases); the HIV/AIDS community had been in favor of reporting HIV positive individuals by a "unique identifier" with names remaining confidential. The compromise has health providers and labs reporting the names of HIV positive individuals to health departments; after 90 days the health departments delete the name in favor of a unique identifier. An association called *Resist the List* is opposed to any form of names reporting. The group filed an action in Federal District Court in Seattle alleging that the HIV reporting rules violate various provisions of the federal and state constitutions. The District Court granted the state's motion to abstain, a decision affirmed by the Ninth Circuit Court of Appeals in October. *Resist the List* has refiled in King County Superior Court.

Skamania County and Brian and Jody Bea v. Columbia River Gorge Commission: In January 1999, the Columbia River Gorge Commission issued a final administrative

order stopping construction of a house overlooking the Columbia River in Skamania County and ordering the county to take such steps as were necessary to ensure compliance with the Federal Scenic Area Act and state statutes which implement the Act. The property owners and the county filed actions in Skamania County Superior Court challenging the authority of the Commission to issue its order, and, in the case of the property owners, alleging various constitutional and

Rising health care costs, particularly for prescription drugs, and problems with access to care, particularly in rural areas, are anticipated to require increasing attention from both the Department of Health and the Health Care Authority.

infringements on their property rights. The superior court affirmed the administrative decision. The state supreme court granted the plaintiffs request for direct review and heard arguments at the end of November.

Mader v. State: Part-time community college employees have filed a class action in superior court against the Board of Community and Technical Colleges, the Department of Retirement Systems

and the Health Care Authority. With respect to the Health Care Authority, plaintiffs allege an entitlement to continued health care benefits during periods when they are not teaching.

Dawn Mining: The Department of Health had licensed the Dawn Mining Company to fill an excavation pit near Spokane with uranium mill tailings as part of a statutorily required reclamation effort. The department amended Dawn's license, conditionally approving the route by which the company would transport fill materials. The Spokane Indian Tribe filed an action in the Federal District Court in Spokane contending the action contravened "environmental justice" provisions of the Federal Civil Rights Act. Dawn subsequently offered an alternative proposal under which the company would use clean fill from an adjacent property, but would also dispose of small amounts of uranium bearing sludge from a mine operation on the Spokane reservation. Both the department and the tribe are evaluating a new proposal and its effect on the pending litigation.

Manufactured Housing Communities of Washington v. State: A state statute required the owners of mobile home parks to provide tenants a right of first refusal in the event of a proposed park sale. A park owners association asserted that the statute effected a facial taking, impermissible under both state and federal constitutions. The court of appeals affirmed a superior court decision rejecting these assertions. The supreme court granted review, and in

November, reversed the court of appeals, holding that the statute, though well intentioned, did effect a taking under the state constitution.

Nationscapital Mortgage Corporation: The Department of Financial Institutions instituted a license action against this California based mortgage broker alleging numerous violations of applicable regulations, and seeking more than a million dollars in restitution, fines and investigative costs. After a six week administrative hearing, an initial decision is pending.

Major Issues/ Events

Health Care Access and Health Care Funding: Concerns over access to health care and health care funding prompted several major initiatives over the past year involving the division's clients. In

August the Governor issued an executive order announcing the AWARDS program which is intended to provide prescription drug discounts to Washington citizens 55 and older who lack prescription drug coverage. The Department of Health and the Health Care Authority are responsible for implementing the program. Noting regional disparities in federal reimbursement to providers of managed-care-Medicare which disadvantages this state's Medicare population, the Office of the Attorney General and the Department of Health are exploring the reasons for these disparities and possible remedies.

Health Insurance Portability and Accountability Act: Recent federal legislation has imposed new requirements on health care providers and others with access to health care information. The new requirements, which affect a

number of state agencies including the Department of Health and the Health Care Authority, balance interests in the standardization and electronic transmission of health care data with strict privacy standards. Implementation will be a major effort over the next several years.

Regional Power Supply: After many years in which the state enjoyed a relative abundance of low cost power, the state's power needs have begun to outstrip supply. This has resulted in the significant increase in the number of expected or actual applications for new power supply plants to the Energy Facility Site Evaluation Council. Each siting application raises environmental and energy policy issues of concern to a number of state agencies, including the Department of Community Trade and Economic Development.

Ecology Division

Summary of Responsibility

The Ecology Division represents the Department of Ecology, Puget Sound Water Quality Action Team, Pollution Liability Insurance Agency, and the State Conservation Commission.

Legal Services Provided

The Ecology Division works to resolve environmental problems and disputes using a

variety of legal tools including negotiation, multi-party mediation, and litigation when necessary. Division attorneys provide advice on a broad spectrum of matters, including permitting, legislation, rule-making, and enforcement. The division's practice includes hearings before administrative boards as well as trials and appeals before state and federal courts.

Numbers/Trends

Ecology attorneys are required to apply increasingly complex

problem-solving techniques as the public's understanding of the causes of environmental problems grows, and the sophistication of those affected by our clients' decisions increases. At the same time, budget constraints on client agencies require that the Ecology Division attorneys work to develop more efficient mechanisms for resolving environmental disputes. For instance, the division is putting additional resources into providing training for Department of Ecology employees to prevent unnecessary and avoidable

litigation. Areas addressed through statewide training efforts over the last year have included the Endangered Species Act, Enforcement and Wetlands. The division has also made full use of Alternative Dispute Resolution including the use of mediation in several major cases.

The workload associated with water resource management poses the most significant challenge for the division as a result of the listing of a significant number of salmonid fish species as endangered or threatened under the Endangered Species Act and increased development pressures associated with the state's growing population. Complicating these issues further is the need to balance these issues with growing regional power generation needs that are served, in part, by hydroelectric facilities.

However, water resources issues are not the division's only challenge. Litigation and negotiations with the U.S. Department of Energy over the cleanup of radioactive waste at the Hanford facility has required a significant commitment of resources. Further, division clients face increasing litigation pressures across all media (air, water, and land) due to increasing public awareness and understanding of the threats to public health and the environment. Finally, the division is also seeing growing numbers of large-scale commercial and industrial development projects that require approvals under multiple statutes and programs.

Water Resources: Cases in this area include defending permit

decisions, rules, and enforcement actions as well as prosecuting general stream adjudications. The division is working closely with the Governor's Office and the department in the development and implementation of a judicial and legislative strategy to reform our state's system of water resource management. As part of this strategy, the division is litigating issues of enforcement, municipal water rights, water metering, the authority of local conservancy boards, and the licensing of groundwa-

Litigation and negotiations with the U.S. Department of Energy over the cleanup of radioactive waste at the Hanford facility has required a significant commitment of resources.

ter withdrawals. In addition to the workload pressures generated by Endangered Species Act listings, the division is experiencing an increasing workload associated with the large number of hydroelectric dams soon to be subject to federal relicensing. In the state's longest running general

adjudication, Aquavella, the division will continue with efforts to use mediation to significantly narrow the issues remaining to be litigated.

Water Quality: Ecology attorneys defend permit decisions and enforcement actions. The division is also advising the Department of Ecology regarding its efforts to address non-point source pollution and its implementation of the Total Maximum Daily Load ("TMDL") requirements of the federal Clean Water Act.

Division attorneys have seen a continued referral of a significant number of enforcement actions involving dairy farms. Increased workload in this area will also result from advising and defending Ecology decisions regarding the regulation of stormwater discharges, the adoption of new statewide water quality standards, and the renewal of a significant number of pulp and paper mills discharge permits.

Hazardous Waste Management and Cleanup: In these cases, division attorneys negotiate and enforce consent decrees or orders requiring cleanup of sites contaminated with hazardous substances. The division also defends Ecology permit decisions and enforcement actions against facilities which generate, treat or dispose of hazardous wastes in order to prevent the creation of more contaminated sites. The division continues to look for opportunities to promote "brownfields development" through the use of innovative agreements allowing purchasers of contaminated property to resolve liability concerns thus freeing up the properties for development.

Division attorneys have also been advising the department in its amendment of the toxics cleanup rules, which are being proposed to improve the cleanup process. Significant new areas of work include advising and defending Ecology as it develops new regulatory approaches for handling emerging problems such as the closure of major hazardous waste treatment, storage and disposal facilities, and the widespread contamination of arsenic and lead resulting from lead smelters and the past application of lead arsenate to fruit orchards.

Shorelines: Division attorneys defend Department of Ecology permit decisions and enforcement actions, as well as Ecology appeals of shoreline permits issued by local governments. There is a trend toward more complex cases in this program. In addition, the division is currently defending the Department of Ecology's new statewide Shoreline Management Act guidelines, which have drawn significant public attention.

Air Quality: In this area, the division defends Department of Ecology permit decisions and enforcement actions. The department continues to actively enforce its regulations relating to agricultural burning through the issuance of enforcement orders which are often appealed. Another enforcement priority, and subsequently an area heavily litigated, involves aluminum smelters. The division is also defending a novel challenge to its decisions regarding the regulation of wheat stubble burning based upon the Ameri-

cans With Disabilities Act. The Department of Ecology is currently implementing a new program requiring issuance of complex, facility-wide air operating permits which is generating additional workload for the Ecology Division both in requests for advice as well as defenses of permit decisions.

Other: Division attorneys also work in a number of other areas including the regulation of water well drillers, solid waste management, environmental review of significant

... the division is currently defending the Department of Ecology's new statewide Shoreline Management Act guidelines, which have drawn significant public attention.

projects under the State Environmental Policy Act, and oil spill prevention and cleanup. Oil spill prevention and cleanup has been a particular focus in the aftermath of the Intertanko decision significantly narrowing the state's authority to regulate oil tankers, and the pipeline explosion which killed three children in Bellingham.

Significant Cases and Issues

Hanford: The state continues to press the U.S. Department of Energy to make significant and enforceable commitments of resources to design, construct and operate a facility to safely manage and treat the large volumes of highly radioactive liquid waste contained in aging single-shell tanks at Hanford. The division is defending Ecology decisions to increase the state's regulatory oversight at Hanford and negotiating new approaches to ensuring compliance with state and federal cleanup requirements.

Intertanko v. Locke: The U.S. Supreme Court overturned a Ninth Circuit decision and invalidated much of the state's oil spill prevention regulations applying to oil tankers based upon principles of federal preemption. A number of the state's regulations were remanded for a determination of validity in light of the court's ruling. In response, Ecology repealed the challenged regulations and is developing a new approach for ensuring that oil spills in Washington waters are prevented, relying more heavily on a cooperative role with the U.S. Coast Guard. The Ecology Division assisted in the development of the briefs and arguments submitted to the supreme court and is the lead adviser to Ecology in the development of a new regulatory approach.

ASARCO v. Ecology: In late 1999, ASARCO prevailed before a Thurston County Superior Court in a constitutional challenge to the retroactive application of the

state's cleanup law. This case involves lead and arsenic contamination deposited by a lead smelter operated by ASARCO in the early part of the 20th century. The contaminated area is currently the site of a residential neighborhood. Ecology Division attorneys have filed briefs before the state supreme court appealing the lower court's decision.

Battle Mountain Gold: After a significant and lengthy hearing, the Pollution Control Hearings Board (PCHB) vacated the Department of Ecology's issuance of a Clean Water Act Section 401 Certification and reversed its issuance of water rights for Battle Mountain Gold's Crown Jewel Mine project. As a consequence, the applicant, Battle Mountain Gold, has stopped development of this major gold-mining operation in Eastern Washington pending appeal.

Postema v. Pollution Control Hearings Board ("Hydraulic Continuity"): Following briefing and argument by division attorneys, the state supreme court substantially upheld the state's position in consolidated appeals of a series of water rights decisions by the Department of Ecology. The court held that Ecology appropriately denied applications to

withdraw groundwater that would decrease flows in surface water sources that were either closed from further appropriations or had minimum flows set which were not being met. Division attorneys have filed a motion for reconsideration on the application of the rule of law developed in the court's decision to certain of the cases decided by the court.

The state continues to press the U.S. Department of Energy to make significant and enforceable commitments of resources to design, construct and operate a facility to safely manage and treat the large volumes of highly radioactive liquid waste contained in aging single-shell tanks at Hanford.

Save our Summers v. Ecology: Division attorneys are in federal court defending the Department of Ecology's decisions relating to the regulation of wheat stubble burning against a challenge based upon

the Americans with Disabilities Act. Plaintiffs include children with respiratory ailments or other disabilities affected by agricultural smoke, and an environmental advocacy group. The Wheatgrower's Association has sought to intervene.

PUD No. 1 of Pend Oreille County v. Ecology ("Sullivan Creek"): In a case involving a Clean Water Act Section 401 Certification and two water right change decisions, the PCHB ruled that Ecology has the authority to issue bypass flow conditions to a dam operator in order to ensure compliance with water quality standards, even where those conditions would have an incidental effect on the operator's ability to exercise its water right. The decision has been appealed to the state supreme court.

Shoreline Management Guidelines: Division attorneys assisted Ecology in the development and promulgation of updated shoreline management guidelines for use by local governments in review of development near shorelines. These guidelines have been challenged by a variety of interests and the division will be defending the rules before the Shorelines Hearings Board this coming year.

Fish and Wildlife Division

Summary of Responsibility

The Fish and Wildlife Division represents the Department of Fish and Wildlife in all types of legal matters before state and federal courts and administrative tribunals. In addition, the division advises the client agency in a wide variety of civil and criminal matters, assists local prosecutors, and provides general information to the public concerning natural resource issues.

Legal Services Provided

The division provides litigation and advice services covering a wide range of legal issues including: fish and wildlife resource management and habitat protection, Indian tribal issues, legislation, rule adoption, public disclosure, hydro-power licensing, enforcement, land acquisition and management, public works construction, endangered species issues, water rights, contracts, licensing appeals, Shoreline Management Act and Growth Management Act cases, and appeals of hydraulic project approvals and forest practice permits.

Significant Cases and Their Impact

Indian Treaty Rights: The division is the principal legal advisor and representative on

all legal issues pertaining to the hunting, fishing, and gathering rights of the tribes in Washington.

United States v. Washington, subproceeding 89-3 (shellfish): In January 1998, the Ninth Circuit Court of Appeals issued a ruling affirming the trial court's decision that tribes may take up to half of the shellfish from most beaches (including shellfish farms and private lands) and half of all deep water shellfish fisheries (crab, shrimp, and geoduck). Since that decision became final, the division has assisted the department in developing and negotiating management and harvest agreements to facilitate implementation of the Ninth Circuit's decision.

United States v. Oregon: The Columbia River Treaty Tribes, the Columbia River basin states, and the federal government are negotiating a new fish management plan governing the mainstem of the Columbia River where it flows through Idaho, Oregon, and Washington. The existing plan, adopted in 1988, has expired, but the parties are attempting to maintain the cooperative planning atmosphere experienced during the past decade when a plan was in effect. The division is advising Fish and Wildlife regarding the complex and challenging legal issues that arise during the negotiations, including those involving the Endangered Species Act

(ESA) and its relation to federal Indian law. The agreement, once negotiated, will directly impact multi-million dollar fisheries on the Columbia River.

Treaty Hunting Rights: In June 1999, the state supreme court, ruled that the geographic scope of the treaty hunting right was limited to open and unclaimed lands within ceded areas and traditional hunting grounds. Since the supreme court's decision, various state courts have been called upon to try to determine the geographic scope of particular treaty hunting rights. The division has assisted in the resolution of hunting rights issues, both in court and by assisting the department in the negotiation of arrangements that accommodate the parties' respective needs while preserving their respective legal arguments.

Interjurisdictional Fisheries: The division advises Washington's representatives to the Pacific Salmon Commission, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and other fishery management bodies on matters related to ocean and international fisheries issues.

Washington v. Daley: The states of Washington and Oregon, together with fishing industry parties, challenged regulations adopted by the

Secretary of Commerce pertaining to coastal tribes' harvest of Pacific whiting under the Magnuson Act. The case involved important issues of entitlement and allocation of Pacific whiting and other ground fish species. Washington challenged the regulations on both procedural and substantive grounds. Washington was able to settle all but one of the issues. Other parties to the case are now pursuing appeals in the Ninth Circuit.

Pacific Salmon Treaty: In 1985, the U.S. and Canada executed the Pacific Salmon Treaty, which set up a framework for negotiating fishing regimes. The two countries, however, disputed the meaning of key terms in the treaty. British Columbia sued the states of Washington and Alaska and the United States in U.S. District Court, alleging violations of the Pacific Salmon Treaty. The district court dismissed the case. In 1999, shortly before British Columbia argued its appeal to the Ninth Circuit, the U.S. and Canada reached agreement on a new set of fishing regimes. After further negotiation, British Columbia withdrew its appeal. The division assisted in the drafting of agreements involving several state and tribes to clear the way for implementation of the new U.S.-Canada agreement.

Endangered Species Act: The ESA has been the source of a rapidly growing workload for both Fish and Wildlife and the division. The division counsels and represents the department in a wide range of settings related to the protection and recovery of terrestrial and aquatic species that have been

listed or are candidates for listing under the ESA.

Puget Sound Region: The recent listings of the Puget Sound chinook salmon, bull trout, and Hood Canal summer chum salmon have generated numerous requests for advice and assistance. These listings will impact heavily urbanized areas in the greater Puget Sound region. The division has assisted the department and the Governor's Salmon Recovery Office in a myriad of

The division has assisted in the resolution of hunting rights issues, both in court and by assisting the department in the negotiation of arrangements that accommodate the parties' respective needs while preserving their respective legal arguments.

activities and initiatives related to the protection and recovery of these species, including discussions and negotiations pertaining to the development of federal rules for the protection of these species.

Columbia River Region: The division continues to advise Fish and Wildlife regarding ESA listings in the Columbia and Snake River basins. Listings of these species require coordination of, harvest planning with resource protection

actions, recovery actions, and adjustment for tribal uses.

Salmon Recovery Funding: The Governor's Salmon Recovery Office is administering the distribution of \$20 million in federal grant money from the U.S. Fish and Wildlife Service to local governments and federally recognized Indian Tribes for salmon recovery efforts. The division prepared the Project Grant Agreement and accompanying documents that will govern the grants.

Hydropower Issues: The division represents Fish and Wildlife in proceedings before the Federal Energy Regulatory Commission (FERC) and federal courts concerning the licensing and re-licensing of hydropower generating facilities (dams) throughout the state. The proceedings are often lengthy and complex, involving high stakes contests between the economics of electrical power generation and the protection of fish and other wildlife resources that are jeopardized by the presence and operation of the facilities.

Cushman: In July 1998, after a 24-year relicensing proceeding, the FERC issued a license for the Cushman hydroelectric project on the North Fork of the Skokomish River. Most of the parties to the proceeding sought rehearing and requested interim relief in the form of increased minimum flows during the pendency of the appeals. The requests for rehearing and interim relief were denied. The case was appealed to a federal court of appeals in Washington, D.C. After a series of procedural motions, the case was remanded back to FERC to address ESA compliance issues.

Condit: The division assisted Fish and Wildlife in securing a settlement agreement between PacifiCorp, the owner and operator of Condit dam on the White Salmon River, and several state and federal agencies, the Yakama Indian Nation, and non-governmental organizations. The agreement would provide for a 13-year extension of the current license and eventual removal of the dam. The agreement is now in the final review and comment period. The agreement was submitted to FERC and further environmental review has been initiated.

Cowlitz: The division assisted Fish and Wildlife in reaching a settlement agreement regarding the licensing of the Cowlitz hydroelectric facility. The agreement, which includes several local, state, and federal agencies, the Yakama Indian Nation, and several environmental groups, resolved a very challenging legal proceeding concerning the relicensing of this facility. The 40-year agreement includes provisions for effective fish passage, improved hatchery facilities, a \$3 million habitat improvement fund, and the continuation of pre-existing wildlife protection and recovery agreements.

Priest Rapids: A five-year agreement was reached with Grant County PUD that will safeguard salmon runs while efforts to reach a longer term agreement are pursued. The five-year agreement provides that nearly one half of the water reaching the dams during the spring and summer will be spilled in order to pass 95 percent of the juvenile salmon downstream.

The division continues work on many other FERC licensing projects, including significant efforts on the Mid-Columbia, White River, Enloe, Lewis River, and Box Canyon projects.

Olympic Pipeline's Cross-Cascades Pipeline Proposal: In 1996, Olympic Pipe Line Company requested a permit from the Energy Facility Site Evaluation Council (EFSEC) to construct and operate a 230-mile refined oil products

The division assisted Fish and Wildlife in securing a settlement agreement between PacifiCorp, the owner and operator of Condit dam on the White Salmon River, and several state and federal agencies, the Yakama Indian Nation, and non-governmental organizations.

pipeline from Woodinville, Washington, to Pasco, Washington. After years of preparation, the EFSEC commenced a hearing during the spring of 1999. The department was an active participant in the hearings regarding the proposal's potential construction impacts and the possibility of operational oil spills on aquatic, wetland, and terrestrial wildlife habitat. Potentially impacted habitats included wetland, shrub

steppe, and several hundred water crossings, including the Snoqualmie, Tolt, Yakima, and Columbia Rivers. In addition to the habitat impact issues, the EFSEC raised issues related to decision making on state-owned property. Olympic withdrew its permit application shortly after its mainline ruptured and exploded in the Bellingham area.

Management of Wildlife

Resources: The division is called upon to assist in the resolution of a wide variety of resource management and hunting related issues. Game resources are fluctuating throughout the state, with many in decline due to encroaching development. As a consequence, historical seasons for some species are being curtailed and creative management solutions have become necessary.

Trendwest Resort: The division represented Fish and Wildlife in the appeal of county permitting decisions regarding the development of a \$40 million, 6,200 acre, resort complex near the city of Roslyn. The planned resort would include two golf courses, a hotel, 3,300 vacation homes, 850 condominiums, restaurants, retail space, and a conference center. The county estimated that the project would mean 1,400 full-time jobs. The division represented the department in negotiations over stewardship plans and other wildlife needs related to the project. The negotiations resulted in an agreement between Trendwest and the department in coordination with the Yakama Indian Nation. The agreement will result

in the dedication of open space for wildlife and the creation of a trust fund to ensure adequate mitigation for the project's impacts and to obtain conservation easements and water rights.

Cedar River In-Stream Flow and Mitigation Agreements:

The division assisted Fish and Wildlife in challenging three-way negotiations with the city of Seattle, the National Marine Fisheries and U.S. Fish and Wildlife Services. Two agreements, an In-stream Flow Agreement and a Landsburg Mitigation Agreement, were negotiated in connection with the city of Seattle's efforts to obtain a Habitat Conservation Plan for the Cedar River. Vice President Al Gore identified these agreements as models of successful city, state, and federal cooperation in salmon recovery.

Goldsborough Dam: The division represented Fish and Wildlife in negotiations with Simpson Timber Company and the U.S. Army Corps of Engineers for the removal of Goldsborough dam in Mason County. The dam, located on Simpson property, is no longer utilized and would require significant maintenance. Removal of the dam and restoration of Goldsborough Creek will allow for passage of listed salmon.

Sumas Energy 2 Generating Facility: The division assisted Fish and Wildlife in negotiating a wetlands protection and mitigation agreement with Sumas Energy 2 to address the wildlife impacts of a 720 megawatt gas fired electric generation facility near Sumas.

Port of Tacoma Northern Expansion Project: The division represented Fish and

Wildlife in litigation and the subsequent settlement of a major permitting dispute regarding the Port's plans to expand its Tacoma facilities. An agreement reached between the port and the department will provide for significant mitigation habitat for resident fish and wildlife populations.

Miscellaneous Issues

Washington Interactive Licensing Database: The division represented Fish and Wildlife in complex negotiations regarding a multi-year, multi-million dollar contract with MCI Worldcom Communications for the development of a computerized fishing and hunting license sale system. The division also assisted the department in revising the license sales program (internet and IVR/telephone license sales), license dealer contracts, and auditing processes.

Natural Resources Division

Summary of Responsibility

The Natural Resources Division represents the Commissioner of Public Lands, Department of Natural Resources (DNR), Board of Natural Resources, Forest Practices Board, Board of Geographic Names, and other related committees, as well as the State Parks and Recreation Commission.

Legal Services Provided

The division provides a broad spectrum of client advice,

dispute resolution, and litigation services. DNR manages three million acres of state lands, generating as much as \$300 million a year for trust beneficiaries, and also manages more than two million acres of aquatic lands. DNR also exercises extensive regulatory, environmental and fire protection responsibilities on 11.8 million acres of state and private forest lands. The Parks and Recreation Commission acquires, exchanges, leases and manages lands for parks and other recreational and conservation purposes, and provides a variety of public services throughout the state.

Numbers/Trends

The division's work in the following areas is on the increase:

Timber Sale Litigation: Timber sale operations on lands held in trust by DNR have generated an increasing number of legal challenges in recent years. These cases may involve breach of contract claims between the timber purchaser and DNR, as the timber seller. As an example, two different timber purchasers brought suit claiming that DNR breached their timber sale agreements when the timber that had been sold was not to be harvested

due to the presence of northern spotted owls and marbled murrelets. These two bird species are listed as threatened with extinction under the Endangered Species Act (SEPA) and thus protected by federal law. Such contract disagreements are often resolved prior to a lawsuit being filed through a contractually mandated dispute resolution process in which our office provides legal counsel. Another type of timber sale litigation arises when organizations or individual persons administratively appeal the state forest practices permit related to a timber sale planned by DNR. These challenges often raise Forest Practices Act or SEPA compliance issues. A particularly significant SEPA case was recently settled by the Board of Natural Resources through its agreement to do watershed planning in two watersheds of the Loomis State Forest. A few cases have involved tribal appellants, concerned about the protection of historic and cultural resources in the vicinity of planned timber sales. We are assisting DNR with a number of initiatives to reduce the volume and complexity of all of these cases.

Proprietary Transactions: DNR's transactions include monthly timber sales as well as purchases, sales and exchanges of forest lands and commercial properties. These transactions often raise issues involving the Forest Practices Act, State Environmental Policy Act, Growth Management Act, hazardous waste laws, water rights and Endangered Species Act. Legal challenges in this area seem to be increasing slightly, at least partially due to increased urbanization. Additionally, DNR recently reorganized to consolidate its proprietary land transactions

into one division. We anticipate the new division will require significant assistance with (1) reviewing and standardizing DNR's documents to ensure that a solid document underlies the transactions themselves, (2) providing legal advice and drafting assistance for non-routine transactions, and (3) litigation relating to DNR land transactions.

Forest Practices: The Forest Practices Board is engaged in complex rule making driven by

Timber sale operations on lands held in trust by DNR have generated an increasing number of legal challenges in recent years.

the forestry and fish legislation that was passed in 1999 and the division provides counsel as the board moves forward. The forest and fish legislation was enacted in response to concern over declining populations of salmonids and the resulting listings under the federal Endangered Species Act as well as growing concern about federal Clean Water Act issues. The board adopted forest and fish emergency rules that address water typing, riparian management zones, unstable slopes, forest roads, wetlands, watershed analysis, adaptive management, pesticides, multi-

year permits, enforcement, and compensation for forest riparian easements. The board is in the middle of its permanent rule making.

We are providing increased assistance with legislative interpretation, rule review, and compliance with the APA, SEPA, and Regulatory Fairness Act. The forest and fish legislation and rules are closely connected to the federal rulemaking for protection of salmonids under the federal Endangered Species Act. Two citizens suits challenging the federal rules and one suit challenging the state rules have recently been filed providing additional workload challenges. Appeals of DNR forest practices applications have also increased slightly over the past year. The more recent appeals are growing more complex and raise issues related to the new forest and fish rules as well as regulatory takings. There have been 27 appeals filed with the Forest Practices Appeals Board so far this year. We have also experienced a concurrent upturn in our appellate court activity, again on complex issues such as implementation of SEPA in the forest practices arena.

Hazardous Waste Sites: DNR continues to make some progress on addressing the state's liability and responsibility for clean up of hazardous waste sites in Puget Sound as DNR and EPA engage in complex negotiations. As discussed below, activity in this area is expected to increase in the next year.

Significant Cases and Their Impact

SDS v. DNR: In this regulatory takings case DNR imposed conditions on a forest

practices application submitted by a commercial forest land owner. The conditions were imposed to protect a pair of northern spotted owls residing on property in Klickitat County. A jury found that DNR had "taken" the property, resulting in a \$3 million judgment in SDS's favor. Both SDS and DNR have appealed to Division III of the Court of Appeals. This case raises at least two significant issues. The first issue is whether the court should consider all of a landowner's related timber holdings, and not just the regulated parcel, when evaluating the economic impact of regulatory activity. The second issue is whether a landowner must investigate state and federal landscape planning alternatives that might provide harvest opportunities prior to bringing a takings suit alleging that the state's regulations have taken a portion of property.

Loomis State Forest Litigation and Transfer: Several environmental groups brought suit challenging DNR's Loomis State Forest timber harvest and road construction plans, alleging that such activities will result in the "take" of grizzly bears under the ESA. This case, along with two other Loomis cases related to water quality and forest practices, was settled in April of 1998 pursuant to court-ordered mediation. Another action was then filed by cattlemen challenging the innovative settlement. This case was also settled. The settlements provided for the potential transfer of significant roadless areas in the forest from trust to conservation status in exchange for millions of dollars that will be used to purchase more productive land and/or go directly to

the trust beneficiaries. The environmental group petitioners raised approximately \$16.5 million to fund the transfer which resulted in over thirteen million dollars for school construction while also creating the largest Natural Resources Conservation Area in the state of Washington.

Major Issues/ Events

Hazardous Waste Sites: The state of Washington owns aquatic lands (submerged lands, tidelands, bedlands) in Puget Sound which have

Two citizens suits challenging the federal rules and one suit challenging the state rules have recently been filed providing additional workload challenges.

become polluted and contaminated. Under federal and state hazardous waste laws, owners and managers of lands which have become contaminated may be strictly liable for the costs of investigating and cleaning up the contamination. The state may be potentially liable for substantial sums even if it was not the polluter. DNR and EPA entered a memorandum of understanding that creates a process for negotiating a

settlement of any liability arising from the state's status as landowner. The memorandum describes a process for allocating the state's "fair share" of liability, a process for addressing funding of any orphan share of liability, and a means of coordinating pollution prevention efforts. Negotiations regarding three major superfund sites are expected to continue into 2001.

Contaminated Sediments Disposal: DNR is under increasing pressure to make its aquatic lands available for disposal of contaminated sediments. Through the memorandum of understanding signed by EPA and DNR in the Eagle Harbor litigation, DNR hopes to coordinate and control decisions allowing disposal of contaminated sediments in the context of CERCLA liability negotiations.

Fee Issues: A substantial amount of time was spent this past year advising State Parks on issues related to Initiative 695. At its December meeting, following the supreme court's ruling, the Parks Commission voted to implement a day-use parking fee to alleviate the substantial budgetary problems faced by the state park system.

Columbia Plateau Trail Gravel Operation: In a continuing effort to raise revenues to develop and maintain park trails, the Parks and Recreation Commission voted to develop a large mineral deposit on the Columbia Plateau Trail. Significant legal resources have been, and will continue to be, invested in this project, which could generate approximately \$60 million to develop and maintain the state's rails-to-trails corridors.

Protecting Public Funds

Bankruptcy and Collections Unit

Summary of Responsibility

The Bankruptcy and Collections Unit (BCU) encourages voluntary compliance with the state's taxing laws by supporting efforts of state agencies to aggressively pursue money owed to the state. Most of the monies are owed for delinquent sales and business and occupation taxes, industrial insurance premiums and unemployment fund contributions.

The unit gives priority to representing the state departments of Labor & Industries, Revenue and Employment Security in bankruptcy cases. Assistance has also been provided to other agencies including Agriculture, Community Trade & Economic Development, Corrections, Financial Institutions, Ecology, Health, Natural Resources, State Patrol, Transportation, University of Washington, Washington State University, Utilities & Transportation Commission, and the AGO Consumer Protection Division.

Because of the business expertise of attorneys in the unit, the unit also serves as general counsel to the Washington State Convention & Trade Center.

Legal Services Provided

The vast majority of the unit's work consists of handling bankruptcy litigation in cases under chapter 11 ("corporate

A total of 8,439 bankruptcy and collections cases have been handled on behalf of the state since the BCU was created in 1993. Of those, 7,670 have been closed, producing more than \$53.6 million, including \$33.2 million in payments made, \$4.9 million in claims successfully defended, and \$15.6 million in future payments to be made to the state under court orders.

reorganizations") and chapter 13 (cases involving regular income from small businesses or jobs) of the federal Bankruptcy Code. The unit's attorneys provide legal services at all stages throughout a bankruptcy case. A typical case

would include appearing early on behalf of the agency, obtaining all financial information necessary to analyze the agency's claims, asserting secured or trust fund status, if appropriate, and defending any challenges to agencies' claims. The unit's attorneys also review proposed bankruptcy plans to ensure proper treatment of agency claims and to enforce payment when taxes or payments under court-approved plans are delinquent.

Although top priority is given to bankruptcy cases, the BCU handles a significant number of non-bankruptcy collection cases. These include civil proceedings to recover monies, stopping delinquent taxpayers from doing business, and collection actions against the bonds of contractors who are delinquent in tax payments. The unit also devotes substantial resources to providing training and manuals for tax agency personnel who handle bankruptcy and collections claims.

As general counsel for the state Convention Center, the unit's work has recently focused on the Convention Center's current expansion project, in which the exhibit space in the center will be doubled. This work has included negotiating and drafting contracts for

expansion work, researching legal issues, working on the acquisition of property for expansion and the relocation of tenants on the expansion site to other locations, assisting with the financing of the expansion, and working on issues relating to co-developers on the expansion project.

Numbers/Trends

A total of 8,439 bankruptcy and collections cases have been handled on behalf of the state since the BCU was created in 1993. Of those, 6,279 have been closed, producing more than \$53.6 million, including \$33.2 million in payments made, \$4.9 million in claims successfully defended, and \$15.6 million in future payments to be made to the state under court orders. The unit currently has 802 active cases with a total of \$47.5 million in agency claims.

Significant Cases and Their Impact

Consumer Protection Cases: During 2000 the BCU has been extensively involved in consumer protection cases involving bankruptcy filings.

American Family Enterprises:

This was a case against a publisher and related entities based on allegations of deceptive practices in using sweepstakes to promote magazine sales. The defendants attempted to use their chapter 11 bankruptcy reorganization case to block the Attorney General's Office from proceeding with a consumer protection enforcement action in state superior court. The defendants also attempted to subsume the enforcement action within a proposed plan of reorganization in the bankruptcy case. The BCU assisted the AGO Consumer Protection Division by developing successful strategies to prevent the bankruptcy proceedings from impairing the consumer protection enforcement action. As a result, the litigation was settled, with consumers receiving a minimum of \$600,000, and the AGO being awarded \$200,000 in costs and attorney's fees.

First Alliance Mortgage: This case involved a multi-state consumer protection investigation against a lender that is alleged to have used unfair and deceptive practices in promoting mortgages. The lender filed a bankruptcy reorganization case and has

attempted to use the bankruptcy proceeding to block the multi-state investigation. The BCU has worked with the AGO Consumer Protection Division, other state attorneys general, and the Washington Department of Financial Institutions to protect the ability of the states to proceed with the important investigation.

Futon of North America: This firm owed the Department of Revenue \$670,609 in delinquent taxes. The department filed a tax warrant against the firm and proceeded to execute on the warrant by serving levies on all of the firm's bank accounts. As a result of the tax levies, the firm opened negotiations with the Department of Revenue over procedures for selling the firm, if possible, or liquidating its assets, and using proceeds to pay delinquent taxes. The BCU participated in the negotiations and drafted an operating agreement that was agreed to by the firm and the department. Under the operating agreement, the firm has ninety days in which to locate a satisfactory buyer or conduct an orderly liquidation of its assets. If it is unsuccessful, the assets will be sold at auction.

Revenue Division

Summary of Responsibility

The Revenue Division provides legal services to the Department of Revenue, which administers and collects the state's major excise taxes. Legal issues relating to the administration of the state's property tax system, including the assessment of business property owned by public utilities and the administration of the state's unclaimed property law and estate tax are also handled by this division.

Legal Services Provided

The division's principal legal activity involves the defense of the Department of Revenue (DOR) against excise tax refund claims in the state courts. Litigation of state tax issues involving the state's Indian tribes and railroad and airline utilities are handled by the division attorneys in the federal courts. Utility property tax litigation, as a future part of the division's caseload, may be affected by legislation providing tax exemptions for businesses owning intangible assets.

Numbers/Trends

The division historically receives 50 to 70 new cases in litigation annually. The division was in the historic

range again in 2000. There are approximately 130 cases addressing a wide variety of predominantly excise tax claims. Many of these claims are of industry-wide significance. Additionally, there are approximately 100 cases related to National Can issues and 130 cases related to the nursing home litigation.

Significant Cases and Their Impact

Out-of-State Manufacturers: Currently before the courts are significant refund claims brought by out-of-state manufacturers and product suppliers to Washington manufacturers in which these taxpayers contend that the sales of such products, in fact, occur outside the state and thus are exempt from the business and occupation tax.

Nursing Home Litigation: The division is defending in the appellate courts the denial by the DOR of business and occupation tax exemptions for for-profit nursing homes argued to be assignable to a portion of patient fees representing "rent" for patient rooms. Refund claims in this litigation currently exceed \$70 million.

Tobacco Products Taxes: The incorporation of a marketing subsidiary by a manufacturer of tobacco products (other than cigarettes) has led to a major

challenge to the tax base on which the state's "other tobacco products" tax is calculated. The outcome of this ongoing litigation will affect significant refund claims brought by tobacco distributors.

Major Issues/Events

Court Rulings: The court of appeals ruled that Sea-Tac terminal is not a "mass public transportation terminal" and therefore not entitled to the statutory sales tax exemption. The taxes involved were \$20 million. The decision has implications for the third Sea-Tac terminal runway as well as other ports' developments. The supreme court denied discretionary review.

The Court of Appeals Division II recently ruled for DOR in two consolidated cases where the taxpayers had argued that the Washington Supreme Court's denial of refunds in the 1988 National Can decision was an "unconstitutional taking," entitling them to "just compensation." The refund for the two taxpayers was \$5 million, but an adverse decision would have impacted all of the other National Can related cases. The taxpayer is seeking discretionary review.

The trial court granted summary judgment to the state against 21 public utility

districts which were seeking refunds for taxes paid prior to the repeal of RCW 82.04.417, representing revenues attributable to capital cost incurred by the BPA and WPPSS in producing power sold to utilities. The taxes involved are \$20 million. The taxpayer has appealed.

Other Events: The adoption of the Master Settlement Agreement by the states and the major cigarette manufacturers has involved the division, together with the Department of Revenue and the Attorney General's Office, in its implementation. The provisions of the agreement stipulate the calculation and collection of escrow payments from "non-participating" manufacturers

as a means of preserving the level of payments to be made to the states, including Washington, by the signatory tobacco companies.

At year's end, members of the division devoted a significant portion of time to a range of interpretive issues and litigation issues related to passage of Initiative 722.

Torts Division

Summary of Responsibilities

The Torts Division defends tort claims and lawsuits against all state agencies. The majority of cases are based on actions brought under theories of liability for state actions such as highway design, release of inmates, injuries on state property, medical malpractice, child care and custody, auto accidents, false arrests and unreasonable force.

Torts attorneys also provide legal and risk management advice to state agencies on tort claims. In addition, the division provides advice and assistance to other divisions of the office on matters of trial practice, case evaluations and investigations, and trial team assistance in specialized litigation efforts, such as shellfish or regulatory takings.

Legal Services Provided

The primary legal service provided by the Torts Division is the resolution of damage

claims against state agencies and employees. Many cases are resolved through successful pretrial motions, saving the state significant resources in research, discovery and investigations. The remaining cases are evaluated for settlement after pre-trial discovery and investigation. If possible, cases are settled through direct negotiation, or mediated negotiation. Cases that cannot be settled, or are inappropriate for settlement due to lack of liability, are tried before juries. The Torts Division also handles all appeals resulting from those cases.

Numbers/Trends

In the past seven years, new tort lawsuits have increased sharply despite attempts to settle more claims before litigation. In the five years prior, new lawsuits averaged approximately 200 per year. This increased to 244 in 1993, 328 in 1994, more than 350 in 1995 and 1996 and more than 400 in FY 1997. In 1998, approximately 350 new tort lawsuits were filed, in 1999 approximately 375 were filed, and in 2000 over 400 were filed.

The division has seen the largest increases in employment litigation, and litigation against DSHS social workers and social service programs, particularly those dealing with children. These are areas of relatively new state liability, as recognized by the courts, and it is expected that litigation in these areas will continue to grow in volume, complexity and potential dollar exposure to the state. In the past two years, the court of appeals has issued four more decisions which sharply increase DSHS liability for child protective activities. A recent court of appeals decision reconsidered some aspects of the broad new liability and reduced it. However, the supreme court reversed the court of appeals, again increasing DSHS liability.

The Torts Division is currently handling approximately 900 lawsuits. Investigators handle approximately 250 pre-lawsuit claims for damages per year. The division disposes of claims potentially worth \$100 to \$200 million per year, and at current staff levels, disposes of approximately 280 cases per year.

In recent years, average payouts to resolve tort cases generally ranged from \$5 million to \$30 million per year. However, this amount has increased significantly over the past two years and is now exceeding \$60 million per year. In the past year there have been two verdicts for over \$2 million and one for over \$8 million in personnel cases. There has also been a verdict for \$18 million in a case where disabled adults were allegedly abused in an adult family home and verdicts for \$15 million and \$23 million in cases in which citizens were killed by parolees.

Almost half of all tort lawsuits are disposed of before trial without any payment. Forty percent are settled and the other ten percent are tried before juries or arbitrated. The Torts Division prevails at trial in more than three out of four cases tried. However, verdicts in cases lost by the state have increased markedly due to the emotional or outrageous nature of the injuries for which the state is now held liable.

Experienced torts attorneys not only attempt to limit the amount of tax dollars spent in tort payouts, but they also provide advice, training and other cost saving assistance to agencies in the areas of risk prevention, planning and management.

Significant Cases and Their Impact

Wenatchee "Sex-Ring" Cases: Local authorities in the Wenatchee area, with assistance from DSHS, investigated allegations of extensive sexual

abuse of children by a large group of acquainted individuals. Local prosecutors ultimately charged a significant number of them and most were convicted or agreed to a plea bargain. Some were acquitted after trial. The acquitted persons and several who were convicted or plea bargained sued the local prosecutor, local police and DSHS employees, claiming they were negligently investigated, falsely arrested, or maliciously prosecuted. DSHS was also being sued by several employees who were

The Torts Division prevails at trial in more than three out of four cases tried. However, verdicts in cases lost by the state have increased markedly due to the emotional or outrageous nature of the injuries for which the state is now held liable.

terminated for poor performance in connection with specific earlier complaints concerning some of the abused children or specific wrongdoing in connection with the "sex-ring" investigations. In a major trial victory, the state and local authorities received a defense verdict in the major lawsuit by individuals who

had been acquitted of criminal charges. However, an appeal of this result is likely and other cases are pending. In one of the other cases, a different jury awarded a former Wenatchee office employee more than \$1.5 million.

Group Home Cases: There are currently claims and lawsuits pending against DSHS by juveniles who allege they were abused by other juveniles after being placed in state-licensed group homes. More than three dozen of the group home claimants have settled their suits so far for more than \$14 million in damages. Some claims remain pending and a few more could be filed.

Linda David Claim: This was a lawsuit claiming that the state was liable for long-term abuse suffered by a disabled woman at the hands of her husband. The woman was in a state "chore services" program which entitled her to receive state funds to pay her husband to take care of her. The program was designed to allow disabled people to remain in their home environment rather than be housed in more expensive state institutions. A major liability issue in the case is whether the state is responsible for the husband's abuse because the state was paying the funds which were ultimately given to the husband for "care" of his wife. At issue was the question of the state's obligation to periodically monitor her eligibility. The case is very significant because the state has tens of thousands of individuals in this program and similar ones. The state recently settled this case for \$8.8 million with the provision that the remainder of the settlement go

to domestic violence programs in the event Linda David cannot use it all in her lifetime.

Major Issues/ Events

Wrongful Adoption Cases:

Three years ago there were approximately 15 "wrongful adoption" cases pending against DSHS and its caseworkers. The claim was that caseworkers were negligent in not fully disclosing psychological or emotional problems of children before adoption. The parents generally sought damages for their emotional distress in raising the children and large damages for care and treatment of adopted children. Many of the lawsuits alleged that the children had Fetal Alcohol Syndrome. The state has settled some of these cases and some have been dismissed. The state won two others at trial, one of which was appealed to the state supreme court. The court affirmed the defense verdict in favor of the state. However, the court, unlike courts in most other states, did generally approve the legal basis for filing this kind of lawsuit against the state and adoption agencies. More of these lawsuits are now being filed and some are going to trial.

Dependency Cases: State law provides that DSHS can obtain a court order allowing temporary foster care for children who are suspected of being victims of abuse or neglect.

DSHS, with legal assistance from this office, handles thousands of these dependency cases every year. In some cases, the courts ultimately decide to remove children from their parents permanently or for extended periods of time. However, in many cases children are returned to their parents after investigation or professional examination reveals that abuse likely did not occur. In the past it has always been thought that the state had no liability for obtaining temporary court orders to protect children. Recently, however, the courts have ruled that parents can sue and argue that the state "negligently investigated" the allegations of abuse or neglect which lead to the court order for temporary foster care.

Juries have been awarding hundreds of thousands of dollars in these cases. This is a major legal development because there are hundreds of cases every year in which the state might now be sued for placing children in protective foster care. As noted above, a recent court of appeals case indicated that parents cannot sue the state over court-ordered separations of parent and child, a reversal of the court's prior position. However, the supreme court reversed this decision.

Early Resolution Program:

The Torts Division has initiated an early resolution program. The goal of the program is to

try to achieve savings by early negotiation of lawsuits and claims arising from incidents for which the state is likely to be held liable if the matter goes to court. If the program is successful some savings in legal defense costs should be possible and some cases might also have lower settlement costs because the plaintiff or claimant has incurred lower legal costs.

"Parole" Liability Cases:

In 1992, the supreme court held that the Department of Corrections could be liable for crimes committed by released offenders who were under state post-release "supervision." This has produced a huge increase in payout. In 1997, there was a large (\$6.5 million) verdict against the state in one of these cases and in 1998 the supreme court reaffirmed its decision allowing this liability and extended the liability to local government "probation" supervision. As a result of these developments there has been a large increase in lawsuits against the state by victims of crimes by released offenders under state supervision. The state now has almost three dozen lawsuits and claims pending against it for murder, rape, and other serious crimes by released offenders. Many of these suits represent multi-million dollar loss exposures for the state. Two of these lawsuits lead to verdicts of \$15,000,000 and \$23,000,000 this year. These verdicts are under appeal.

Strengthening Washington's Education Systems

Education Division

Summary of Responsibility

The Education Division provides a full range of legal services to more than 50 education-related clients, including: the three regional universities; The Evergreen State College; the 28 community colleges; five technical colleges; and other education-related boards, such as the Higher Education Coordinating Board, the State Board for Community and Technical Colleges, the Council of Presidents and the Center for Information Services. In addition, the division serves the Office of the Superintendent of Public Instruction, nine area-wide educational service districts, the State Board of Education, and the Academic Achievement and Accountability Commission.

Legal Services Provided

The workload of the division is extremely diverse. On any given day, division attorneys advise on matters as varied as constitutional rights, labor/management disputes, employee rights, student rights and responsibilities, discrimination and sexual harassment, public contracting, intellectual property, and general public sector business issues. Attorneys also represent their education clients at hearings on a variety of education-related matters, including prosecution of

teacher misconduct, consumer complaints against private vocational schools, labor arbitrations, and employee and student misconduct hearings. In serving the Higher Education Coordinating Board, the State Board for Community and Technical Colleges, and the Superintendent of Public Instruction, the division

Regionalization of services has allowed clients easier physical access to their attorneys which results in many matters being resolved before they involve litigation.

handles a wide variety of legal issues associated with both the K-12 and higher education systems, taking into account many federal as well as state laws.

Numbers/Trends

The workload of the division has substantially increased during the current biennium. Enrollment at the regional universities, The Evergreen

State College, and the community and technical colleges has increased by approximately 40,000 students. Attorneys devote about 30 percent or more of their time to hearings and litigation involving administrative hearings, arbitrations, and cases before the U.S. District Court, superior court, court of appeals, and the state supreme court.

Significant Cases and Their Impact

State Financial Aid Program Challenge: Each biennium, the Higher Education Coordinating Board distributes about \$142 million in financial aid to students attending both public and private institutions in Washington. Most of the private institutions operate under some sectarian control or influence. A portion of this aid (Educational Opportunity Grants) goes directly to the students attending these private institutions. The American Civil Liberties Union has challenged the constitutionality of this legislation and the Education Division is defending the action.

Education of Incarcerated Inmates: This year, the division successfully defended the Legislature's policy decision to offer a high school diploma program to inmates incarcerated in adult correctional facilities up to age 18, but not to those age 18-21 who are instead offered a GED program.

Part-Time Community College

Faculty Class Actions: The division also successfully defeated two class actions brought by community and technical college part-time faculty for alleged violations of this state's minimum wage and overtime laws. The first, filed against the State Board for Community and Technical Colleges, was dismissed on the basis that the State Board was neither an employer nor a joint employer with individual

college districts. In the second, plaintiffs' claims were dismissed on the merits because the plaintiffs were paid as salaried professional employees. Plaintiffs have appealed both cases.

Major Issues/ Events

Because client agencies are dealing with reduced budgets, the division's workload has

increased to assist them to cope with budget-related issues. It has become even more important for the division to work more efficiently.

Regionalization of services has allowed clients easier physical access to their attorneys which results in many matters being resolved before they involve litigation. It also requires close coordination among the attorneys in order to maintain consistent advice.

University of Washington Division

Summary of Responsibility

The University of Washington Division provides legal services to the University of Washington in Seattle, with campuses in Bothell and Tacoma. The university currently has approximately 35,000 FTE-enrolled students.

It is one of the largest employers in King County, with about 15,000 FTE staff and 7,800 FTE teaching and research faculty. The university operates two hospitals, University of Washington Medical Center and Harborview Medical Center.

Legal Services Provided

The university has all the legal issues of a large state agency, many of the legal issues of a large corporation, and many legal issues unique to higher

education. Accordingly, the division must provide a broad spectrum of legal advice and representation, including employment law, labor relations, student affairs, real estate and business law, intercollegiate athletics, public finance and bonding, intellectual property, tax, benefits, constitutional law, gifts and trusts, and health care law. In addition, the division coordinates with assistant attorneys general representing the other colleges and universities in the state. The division also supervises the work of outside attorneys appointed as special assistant attorneys general to represent the university in these and other matters.

Numbers/Trends

There are approximately 148 active lawsuits against the university and its affiliated hospitals. Approximately one-third of them are medical malpractice cases. Cases

involving disputes on construction projects are the next most frequent type of litigation, comprising about 30 current cases. Claims involving statutory violations, personal injury, and employment issues, round out the top five categories of litigation.

The following trends have increased demand for legal advice and representation:

- The University of Washington is inviting and addressing public comments on its growing physical presence in the neighborhoods surrounding the Seattle campus, including matters such as Sound Transit and the campus master plan. The division aids the university in negotiations with community groups, and in drafting contracts with other governments and businesses that accommodate the expressed concerns of the community.

- The medical centers, like all other health care providers, are under increasing scrutiny from federal and state agencies that oversee Medicare and Medicaid billing. Both the medical centers and the division are devoting increased resources to insuring compliance and responding to regulatory inquiries.
- The university requires increasingly sophisticated legal advice to address the complex laws governing employment.
- The university's leadership role in research, computing and communications, and high technology has significantly increased requests for advice on intellectual property issues. These include copyright, licensing of technology, and access to computer-based information.

Significant Cases and Their Impact

Affirmative Action: The university prevailed before the Ninth Circuit in Smith v. University of Washington School of Law, a case holding that an educational institution's interest in diversity of its student body is a compelling state interest that justifies the consideration of race in admissions. Although Initiative 200 put an end to public colleges' and universities' consideration of race in admissions decisions, the case has national significance.

Faculty Gender Equity:

Recently a superior court judge certified a class comprised of all past, present, and future female faculty members employed by the University of Washington, including medical school faculty and those faculty employed at the Bothell and Tacoma campuses. The plaintiffs' claims are under the Washington Law Against Discrimination and the Washington Equal Pay Act. The university presented evidence that university decision-making on pay and

top-down decision-making regarding pay and promotion to justify class certification.

Unionization of Teaching

Assistants: Graduate students also teach classes, give and grade examinations, and read and grade papers and reports. Nationally they are a growing focus of union organizing efforts. The university recently agreed to recognize the Graduate Student Employee Action Coalition, International Union, UAW, AFL-CIO as the majority representative for teaching assistants pending enabling legislation that would authorize exclusive collective bargaining with the union; and to "meet and confer" on terms and conditions of employment.

There are approximately 148 active lawsuits against the university and its affiliated hospitals. Approximately one-third of them are medical malpractice cases.

Technology and Intellectual

Property: The university increasingly gains financial returns by selling licenses to outside companies to use technology and intellectual property developed through the university's research activities. Recently, university software has emerged as a substantial basis for license royalties. Also, the university is exploring opportunities for using the Internet as an additional means of providing educational services. With the expansion of the university's licensing and "distance learning" services, the division has seen a tremendous growth in the legal issues regarding interpretation and enforcement of licenses, constitutional questions including First Amendment and privacy concerns, and patent, trademark, and copyright law.

promotion is decentralized, and cited case law holding that the decentralized decision-making in universities makes class actions inappropriate. In a decision attracting national attention, the judge found that the university's actions conducting a salary survey and creating a special committee on faculty women's activities provided sufficient evidence of

Washington State University

Division

Summary of Responsibility

The Washington State University Division provides legal services to the state's land grant university from the main campus in Pullman. The division's five attorneys, with support from attorneys in other divisions in specialized areas such as employment and construction law, provide legal services to the main campus, the three branch campuses (in Spokane, the Tri-Cities, and Vancouver), agricultural research and extension operations statewide, and extension field offices in every county.

Legal Services Provided

Division attorneys provide advice on a host of legal issues, many of which are unique to an academic environment. Attorneys frequently provide advice on issues relating to: faculty research, ownership, and use of intellectual property; the university's statewide Cooperative Extension Program (including 4-H programs); athletics and NCAA compliance; various student rights and programs; faculty tenure and promotion; university development; environmental health and safety; public contracting; constitutional rights; and veterinary services. Division attorneys also provide representation on non-tort related litigation in a variety of forums.

Numbers/Trends

Division workload continues to grow as the university continues to grow and expand its branch campus programs. More than 22,000 students currently are enrolled system wide:

Pullman (including the Intercollegiate Center for Nursing

research stations, county extension offices, learning centers, etc.: faculty 2,093; graduate assistants (which also are in the student count noted above) 1,228; exempt personnel 856; classified staff 2,257.

Significant Cases and Their Impact

Napster: Washington State University received a request from the attorneys for the musical recording artists Metallica and Dr. Dre requesting that WSU ban access to Napster through WSU's computer services and alleging that Napster is engaging in copyright infringement. WSU determined not to block Napster pending further direction from the courts. This decision was made in recognition of the fact that Napster can be used to share non-copyright protected files, that WSU provides students access to the Internet as part of its educational mission, and because WSU essentially is acting as an Internet Service Provider in so doing.

Major Issues/Events

Alcohol Initiatives: The division is assisting the university in creating alcohol diversion programs and programs designed to educate WSU students on the dangers of alcohol abuse. The division will continue this assistance over the next year.

Washington State University received a request from the attorneys for the musical recording artists Metallica and Dr. Dre requesting that WSU ban access to Napster through WSU's computer services and alleging that Napster is engaging in copyright infringement.

Education in Spokane, the Extended Degree Program, and The Seattle Center for Hotel and Restaurant Administration) 18,626; Spokane 584; Tri-Cities 1,157; Vancouver 1,648. WSU employs approximately 6,400 individuals, including

 ***Representing the Public***

Criminal Justice Division

Summary of Responsibility

The mission of the Criminal Justice Division is to be responsive to and supportive of its partners in the criminal justice community, and to work towards safe communities. The Criminal Justice Division staff represent the Department of Corrections (DOC), Indeterminate Sentence Review Board, Governor's Clemency and Pardons Board, the Governor's Office on extraditions and detainers, and the Criminal Justice Training Commission. They also investigate and prosecute Medicaid fraud and resident abuse cases, and environmental and economic crime cases on behalf of the state. Staff also handles all federal habeas corpus matters, including capital cases. Upon request, the division assists prosecuting attorneys and the Governor by investigating and prosecuting criminal cases throughout the state. The division also provides investigative expertise and assistance statewide and nationwide through the office's Homicide Investigation Tracking System (HITS) Unit.

The division also serves several other criminal justice clients. Among these are the Jail Industries Board, State Toxicology Lab, and State Forensic Investigation Council. The division also represents the state in self-defense

reimbursement claims, and the Washington State Patrol in personal and real property civil forfeitures.

Legal Services Provided

Corrections Unit: The Corrections Unit provides representation to the Department of Corrections and its employees

This unit represents the state and the Department of Corrections in challenges to the fact or duration of confinement.

in state and federal court in litigation. It represents the department in actions where an inmate claims a violation of his or her constitutional rights during incarceration. These can be claims dealing with the conditions of confinement, access to court, freedom of speech, or due process of law. The other major area of representation is in personal restraint petitions filed by inmates attacking administrative or disciplinary action taken

against them by the department. This unit also provides advice and training for the department, in areas such as search and seizure, access to courts and public disclosure. Also, attorneys in this unit review draft DOC policies for constitutional and legal issues. Finally, some staff of this unit represent the department in parole revocation proceedings.

Sentencing/Habeas Corpus Unit: This unit represents the state and the DOC in challenges to the fact or duration of confinement. A key responsibility of this unit is to handle the continued prosecution of death penalty cases and other convictions in federal court. These division staff represent the department in post sentence petitions, which involve correcting flawed criminal judgements and sentences. They also represent the Indeterminate Sentence Review Board in challenges to its discretionary decisions relating to release of offenders under their jurisdiction. Finally, the unit represents the Governor's Office in clemency and pardon matters.

Medicaid Fraud Control Unit (MFCU): The MFCU is a federally mandated law enforcement unit staffed by attorneys, auditors, investigators, and support personnel. The main function of the unit is to investigate and prosecute fraud by health care providers

or facilities that illegally divert Medicaid funds or abuse residents. This unit receives 75 percent of its operating funds from a federal grant.

In 1999 the MFCU was reconfigured into stand-alone Fraud and Resident Abuse Sections. This has resulted in a more efficient response to allegations of resident abuse throughout the state by both local law enforcement and the MFCU. By establishing a contact network of designated law enforcement personnel in each county and municipality, the MFCU is now in a position to facilitate timely and meaningful responses from the local authorities and offer its resources to assist local law enforcement in these investigations.

The Fraud Section maintains an active involvement in the ever-expanding area of medical fraud and abuse. The federal government's enhanced interest in this area has involved MFCU staff in numerous task force investigations, global settlements, and prosecutions.

The Sexually Violent Predator Unit (SVP): The SVP Unit was established in 1990 following enactment of RCW 71.09 which permits the involuntary civil commitment of sex offenders who, because of a mental abnormality and/or personality disorder, are likely to commit predatory acts of sexual violence if they are released to the community.

The unit is responsible for prosecuting sex predator cases for 38 of Washington's 39 counties. The expertise of the unit permits it to handle all aspects of sex predator cases,

including pre-filing investigations, pre-trial motion practice, trial, post-commitment proceedings, and appear before both state and federal courts. The unit also employs two investigators who work with the attorneys and paralegal to discover witnesses and otherwise prepare cases for filing and trial. Most notably, in 2000, the unit had one of its cases, *Seling v. Young*, argued before the United States Supreme Court.

The CLU provides statewide investigation and prosecution of tax fraud cases as well as false statement and theft crimes committed against the state.

The Homicide Investigation Tracking System Unit (HITS):

HITS is a program within the Attorney General's Office that tracks and investigates homicides, rapes and other violent crimes. It is the only statewide central repository for information relating to violent crimes. HITS also keeps data for the Oregon State Police. Investigators have collected data from more than 6,900 murder investigations and more than 7,700 sexual assaults. Investigators assist local law enforcement in the investigation of violent crimes

when requested. Typically, HITS will respond to approximately 800 requests for assistance or information each year.

HITS is a national leader in developing and using computers in innovative ways to prevent crimes or increase the solvability of crimes and has been the recipient of several grants to study trends or common characteristics in violent crimes.

Criminal Litigation Unit

(CLU): This unit assists county prosecutors and the Governor in complex criminal cases, including multi-county crime, white-collar crime and governmental corruption or in cases where the local prosecuting attorney has a conflict of interest. The unit also prosecutes major violations of the state environmental protection statutes. These investigations are conducted by the U.S. Environmental Protection Agency or the state Department of Ecology, with legal assistance from the unit. The nature of the cases prosecuted by the unit, either independently or in coordination with local prosecutors, range from misdemeanors to capital cases.

A portion of the CLU budget is funded by the DOR. The CLU provides statewide investigation and prosecution of tax fraud cases as well as false statement and theft crimes committed against the state. The unit also assists state agencies in the areas of fraud detection and training.

High Tech Unit (HTU): In 1999 the Attorney General's Office took a lead role in helping law enforcement and

the citizens of Washington address schemes and crimes that are done over the Internet or with the assistance of computers. With the creation of a High Tech Unit, the office has acquired expertise to investigate and prosecute Internet and computer crimes. The unit also has developed the ability to conduct limited forensics computer work. The Attorney General's Office also undertook an initiative to bring together other criminal justice agencies that deal with computer crime. The result was Computer Law Enforcement of Washington (CLEW), a cooperative effort among the U.S. Attorney's Office, FBI, Washington State Patrol, the Washington Association of Prosecuting Attorneys, and the Washington Association of Sheriffs and Police Chiefs.

Numbers and Trends

Corrections Unit and Sentencing/Habeas Corpus Unit: In 2000, the DOC's "in custody" population reached almost 15,000 inmates with the expectation of continued growth in the coming years. These inmates are housed in the department's 13 prisons and 18 pre-release and work-release facilities. In addition, the department has a total of 89,000 offenders subject to its jurisdiction and under its supervision. The increase in the offender population will continue to drive an increased demand for legal services. In 1999, the state Legislature enacted the Offender Accountability Act, a new approach to sentencing and post incarceration supervision that places responsibility for conducting

most community custody violation hearings with the DOC, rather than the courts. As this new law is tested, this too will have a significant impact on the demand for legal services.

There are more than 1,400 cases on the combined dockets of the Corrections and Sentencing Units, including the following 949 new cases that were opened in 2000: 128 habeas corpus cases; 71 civil rights cases; 396 personal restraint petitions; 26 parole revocation

Thirteen individuals are currently under sentence of death and an additional 11 cases are under prosecution at the state trial court level. These cases will dictate the future workload of the division.

hearings; 237 post sentence petitions; 15 public disclosure cases; 34 self-defense reimbursement cases; and 42 miscellaneous cases. Also in 2000, 160 cases of a variety of types were closed.

As noted above, the Sentencing Unit handles the federal court review of all state death penalty cases. Thirteen individuals are currently under sentence of death and an additional 11

cases are under prosecution at the state trial court level. These cases will dictate the future workload of the division. Currently, there are three active death penalty cases in the division and it is likely that five more will be added this year. The unit has an expanded role in assisting local jurisdictions in defending capital sentences at the state direct appeal and personal restraint petition stages. This is consistent with the division's mission to be a partner with others in the criminal justice community.

Medicaid Fraud Control Unit:

The MFCU concluded a number of fraud and resident abuse investigations with the filing of charges, and the referral of cases to county prosecutors for their review and action. During the year, the unit, with its federal agency partners, concluded fraud cases resulting in approximately \$1.4 million in restitution, investigative costs, fines and overpayments being ordered. At any given time during the year, the unit had approximately 200 fraud and resident abuse cases under active investigation.

Also, MFCU staff played a leadership role in improving the way that resident abuse complaints are processed, investigated and prosecuted. During the course of the year, the MFCU reviewed in excess of 416 resident abuse complaints and tracked local law enforcement's response to each.

Criminal Litigation Unit:

Approximately 30 cases are referred annually to the CLU for general assistance, investigation and/or prosecution. Most requests come from prosecuting attorneys, with a

few coming from the Governor. Additionally, on an annual basis, 30 to 40 cases are referred to the unit for assistance at the trial or appellate court level, or on self-defense reimbursement claims.

The unit also fields a high number of general assistance requests about criminal prosecution matters from jurisdictions throughout the state and country. A significant portion of these calls for assistance pertain to questions about the use of DNA evidence and/or capital litigation matters.

Sexually Violent Predator Unit: Washington was the first state to enact a sexually violent predator law to protect its most vulnerable citizens from predatory sex offenders who suffer from a mental abnormality or personality disorder which makes them likely to reoffend. Since 1990, many other states have used Washington's sex predator law as a model in enacting similar statutes. The unit has been able to provide assistance to these other states because of its vast experience dealing with sexually violent predators.

Approximately 32 persons were referred to the unit in 2000 to determine whether to initiate a sexually violent predator action seeking the civil commitment of those persons. This past year, the unit filed 19 such actions. In addition, the unit obtained commitments in almost 20 cases, losing only one case.

Homicide Investigative Tracking System Unit: HITS currently has a supervisor and five investigators with over one hundred years of combined

violent crimes experience. One additional investigator is on loan to the High Tech Unit, which is developing capacity to investigate and prosecute computer crimes, in collaboration with other criminal justice partners. The HITS computer contains more than 1.8 million informational records with access to an additional 16 million. All law enforcement agencies in the state provide information to HITS and have access to staff for assistance in their investigations.

Washington was the first state to enact a sexually violent predator law to protect its most vulnerable citizens from predatory sex offenders who suffer from a mental abnormality or personality disorder which makes them likely to reoffend.

The demands on HITS continued to increase in 2000. HITS investigators have been actively involved in major and multi-agency task force investigations with the Royal Canadian Mounted Police, the state of Oregon and the Spokane Homicide Taskforce. Staff members from HITS have also worked with the nation of South Africa and the state of Arizona who are seeking to replicate the HITS database and investigative systems to address their crime problems.

In 2000, the HITS Unit continued to work on a grant received in 1998 from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to continue the Child Abduction Murder Study. HITS has been asked to further examine the characteristics of the killers of abducted children. The results of the first phase of the original research have been disseminated nationally and are highly regarded as an important tool in preventing and investigating these crimes. Also, members of the HITS Unit are nationally recognized experts in case management of child abduction murder investigations and have consulted with investigators from several states regarding ongoing investigations.

In 1998, HITS received a grant from OJJDP to conduct nationwide training for law enforcement investigators. The objective of the training is to disseminate the results of the initial child abduction murder research. In 2000, training was provided to more than 760 law enforcement investigators in the states of Florida, Iowa, Arkansas, New Jersey, Mississippi, North Carolina, Virginia, Nebraska, and Georgia and in Montreal and Quebec, Canada.

In 1997, the Legislature provided funding for HITS to develop a Supervision Management and Recidivist Tracking (SMART) System. Full development of the SMART System continued in 2000. SMART will allow the DOC and local law enforcement to better communicate about offenders and their conditions of supervision. This will increase the number of individuals who are "monitoring" an offender's behavior in the

community. All of the offender contacts with police are kept in the HITS database for later use in violent criminal investigations. In partnership with the Washington State Patrol's WACIC/ACCESS, the HITS Unit will continue to work on developing and building the SMART system making it more accessible to the local jurisdictions. The pilot project with the Seattle, Redmond and Yakima Police Departments will also continue.

Significant Cases and Their Impact

United States v. Ordoubadi:

Dr. Ordoubadi, a well-known radio personality known as the "Medicine Man," systematically overbilled or misled Medicaid, Medicare and private health care payers for numerous years. He misrepresented the services of personal gym trainers, acupuncturists, nutritionists, message therapists, and chiropractors as medical doctor services in order to obtain insurance reimbursement. He also billed for personal services at times when he was out of the country and billed for services of a foreign medical doctor who was not licensed to practice in the United States. Dr. Ordoubadi and three of his employees pled guilty to conspiracy to commit mail fraud and health care fraud and received sentences and restitution. MFCU played an important role in the investigation of this case and the MFCU investigator received a special commendation from the FBI for his efforts.

Seling v. Young: In 1997 the U.S. Supreme Court upheld the constitutionality of a sex predator statute in Kansas that

was virtually identical to Washington's statute. Andre Young, a six-time rapist was committed as a sexually violent predator under this statute in 1991. Mr. Young filed a case against the state arguing that while the statute may be constitutional on its face, the conditions under which he is confined serve to punish rather than treat him. This case was accepted for review by the United States Supreme Court and was argued before that court on October 31. On January 17, 2001, the U.S. Supreme Court ruled the law is constitutional even if it is applied to individuals in a manner that is punitive.

State v. Gonzalez: The defendant was convicted of Aggravated Murder and Attempted First Degree Murder for killing an Omak police officer and attempting to kill another Omak police officer. The Attorney General's Office was asked to assist the Okanogan County Prosecuting Attorney's Office in the prosecution of this complex case and served as co-counsel at trial. The defendant was sentenced to a term of life in prison without the possibility of parole or release.

State v. Cota: The defendant was convicted of First Degree Murder, two counts of Attempted First Degree Murder and Arson in the Second Degree after he went on a shooting spree and burned the victims' house to the ground in Curlew, Washington. The Attorney General's Office was asked to assist the two-attorney Ferry County Prosecuting Attorney's Office in the prosecution of this case and served as co-counsel at trial. The defendant was sentenced to 75

years in prison.

State v. Force: The defendant was convicted of multiple counts of First Degree Theft for the theft of revenue collected but unremitted to the Washington State Department of Revenue. The defendant was ordered to pay full restitution in an amount in excess of \$58,000 and full restitution was made to the taxpayers through the DOR prior to sentencing. The defendant also received a jail sentence and was ordered to a term of probation.

State v. Merrit: In this Pierce County case, the defendant pled guilty to Malicious Mischief in the Second Degree and a Violation of Washington State Hazardous Waste Management Act. The defendant was sentenced to two months of work release and ordered to pay \$6,000 in restitution; \$8,146 in cleanup costs payable to the Washington State Department of Ecology and ordered to serve one year of probation.

State v. Miller: Because of a conflict of interest, the Attorney General's Office was requested to prosecute this former King County prosecutor for multiple counts of delivery of Methamphetamine. The defendant was convicted and sentenced to over four years in prison. The case is currently on appeal.

In Re Personal Restraint of

Matteson, et al.: To alleviate overcrowding, in 1999 the DOC sent 254 inmates to a "private" prison in Colorado. These inmates filed over 300 personal restraint petitions attacking their transfer and alleging that the department lacked authority to transfer them. In a 6-3 decision, the Washington State Supreme Court held that DOC

was operating under a proper grant of authority from the Legislature and that there was no requirement that offenders be afforded a pre-transfer hearing.

State v. Brown: The Washington State Supreme Court invalidated a statute making persistent prison misbehavior a Class C felony. Prior to this decision, an offender could be charged with persistent prison misbehavior when he violated prison disciplinary rules after all of his earned early release credits had been lost.

Benn v. Lambert: In this death penalty case, the United States District Court for the Western District of Washington granted Mr. Benn's writ of habeas corpus and vacated his two convictions for Aggravated First Degree Murder. The court found that the prosecutor's office erred when it failed to release potentially exculpatory evidence. This case is on appeal to the Ninth Circuit Court of Appeals.

Wright v. Riveland: This class action was brought by Washington State inmates challenging the constitutionality of RCW 72.09.480, a statute that requires the DOC to make deductions from inmates' incoming funds for cost of incarceration, crime victims compensation and mandatory savings. The Ninth Circuit Court of Appeals issued a published opinion affirming the dismissal of this action.

Tunstall v. Bergeson, et al.: Plaintiffs in this case were a class of persons incarcerated in Washington who were under the age of 21 or disabled and under the age of 22. They

asserted that they have a constitutional right to an education while they are incarcerated. In finding for the state, the Washington State Supreme Court reversed a Thurston County Superior Court ruling. The supreme court held that individuals under the age of 18 incarcerated in a DOC facility have a constitutional right to public education and that right is satisfied by access to a GED; that the state is not required to provide special education services to inmates between the

***This class action
was brought by
Washington State
inmates challenging
the constitutionality
of RCW 72.09.480, a
statute that requires
the DOC to make
deductions from
inmates' incoming
funds for cost of
incarceration, crime
victims
compensation and
mandatory savings.***

ages of 18 and 22; and that the school districts may contract to provide educational services to incarcerated individuals over the age of 18 but are not obligated to do so.

Washington Water Jet Workers Assn. v. Yarbrough, et al.: This is a case brought by a group of business owners challenging the DOC's Correctional Industries Class I job program mandated by the Legislature. The plaintiffs also seek money damages. The King County Superior Court granted the department's partial motion for summary judgment holding that the statute is constitutional. Other issues in the case are pending and an appeal is expected on issues regarding constitutionality.

Jones v. Wood: In 1988 Mr. Jones was convicted of First Degree Murder for killing his wife. He was sentenced to 25 years in prison. He filed a habeas corpus petition alleging that his conviction was unconstitutional because he was not afforded effective assistance of counsel. He asserted that there was evidence of another suspect that was not followed up on by his attorney. The Ninth Circuit Court of Appeals set aside Mr. Jones' conviction and he has been released from prison.

Lambert v. Lord: Mr. Lord was sentenced to death in Kitsap County. On a petition for writ of habeas corpus, the Ninth Circuit held that Mr. Lord's counsel was ineffective because he failed to personally interview witnesses who claimed to have seen the victim after she had been murdered. The Attorney General's Office requested the United States Supreme Court to accept review of the Ninth Circuit Court of Appeals' decision vacating Mr. Lord's judgment and sentence. That request for review was denied and the case will be retried by the Kitsap County Prosecutor.

In Re Personal Restraint of

McNeal: In Mr. McNeal's case, the Washington Court of Appeals decided the issue of what level of due process is required in community custody hearings conducted by the DOC under RCW 9.94.205. The court held that such offenders are entitled to the same due process protections as are parolees and probationers, and rejected the department's position that such hearings are akin to inmate disciplinary hearings. The court also held, however, that offenders in such hearings are not entitled to the assistance of counsel. The Washington Supreme Court denied discretionary review.

In Re Personal Restraint of

Erickson: In this case, currently pending before the

Washington State Supreme Court, the court will decide whether sex offenders are entitled to a due process hearing, either judicial or administrative, prior to being classified by the DOC as a Level II or Level III sex offender.

In Re Personal Restraint of

Addelman: The Washington State Supreme Court held that the Indeterminate Sentence Review Board could not consider an offender's litigious activity in determining parolability. The court remanded the case back to the Indeterminate Sentence Review Board for a new hearing.

Spokane Homicide Taskforce:

Robert L. Yates has been ar-

rested and charged with 15 deaths in Spokane and Pierce Counties. Investigators from the HITS Unit assisted in the case through the identification and location of Mr. Yates' previously owned cars and weapons. HITS investigators also assisted in the identification of other victims that may be related to the Yates case. The unit has also been involved in the tracking of DNA evidence and acted as a liaison to out-of-state agencies that have an interest in the investigation. In October, HITS sponsored a presentation from Spokane County Sheriff's detectives that was attended by over 100 detectives investigating similar cases in an attempt to locate other incidents that might be related to Mr. Yates.

General Counsel Unit

Summary of Responsibility

The General Counsel Unit provides coordinated legal advice to statewide elected officials. The unit represents the Lieutenant Governor, Secretary of State, the State Auditor, the State Insurance Commissioner and the State Treasurer, and works closely with the assistant attorneys general who represent the Commissioner of Public Lands and the Superintendent of Public Instruction. The unit also provides services to the State Investment Board, the Department of Financial Institutions, the Health Care Facilities Authority, the Higher

Education Facilities Authority, and the Office of Administrative Hearings. The unit provides legal advice and representation in litigation and regulatory enforcement proceedings.

Legal Services Provided

The unit provides elected officials with a wide range of advice regarding issues which are uniquely within the scope of their constitutional and statutory responsibilities. The unit also provides legal advice on general issues affecting government agencies such as administrative law, federal preemption of state laws and

regulations, investments, contracts, finance, public records and ethics in government service. Attorneys in the unit are involved in drafting and reviewing proposed legislation.

The unit also handles litigation. During election periods, there is often litigation and the need for client advice relating to ballot eligibility questions and challenges. Attorneys for the Auditor and Insurance Commissioner handle enforcement proceedings on behalf of their agency. Attorneys for the Insurance Commissioner handle rate hearings, insolvency proceedings, public disclosure requests and health

care litigation. The unit also coordinates the use of special assistant attorneys general for legal support for certain agencies, such as bond counsel for the Finance Committee, investment review and litigation for the State Investment Board, and attorneys for companies being liquidated by the Insurance Commissioner.

Numbers/Trends

Counsel for the Secretary of State has continued to face a variety of numerous and complex issues related to initiatives and referendums. The increasing use of the Internet by both commercial businesses and charities provide similar challenges to properly apply the law to these increasingly important subjects.

The Insurance Commissioner is affected by changing federal health care legislation, is increasing health insurance rate and form reviews, and is defending challenges to the "every category of provider" law, both of which have resulted in an increased workload. The state Investment Board has increased the scope of its investment program, due diligence procedures, and the demand for the service of the office.

The volume of work relating to debt and finance for the state Finance Committee and Treasurer's Office is increasing. An attorney is assisting the Treasurer's Office on these transactions and works directly with the treasurer's staff, financial advisors and bond counsel.

In the Auditor's Office whistleblower filings have shown a dramatic increase in

fiscal year 2001 and have consumed a greater amount of attorney resources.

Major Issues/Events

Auditor: As the result of discussions with the Auditor's Office, we anticipate that more of our energies will be devoted to training activities for that office. We believe that such an up-front investment of resources will result in higher quality audits and less need for intervention at the post-audit stage.

In the Auditor's Office whistleblower filings have shown a dramatic increase in fiscal year 2001 and have consumed a greater amount of attorney resources.

State Investment Board: Unit attorneys have coped with a substantial increase in the number of large private equity and real estate investments by the board requiring complex document review. They have assisted the board to integrate several new programs assigned

to it by the Legislature and continue to assist it in preparing legislation to update the laws under which it operates. They also have helped the board complete its implementation of new programs and policies in response to a performance audit, and have provided legal advice almost daily on a wide variety of issues and problems.

Secretary of State: The unit continues to see a heavy volume of election-related cases and requests for advice. The assigned attorney, often in cooperation with the Solicitor General Team, continues to defend a heavy volume of litigation regarding ballot measures and candidate eligibility. For the immediate future, ongoing litigation regarding the voting rights of convicted felons, and perhaps new litigation concerning Initiative 695, are anticipated to present major demands. Expect continuing efforts to defend Washington's system for conducting a "blanket primary," in which voters can choose from among candidates of all political parties. Additionally, the increasing use of the Internet has provided charities with a new and often less costly method of soliciting contributions; the assigned attorney anticipates working closely with other states and the private sector to apply charitable solicitations laws fairly and consistently in this new legal arena.

State Finance Activities: The Treasurer's Office continues to receive legal assistance on a number of projects it has worked on over the past year. The state has worked intensively to help prepare a plan of

finance for the professional football and soccer stadium to be constructed in Seattle. The legislation authorizing the stadium construction provides for the state Finance Committee to issue bonds to help finance the project. The Treasurer's Office also is implementing legislation that expands the state lease-purchase finance program to include participation by local governments. The Washington State Convention and Trade Center ("WSCTC") Expansion Project is expected to proceed swiftly as the last remaining legal hurdles have been cleared. The Treasurer's Office will be working with WSCTC

staff and various advisers to effect the transition from the current interim financing to a permanent financing mode. Finally, the planning and implementation of the \$1.9 billion transportation bond financing that the voters authorized through Referendum 49 is expected to generate a number of legal issues.

Insurance Commissioner: The attorneys assigned to represent the Office of the Insurance Commissioner have responded to increasing litigation demands while attempting to engage in alternative dispute resolution. They placed Kitsap Physician Services in receiver-

ship, with the consent of its Board of Directors, and filed a plan of rehabilitation that should continue its independent operation. They successfully defended RCW 48.43.045 (the "all categories of provider" statute), persuading the United States Supreme Court to deny a Petition for Certiorari in Washington Physicians Service Association v. Gregoire, et al., in which the Ninth Circuit reversed the district court's holding that the statute was preempted by ERISA. They are handling an increasing volume of contested rate proceedings and agent disciplinary proceedings.

General Legal Division

Summary of Responsibility

The General Legal Division handles the litigation for, and provides legal advice to 40 state agencies. These include the Washington State Patrol, the Public Disclosure Commission (PDC), the Gambling Commission, the State Lottery, the Liquor Control Board, the departments of General Administration, Retirement Systems, Information Services, and Personnel, the Public Employment Relations Commission, the Environmental Hearings Office, and the Growth Planning Hearings Boards.

Legal Services Provided

The division's 23 attorneys and 12 professional support staff

provide a wide range of legal services to their clients, including defense of multi-million dollar class-action retirement lawsuits, prosecution of campaign law violations, Indian Gaming Compact advice and litigation, liquor law and cigarette tax enforcement, and construction litigation. They also handle litigation at the administrative hearing level and in subsequent court appeals on issues such as liquor license revocations, gambling law violations, and eligibility for retirement. In addition, the members of the division provide client advice and handle litigation on a myriad of other issues for our clients, including contracts, computer hardware acquisition, software licensing, real estate acquisition and disposal, building construction, the purchase of goods and services for government agencies, casino gaming, public

disclosure, labor law, employee benefits, and state employment. The division also provides coordination and advice to all AGO divisions on contract law issues and e-commerce.

Numbers/Trends

Due to the wide variety of client agencies, it is difficult to quantify workload for the division as a whole. The year 2000 continued to be a busy year for the division. The Department of Retirement Systems has the highest concentration of complex litigation, including three class action lawsuits involving more than 250,000 class members. Regular retirement caseload increased with the addition of new retirement plans to administer and more members. Retirement also generated a significant portion of our

appellate caseload. Other areas that generated considerable litigation included enforcement of the campaign finance and disclosure laws for the Public Disclosure Commission, enforcement of the liquor control laws and cigarette tax laws by the Liquor Control Board, Indian gaming, and seizures by the State Fire Marshal of illegal fireworks.

Significant Cases and Their Impact

Campaign Laws

State Republican Party v. Public Disclosure Commission: The Public Disclosure Commission charged the State Republican Party with violation of the campaign contribution limits of Initiative 134 in connection with ads it ran during the 1996 gubernatorial campaign. The supreme court ruled in favor of the party, finding the statute is unconstitutional to the extent that it limits a political party's use of "soft money" for political issue advertisements.

Public Disclosure Commission v. Intercity Transit: The PDC charged a transit authority with unlawfully using public facilities to campaign in favor of a ballot measure that would have provided additional tax revenues for the transit authority. After hearings, the PDC referred the matter to the Attorney General for enforcement. The office brought an action in superior court on behalf of the PDC. The matter was settled with the transit authority paying a substantial fine, providing training to its staff and the other transit authorities, reimbursing its accounts for the

unlawful expenditures, and adopting internal controls to prevent future violations.

Public Disclosure Commission v. WEA: Acting on a citizen complaint, the PDC filed administrative charges against the WEA for unlawfully using fees paid to it by non-member teachers for political purposes. The PDC referred the matter to the Attorney General because it did not have sufficient penalty authority to redress the viola-

Acting on a citizen complaint, the PDC filed administrative charges against the WEA for unlawfully using fees paid to it by non-member teachers for political purposes.

tions charged. The office filed suit against the WEA on behalf of the PDC in superior court in October.

Labor Issues

Traders v. Department of Personnel: In this class-action lawsuit employees in certain job classes in general

government challenged the differential between their pay and the pay of similar job classes at higher education institutions. After two superior court rulings, one in favor of each side, the parties entered into a settlement agreement. The settlement amount of \$4.2 million was approved by the 2000 Legislature and the matter was concluded.

Gambling

Colville Tribe's Application to Secretary of Interior: The Colville Tribe invoked a new procedure adopted by the Secretary of Interior for arbitrating a compact with the state to operate a casino. The state opposed the application on several grounds, including the invalidity of the secretary's procedures and the illegality of slot machines, but is proceeding through the process under protest and is currently in mediation with the Tribe.

Retirement

WFSE v. Department of Retirement Systems: Two class actions with this name are pending. One is in superior court and challenges the funding and control of the PERS 2 pension system. The other involves a similar challenge to the PERS 1 pension system. The PERS 1 case was dismissed on summary judgment by the trial court and is pending in the court of appeals.

Retired Public Employees v. Department of Retirement Systems: In this class-action, plaintiffs' seek retroactive cost-of-living increases in their pensions. The superior court's dismissal of most of the case was appealed, and the matter

is awaiting a decision by the court of appeals.

Liquor

Jersey's All-American Sports Bar v. Liquor Control Board/ Oscar's v. Liquor Control Board:

Through administrative, superior court, federal district court, and court of appeals actions, the Liquor Control Board's regulations requiring liquor licensees to obtain approval before they added activities to their establishments (like dancing or music), and to take action to prevent criminal activity (like drug sales) on the premises were defended by members of the regulatory enforcement team. The cases involved First Amendment issues and numerous other issues regarding the ability of the Board and local jurisdictions to regulate in this area. One of the cases resulted in a Liquor Control Board rule regarding musical entertainment in liquor establishments being invalidated on First Amendment grounds.

Major Issues/ Events

Cigarette Tax Enforcement:

The 1997 Legislature transferred authority to enforce cigarette taxes from the DOR to

the Liquor Control Board. The board was active in 2000, seizing untaxed cigarettes and vehicles used to transport the cigarettes. In one significant case, the office was successful in the court of appeals in upholding the seizure of a semi-truck that had been used to transport illegal unstamped cigarettes into the state of Washington.

Impoundment of Vehicles Driven by Persons with Suspended Driver Licenses:

The Washington State Patrol, was given the responsibility by the Legislature to impound vehicles driven by persons with suspended licenses. After several adverse court decisions requiring return of an impounded vehicle to the owner of the vehicle who had unknowingly loaned their vehicle to the driver who had a suspended license, the office worked with the Patrol to draft a rule to resolve that situation. As a result, the Patrol is able to allow return of a vehicle to the owner under such circumstances, as long as it is the first time the owner has so loaned their vehicle.

E-Commerce: Through our representation of the Department of Information Services,

the office is providing advice to a state agency group that is planning the state's movement into doing business by electronic commerce.

Liquor Tax and Ban on

Yakama Reservation:

The Yakama Indian Nation enacted a resolution to tax and license alcoholic beverage sales within the exterior boundaries of its reservation. The state opposed that resolution to the extent it applied to non-Tribal members on private lands within the reservation boundaries, and attempted to resolve the situation by working with the Nation to address problems of alcoholism that were identified by the Nation. When those attempts were unsuccessful, the Nation changed the tax to a ban on alcohol, again applying it to non-Tribal members on private lands. After concerted additional efforts by the state to resolve the Nation's concerns short of litigation, the office filed a legislatively funded lawsuit to challenge application of the ban to non-Tribal members on private land. The federal district court recently dismissed the state's lawsuit without prejudice because there has been no attempt by the Nation to enforce the ban.

Labor and Industries Division

Summary of Responsibility

Industrial Insurance: A major component of the Department of Labor and Industries (L&I) is serving as the trustee and administrator of the \$6 billion worker's compensation trust fund which is funded by premiums paid by workers and employers. The department also administers a self-insured employer' fund composed of some of the state's largest employers. The Worker's Compensation Act is designed to provide relief for injured workers while at the same time providing a cost effective system of benefits and services.

Employer Services has set up a comprehensive program for assessing and collecting insurance premiums. The department maintains programs to prosecute individuals who fraudulently collect workers' compensation benefits and to prosecute providers who commit fraud.

A crime victims' compensation program was established to compensate innocent victims of violent crime. The department administers the claims and pays benefits to those who qualify.

Regulatory Functions: Washington Industrial Safety and Health Act (WISHA) requires L&I to administer a health and safety program. Washington is one of 23 states, which administers a state-run Occupational Safety and Health Plan pursuant to federal law.

The Employment Standards Program of Labor and Industries enforces wage and hour laws, regulates apprenticeship training, and monitors whether companies bidding on public works have followed prevailing wage laws.

The Specialty Compliance Division handles a variety of

A single pension case represents an average of \$300,000 of potential liability. Hundreds of additional files are handled by paralegals as part of the division's extensive ADR program.

regulatory and enforcement functions including boiler inspection, electrical inspection, telecommunications, factory assembled housing, elevator inspections and contractor registration.

Legal Services Provided

Division attorneys defend orders issued by L&I in

response to appeals filed by injured workers before the Board of Industrial Insurance Appeals and at all levels of our state courts. The department receives more than 22,500 such compensation claims each month. Although the department resolves the vast majority of these claims without litigation, almost 600 workers' compensation claims per month are rejected by the department and must be handled through alternative dispute resolution or litigation. Approximately 60 percent of the attorneys' time is devoted to this highly specialized work involving complex medical, vocational and legal issues.

Attorneys handle approximately 50-60 workers' compensation cases at one time at various stages of litigation. Each caseload represents several millions of dollars of exposure to the accident and medical aid funds administered by the department. A single pension case represents an average of \$300,000 of potential liability. Hundreds of additional files are handled by paralegals as part of the division's extensive ADR program. Approximately 35 percent of the appeals are resolved in this mediation process by paralegals.

Of the remaining 40 percent of the legal work, a significant percentage consists of prosecuting employers who allegedly violate workplace safety rules. These WISHA claims are litigated before the Board of

Industrial Insurance Appeals, as well as state and federal courts. Division attorneys also defend department orders regarding citations in wage and hour claims, electrical inspection matters, boiler inspection citations, and awards in crime victim compensation cases.

Significant attorney time also is devoted to advising the department regarding legislation and administration of its programs.

Numbers/Trends

The Labor and Industries Division has a substantial litigation caseload. The Board of Industrial Insurance appeals hears all appeals filed by injured workers and by employers. There are approximately 10,000 appeals granted each fiscal year. There has been a trend upward over the last biennium.

Current caseloads for the division include more than 35 major cases currently pending in state and federal courts, and approximately 3,000 workers' benefit cases currently in litigation or pending settlement at the superior court or administrative level.

Significant Cases and Their Impact

W.R. Enterprises, Inc. v. Department of Labor and Industries: This case is on appeal to the state supreme court on the issue of how the department actuarially sets premiums in the accident fund. The law was changed in 1971 requiring the department to maintain a solvent accident fund. Before the change, solvency was required only on the basis of individual work classifications. This represents

a dramatic change in the way the department has calculated premiums for the last 30 years.

Cockle v. Department of Labor and Industries: This case was argued in the state supreme court, appealed from a decision that held that employer contributions for health care benefits, as well as other fringe benefits such as profit sharing, are a form of compensation and should be included in wage calculations for injured workers. This case could impact nearly 12,000 workers and

These (ergonomic) rules are designed to reduce the number and severity of musculo-skeletal injuries, which make up the highest category in sheer numbers of injuries and in related claim costs.

presents a significant workload issue for the AGO and the Board of Industrial Insurance Appeals.

McIndoe v. Department of Labor and Industries: The department will soon argue this case in the supreme court. The court will be asked to decide if injured workers, who are currently receiving a pension, are entitled to additional benefits for permanent partial

disabilities that were not taken into account prior to awarding the pension. As the law now stands, once a worker has been placed on a pension or total disability, they may not apply for disability for partial impairment of another condition.

Major Issues/Events

New Vocational Rules are Implemented: Vocational rules were adopted in 2000, which set new standards for education and training of Vocational Rehabilitation Counselors. They also set out how standards of referral and accountability enhance the quality of services provided to injured workers in this state.

New Ergonomic Rules are Implemented: L&I implemented rules that will regulate ergonomics in the workplace. The rules implementation follows months of focus group meetings across the state with representatives of business and labor. These rules are designed to reduce the number and severity of musculo-skeletal injuries, which make up the highest category in sheer numbers of injuries and in related claim costs.

Emerging Areas of the Law: Attorneys in this division are working closely with the client agency in other emerging areas of the law, including: assisting the agricultural industry with farm worker safety issues, protecting minimum wages for minors, reducing long term disability of injured workers, fair and competent vocational services and utilizing complex information systems to speed the delivery of benefits and services to injured workers.

Labor and Personnel Division

Summary of Responsibility

The Labor and Personnel Division provides centralized employment and personnel related legal services and expertise to state agencies and higher education institutions. The division currently supports all state agencies with the exception of certain Western Washington higher education institutions and the Washington State Patrol in trooper discipline and arbitration matters.

Legal Services Provided

The division represents state agencies and higher education institutions in employee discipline, disability separation, and certain rule violation and reduction-in-force appeals before the Personnel Appeals Boards. It also represents agencies in unfair labor practice complaints and grievance arbitrations before the State Personnel Resources Board and Marine Employees Commission. The division provides client advice and assistance to its clients on a variety of personnel-related matters, such as the Americans with Disabilities Act, the Family Medical Leave Act, Fair Labor Standards Act, affirmative action, Washington Management Service and Merit System, and labor relations issues. The

division also handles employment and wage-related tort cases in state and federal courts. Over the past year, the division has conducted training for state agencies on employee misconduct investigations, the handling of grievance arbitrations, the Public Records

The caseload has continued to climb over the past year as state agencies continue to hold its employees accountable for adhering to agency/state policies.

Act, processing discovery, and how to negotiate a collective bargaining agreement. The division continues to sponsor monthly personnel manager meetings for state agencies to discuss new case and law updates as well as special employment related issues. The division also sponsors bi-monthly personnel manager meetings in Eastern Washington.

Numbers/Trends

The division's current caseload totals approximately 316 actions. This does not include 781 pending disciplinary and subject matter files contemplated by state agencies for which the division provides consultation and advice. The caseload has continued to climb over the past year as state agencies continue to hold its employees accountable for adhering to agency/state policies.

Personnel Appeals Board:

There are approximately 190 active cases before the board on employee appeals of agency disciplinary actions, alleged violations of merit system rules by state agencies, separation of employees based on inability to perform essential job functions, and layoffs.

Personnel Resources Board:

The current caseload of 28 actions involve either grievance arbitrations under collective bargaining agreements or litigation of unfair labor practice charges. This number has increased slightly over this past year as more unfair labor practice are being handled by division attorneys.

Marine Employees Commission: With 35 current cases, the division is involved in either grievance arbitrations under collective bargaining agreements or litigation of unfair

labor practice charges. This is a marked increase in the number of filings before the MEC.

Tort Cases: As part of its original mission, the division continues to litigate employment-related tort cases in state superior and appellate courts, as well as federal court. There are currently 34 cases where employees have alleged discrimination on the basis of race, sex, age, disability, or retaliation. The division also handles any appeals that stem from decisions in tort cases from both the federal district and state superior court level. Of those 34 cases, five are cases pending before appellate courts.

Judicial Review Appeals: This past year, the division has experienced a slight decrease in the number of administrative cases being pursued through the state courts. The division currently has 17 cases pending on appeal either as judicial reviews or in the appellate courts. Of those cases, two are on appeal to the Washington State Supreme Court and four are pending before the state court of appeals.

Miscellaneous: In addition to the case types enumerated above, the division handles 12

other miscellaneous cases, which include human rights commission complaints, unemployment compensation, wage, contracting out and public disclosure claims.

Major Issues/ Events

Public Disclosure: The number of requests for public employment records continues to rise as employees and the public attempt to gain more information on the operations of state government. The rise has been dramatic in the area of state employee personnel records. It is no longer uncommon for litigants to request personnel files on agency enforcement staff in an attempt to personally attack the competency of the individual who made the agency decision. Additionally, individuals who are the subject of investigations are using the court system more to try and limit the disclosure of completed investigative materials.

Employment Tort Cases: A growing area of employment tort litigation that the division is facing stems from claims of whistleblower and general retaliation, as well as the continual rise in disability related claims.

Inappropriate Use of State

Resources: There is a rise in the number of cases the division is handling concerning the issue of inappropriate access to internet sites that are non-work related. As state agencies have accessed more sophisticated computer tracking systems, they have discovered a wide variety of inappropriate computer use. Agencies have been aggressively acting on those discoveries and discipline against offending state employees has been routinely upheld by the Personnel Appeals Board. The division anticipates this trend continuing throughout the coming years.

Immigration: This past year, the division experienced a significant rise in the requests for advice concerning immigration and visa issues. A Special Assistant Attorney General has been appointed to address questions from client agencies, including information on visa applications, assistance with agency personnel visa applications and representation before the Immigration and Naturalization Service. Due to the current job market, the division anticipates this level of immigration activity to continue.

Licensing and Employment Security Division

Summary of Responsibility

The Licensing and Employment Security Division provides legal services to seven state agencies: the Departments of Licensing, Employment Security, and Veterans' Affairs, Human Rights Commission, Office of Minority and Women's Business Enterprises, Board of Accountancy, and also prosecutes professional licensing disciplinary cases for the Department of Health's boards and commissions.

The division handled more than 2,039 cases this year in a variety of administrative, state, and federal forums, with 1,057 cases coming to closure. The division has expertise in the areas of administrative and appellate procedure, public records and open public meeting issues, ADA and employment discrimination issues, affirmative action issues, and professional licensing and health standard of care issues.

Legal Services Provided

The division's legal services include advice and counseling on rule-making, contracts, policy writing and proposed legislation, as well as representation in actions filed against client agencies and their employees and officers. In addition, attorneys represent the state in regulatory prosecutions

before administrative tribunals, appeals to superior court of administrative hearing decisions, and in other actions against the state in the federal courts or the Washington State courts of appeal and supreme court.

The division handled more than 2,039 cases this year in a variety of administrative, state, and federal forums, with 1,057 cases coming to closure.

Numbers/Trends

The different kinds of litigation handled by the division include:

State Board of Accountancy: These are professional licensing disciplinary cases initiated by the board against accountants (4 cases).

Employment Security Department -- Unemployment Benefit Denial Appeals: These are appeals in Washington State courts seeking review of claims in which unemployment benefits were denied (131 cases).

Employment Security Department -- Unemployment Insurance Tax Cases: These are cases, usually at the appeal level, which seek payment of unemployment insurance tax from employers, who either claim to be exempt from payment of the tax or claim that their tax liability should be less (6 cases).

Department of Health -- Health Care Professional Licensing: These are licensing misconduct matters initiated by the Department of Health for violations of the Uniform Disciplinary Act (299 cases).

Human Rights Commission: These are discrimination complaints filed with the commission and appeals from commission decisions (18 cases).

Department of Licensing -- Implied Consent/Administrative DUI: These are appeals in superior court where drivers challenge their breath test results or their refusal to take breath tests when suspected of drinking and driving (320 cases).

Department of Licensing -- Financial Responsibility: These are license suspension appeals in superior court for

uninsured drivers involved in vehicle accidents where there is personal injury or property damage (4 cases).

Department of Licensing -- Other Drivers Cases: These are matters in which the division defends challenges to driver license laws or initiates cases against drivers for other violations of the drivers license law, like driver improvement or commercial driver license suspensions (17 cases).

Department of Licensing -- Business and Professions Licensing: These are licensing misconduct matters initiated by the Department of Licensing against non-health professional licensees, such as real estate licensees (90 cases).

Department of Licensing -- Vehicle Services: These are regulatory misconduct matters brought against vehicle dealers or tax assessment matters against motor vehicle fuel distributors (88 cases).

Office of Minority and Women's Business Enterprises: These are appeals from the denial of certification and decertification of minority or women owned businesses (4 cases).

Miscellaneous: This category includes other legal challenges brought by or against the division's clients (1 case). For example, the division often defends the state in lawsuits challenging the constitutionality of recent amendments to, or new laws.

Major Issues/ Events

Department of Health -- Prosecution of Professional Licensing Cases

Medical Quality Assurance Commission v. Bang Nguyen,

MD: The division, representing the Department of Health's Medical Quality Assurance Commission, prosecuted a physician for sexual misconduct with patients and practice that fell below the community standard of care. The doctor appealed the case to the superior and appellate court, which upheld the Commission's order of revocation. Dr. Bang appealed the case to the state supreme court claiming that the standard of proof the state must meet, preponderance of evidence, violates his due process and equal protection rights. He argues that the constitution requires a higher standard of proof, clear

preponderance, the same standard of proof the court uses to discipline attorneys. The court heard oral argument on this case this fall and we expect a ruling in 2001.

Department of Licensing-- Drivers Division

Eide v. Department of Licens-

ing: The department revoked Mr. Eide's driver's license for refusing to take a breathalyzer test and he appealed to the court of appeals, arguing that the Rules of Appellate Procedure allowed for an appeal from the trial court as a matter of right and not a discretionary review. The Legislature had amended the statutory scheme, which previously had allowed for an appeal as a matter of right and changed it so that the appeals would be pursuant to the rules governing appeals from courts of limited jurisdiction to the court of appeals. The court held that where the statute provides for appellate review pursuant to the rules of appeal from a court of limited jurisdiction, that review is discretionary and not one granted as a matter of right. This ruling significantly reduces the potential for unnecessary trial court and appellate litigation that existed under the prior statute.

Social and Health Services Division

Summary of Responsibility

The Department of Social and Health Services (DSHS) administers a variety of federally and state-funded programs to protect the general public and those who are unable to provide for themselves. Programs include income and medical assistance, food stamps, children's services, child support, mental health, developmental disabilities, juvenile rehabilitation, alcohol and drug rehabilitation, vocational rehabilitation, nursing home surveys, adult protective services, home and community care services, and other related community social services program activities.

Five divisions of the Attorney General's Office provide legal services to DSHS in addition to the specialized services of the Torts Division and Labor and Personnel Division. The majority of legal support to DSHS falls into two main areas: children's services litigation and advice and representation for DSHS headquarters in Olympia. Currently, 70 percent of the legal services support juvenile dependency and parental rights termination cases, as well as the other child welfare services programs.

Legal Services Provided

Children's Services: Client advice, for both DSHS

headquarters and regional offices, is provided to the Children's Administration, which administers child welfare programs. However, the majority of legal services are in litigation-related activities, including initiating dependency cases in which a child has been abused or neglected; filing for termination of parental rights

Five divisions of the Attorney General's Office provide legal services to DSHS in addition to the specialized services of the Torts Division and Labor and Personnel Division.

when a child has been out of the home and the parents are unable to care for the child; and taking actions relating to the licensing of foster homes, group care, daycare facilities, and child-placing agencies.

Economic Services: The Economic Services Administration (ESA) administers public assistance programs, which include temporary assistance to needy families, food stamps, general

assistance, SSI, telephone assistance, and refugee assistance. Litigation ranges from individual appeals of reductions to or denials of benefits to class action lawsuits challenging program implementation. Other significant issues include the development of agreements with Indian tribes for the delivery of TANF and Workfirst services on the reservations, confidentiality of client records, electronic application for and delivery of public assistance benefits, ongoing advice on proposed and enacted legislation, and administrative regulations on both the state and federal levels. ESA also administers the child support program. Legal services provided to the Division of Child Support (DCS) include both legal advice and litigation support. Litigation primarily involves class action lawsuits challenging administration of the program and representation of DCS in appeals to superior court under the Administrative Procedure Act and in bankruptcy court. Litigation relating to individual child support orders is generally handled by prosecutors.

Medical Assistance: The Medical Assistance Administration (MAA) is responsible for administering federal (Medicaid) and state programs that provide medical services to indigent residents. MAA's program budget for the 1999-

2001 Biennium is \$4.88 billion. Legal services to MAA include client advice and representation before federal and state tribunals on issues concerning compliance with the federal Medicaid laws, payment rates paid to hospitals and other medical providers, services provided, contract disputes with medical providers, including contractual agreements with managed care plans and providers in the Healthy Options program, and Medicaid eligibility issues.

Aging and Adult Services:

The DSHS Aging and Adult Services Administration administers a wide variety of programs that provide services to the elderly and to vulnerable adults in the state. Those programs include residential care services (nursing homes, adult family homes, boarding homes, and the resident protection program), home and community services (Medicaid personal care, COPES, Chore, and adult protective services), and management services. Attorneys provide legal advice on the interpretation of state and federal (Medicaid) laws that govern DSHS' programs. They also represent the agency in litigation including, but not limited to, provider licensing actions, provider contract termination actions, and Medicaid rates paid to providers.

Mental Health: The DSHS Mental Health Division operates the two state mental hospitals and the Child Study and Treatment Center and also contracts with Regional Support Networks to provide Medicaid and state-funded community mental health services. Legal advice and

representation of state hospitals include a wide variety of legal issues ranging from patient health care issues to contracts for educational services for minor patients at the children's facility. Advice to the Mental Health Division covers such issues as Medicaid financing, licensing, and contracts. Legal advice and representation are provided in all civil commitment hearings and jury trials.

As of September 30, 2000, there were 7,500 child welfare cases pending in the Attorney General's Office. Approximately 6,000 are dependency actions seeking court-ordered protection, placement, or supervision of children alleged to be abused, neglected, or seriously endangered by their parents.

Special Commitment Center:

The Special Commitment Center houses DSHS' program for the involuntary treatment of sexually violent predators. Litigation has involved complex civil rights challenges by program residents against all aspects of the program.

Developmental Disabilities:

This DSHS division operates

five residential habilitation centers for the developmentally disabled and contracts with counties and private providers for home and community-based residential and day programs. Legal services involve ongoing advice to division staff on various issues, including eligibility for services, federal reimbursement, program certification, contract issues, civil rights and right to treatment issues, public disclosure, and adoption of administrative rules and policies. Litigation issues include eligibility and access to services, access to clients and client records by the Washington Protection and Advocacy System, standards of care in institutions and state mental hospitals, right to community placement, and medical decision making.

Juvenile Rehabilitation: The Juvenile Rehabilitation Administration (JRA) provides for the care, custody, rehabilitation, and community supervision of court-committed juvenile offenders. JRA operates six institutions, one basic training camp, and seven state-operated group homes. It also contracts out for additional community residential placements. Legal services to JRA include program advice on a variety of issues, such as terms and conditions of confinement, right to treatment, conditions of parole, public disclosure, and community protection requirements.

Numbers/Trends

Child Welfare Litigation: As of September 30, 2000, there were 7,500 child welfare cases pending in the Attorney General's Office.

Approximately 6,000 are dependency actions seeking court-ordered protection, placement, or supervision of children alleged to be abused, neglected, or seriously endangered by their parents. When it is not possible to reunite children with their parents, legal action is initiated to permanently place children elsewhere. These actions have increased substantially over the past five years with more emphasis on moving children out of the foster care system and into permanent homes as early as possible. During the 12-month period ending September 30, 2000, there were more than 1,300 children legally freed for adoption and over 600 children were placed in court-ordered guardianships which provide stability for these children.

Appellate Litigation: Appellate litigation in state and federal courts totaled 179 cases as of September 30, 2000. The majority of these cases involve child welfare issues, but a variety of other programs and legal challenges to DSHS are involved.

Significant Cases and Their Impact

Child Welfare Litigation: No single child welfare case by itself may have statewide significance, but, cumulatively, decisions in these cases have a profound impact upon affected children and their families, as well as the community at large. A tremendous volume of these cases are presented to the courts each year. The issues and challenges include determining what is best for children abused or neglected by

parents who are not currently capable of meeting their needs; whether the child should be returned home; how frequent visitation should be, if at all; what services the parents should be required to undertake; and finally, whether some parents should have their parental rights severed because they have been unable to correct underlying problems.

Auburn Regional Medical Center, Inc., et al., v. DSHS: DSHS entered into contracts

During the 12-month period ending September 30, 2000, there were more than 1,300 children legally freed for adoption and over 600 children were placed in court-ordered guardianships which provide stability for these children.

with a managed care organization known as Unified Physicians of Washington (UPW) under which UPW would be responsible for ensuring medical services were provided to certain Medicaid recipients. UPW entered into separate contracts with doctors, hospitals, and other medical providers. The medical providers rendered services to Medicaid recipients enrolled in UPW's plan. UPW was liquidated by

the state Insurance Commissioner and was unable to pay certain medical providers who had contracts with UPW. A group of 28 of those medical providers sued DSHS under the theory that DSHS should pay the amounts that UPW cannot pay. The case involves issues regarding (1) the distinction between managed care and the traditional "fee for service" method of providing medical care to Medicaid recipients; (2) the interaction of Medicaid law and insurance law; and (3) contract law. There is no official trial date, but the court has informally suggested that the trial might occur in the summer of 2001. Discovery is ongoing.

Keffeler v. DSHS: This is a class action brought by foster children receiving financial benefits under Titles II and XVI of the Social Security Act. The lawsuit challenges DSHS' authority when serving as a foster child's representative payee to apply the foster child's social security moneys toward the cost of the child's foster care. Millions of dollars currently used by the department's foster care program are at stake. The Okanogan Superior Court issued a ruling that DSHS may not apply the social security benefits to the cost of foster care. Our state supreme court first heard oral argument in June 1999. After remand to the trial court for the submission of additional information and the entry of additional findings of fact, the supreme court heard further argument on November 8, 2000.

Premera Blue Cross v. DSHS and Health Care Authority ("HCA"): Premera is a

managed care organization that entered into contracts with DSHS and HCA under which Premera would be responsible for ensuring medical services were provided to certain Medicaid recipients and other low-income individuals. Unlike most Medicaid recipients, persons who receive Supplemental Security Income (SSI) from the federal government are not required to join a managed care plan. Premera filed this lawsuit based on its belief that DSHS and HCA failed to ensure that SSI recipients were excluded from Premera's managed care plan. Premera asserts that medical care to SSI recipients is more costly than medical care to the general population. DSHS' and DOH's motion for summary judgment will be heard on January 19, 2001. There is no trial date set.

Sacred Heart Medical Center v. DSHS: Several health care providers who participate in the Medicaid program seek reimbursement for the health care they provided to individuals while they were terminated from the Medicaid program. The providers allege that they there are entitled to reimbursement because those individuals' Medicaid eligibility had been terminated improperly based on their termination from the Temporary Assistance to Needy Families cash grant program. No trial date has been set and discovery is ongoing.

Townsend v. Quasim: This class action lawsuit challenges the income eligibility requirements for the State's Community Options Program Entry System (COPES), which provides Medicaid funded

long-term care services in home and community settings for persons who are otherwise eligible for Medicaid nursing home care. The plaintiffs claim that the Americans with Disabilities Act requires the state to provide them long-term care services in the most integrated setting appropriate to their needs, regardless of their income. Trial is set for September 17, 2001. The department estimates that there are 750 persons now in nursing homes who could be

Premera filed this lawsuit based on its belief that DSHS and HCA failed to ensure that SSI recipients were excluded from Premera's managed care plan.

class members. The department is unable to estimate the number of persons in the community who might be members of the class.

Turay v. Weston: This civil rights action challenges the conditions of confinement at the Special Commitment Center (SCC) for sexually violent predators. All claims but one were eventually resolved in favor of SCC in 1994.

On one claim, the jury found the treatment program was constitutionally inadequate. The federal court appointed a special master who has submitted 18 reports evaluating the progress that SCC has made toward improving its treatment program. On November 15, 1999, the court found DSHS in contempt for failure to make program improvements quickly enough. In May, the court found that DSHS had made substantial progress toward injunction compliance but kept the contempt findings in place. The most recent injunction hearing was held December 5-7, 2000, and a decision is pending.

Wilson v. DSHS: This is a class action lawsuit involving the DSHS Medicaid Third-Party Liability Program. It challenges the state's authority to recover Medicaid reimbursement from Medicaid recipients who obtain tort judgments in actions brought against third parties who are liable for the injuries which gave rise to the Medicaid expenditures. The King County Superior Court ruled partially for the plaintiffs, finding that the state statute is in violation of federal law. Our state supreme court issued its decision in favor of DSHS on October 19, 2000. Counsel for the class has requested the court to reconsider.

Allen v. Western State Hospital: This civil rights action challenges the quality of services for developmentally disabled patients at Western State Hospital. This lawsuit followed a finding by the federal government through the Health Care Financing Administration that there were deficiencies in the services

provided to developmentally disabled patients. The parties have agreed to a stay of this lawsuit to allow DSHS to implement a three-phase plan to improve services for developmentally disabled hospital patients. In 2000, the Legislature approved the first two phases and directed that DSHS report on options for the third phase.

Arc of Washington v. Quasim:

This class action lawsuit alleges that DSHS is violating federal Medicaid law, the Americans with Disabilities Act, and the equal protection and due process clauses of the Constitution, in its management of Medicaid-funded services for clients with developmental disabilities. Plaintiffs claim that DSHS must offer a choice of institutional or community-based residential services to all clients who are eligible for such services under Medicaid. DSHS currently operates those programs within available funds appropriated by the Legislature. Plaintiffs claim that the services are legal entitlements that must be provided to all eligible individuals. The court recently ruled that no entitlement exists to community-based services funded through the Home and Community-Based Services Medicaid Plan waiver. Trial is scheduled to begin January 16, 2001.

Major Events/ Issues

Long-Term Care: In the 2000 legislative session the Legislature removed the July 1, 2000, sunset date for DSHS' oversight of the boarding home program. The boarding home

program was originally transferred to DSHS from the Department of Health in April 1998 subject to the July 1, 2000, sunset date. The Aging and Adult Services Administration is therefore responsible for surveying over 400 boarding homes in the state for compliance with state licensing rules and regulations. APS has authority under RCW 74.34 to provide protections to vulnerable adults who are the victims of abuse, neglect, or financial exploitation. The number of APS cases referred to the

***The Aging and Adult
Services
Administration is
therefore
responsible for
surveying over 400
boarding homes in
the state for
compliance with
state licensing rules
and regulations.***

Attorney General's Office has increased significantly in the past few years, resulting in the filing of more protective orders and guardianship petitions and more referrals of potential criminal violations to the Medicaid Fraud Control Unit and local prosecuting attorneys.

Department of Justice Investigation of State Residential Habilitation Centers: In May 1998, Department of Justice

(DOJ) initiated two new investigations of state institutions for the developmentally disabled under the federal Civil Rights of Institutionalized Persons Act (CRIPA). CRIPA investigations result in a determination by DOJ whether program deficiencies exist which violate residents' civil rights under the constitution and the Americans with Disabilities Act. An agreement was negotiated with DOJ resulting in an expedited investigative process which should avoid the prolonged investigation that occurred at Fircrest School from 1991-1998. Following a tour of the two state facilities in January 1999, DOJ issued a findings letter alleging civil rights violations at both institutions. DSHS has challenged those findings while agreeing to pursue program improvements to address significant concerns of DOJ. It is anticipated that DOJ will soon request another site visit to both facilities in order to evaluate DSHS' efforts to address its concerns.

Child Sexual Abuse Investigation Protocols: The Attorney General's Office has been involved in the establishment of multi-agency protocols for the investigation and documentation of child sexual abuse cases in most counties in the state. The prosecuting attorney in each county was required by legislation enacted in 1999 to implement such protocols covering his or her own office, law enforcement agencies, Child Protective Services, and other agencies including the AGO. Division attorneys have worked with DSHS in setting up and monitoring pilot projects to test methods of documenting interviews of

child victims or witnesses in sexual abuse cases. The Attorney General's Office has also worked with DSHS, prosecuting attorneys, law enforcement, and medical experts to establish multidisciplinary Child Advocacy Centers in a number of counties.

Foster Care Reform: DSHS has initiated a number of major reforms of the foster care system with the assistance of division attorneys. These reforms include restructuring of foster care rates, redrafting of administrative regulations for foster and group care homes, implementation of clear

policies regarding monitoring or restraint of foster children, standardization of background checks of care providers, information sharing with foster parents, and improving the adoption support system. Division attorneys are also assisting the Torts Division in responding to a lawsuit that alleges that children have been harmed by multiple foster care placements and that seeks major changes to the current foster care system.

Kids Come First Action

Agenda: DSHS has implemented a sweeping Kids Come First Action Agenda to ensure

that the safety of the child is the highest priority in all Child Protective and Child Welfare actions and decisions. Additional goals of the agenda are to improve the well-being of children in out-of-home care, expedite permanency and increase stability for children in out-of-home care, and increase the accountability and effectiveness of DSHS. Division attorneys are assisting DSHS in the implementation of the agenda and in related areas such as improved training for social workers and working with the courts to improve the legal response to child welfare issues.

Transportation and Public Construction Division

Summary of Responsibility

The Transportation and Public Construction Division (TPC) represents the state's transportation agencies, most notably the Department of Transportation (WSDOT) and its oversight body, the Transportation Commission. Other division client agencies include the Board of Pilotage Commissioners, the County Road Administration Board, the Transportation Improvement Board, the Washington Traffic Safety Commission, and the Freight Mobility Strategic Investment Board. TPC attorneys use their expertise in such areas as eminent domain, contract and construction litigation, land use and environmental law and to support the construction activities of other state agencies.

Legal Services Provided

TPC's workload is a mix of moderate to complex litigation and client advice on a wide range of issues. In addition to a steady condemnation caseload, TPC attorneys handle construction claims and environmental litigation, both regulatory compliance and defense of hazardous waste claims, as well as land use issues that arise in connection with state projects. In addition, division attorneys handle a number of tort cases seeking recovery of property damage allegedly caused by floods and landslides along state agency facilities. Client advice topics range from land use planning and land management issues to advertising sign regulations to resolving jurisdictional dis-

agreements between federal, state, local and tribal entities. In recent years, TPC attorneys have worked with agency staff, primarily at WSDOT, to create mechanisms to avoid disputes, and provide non-judicial means of resolving them when they do arise.

Numbers/Trends

The division's workload is largely influenced by the WSDOT's budget. As WSDOT revenues declined in recent years, there was a corresponding decline in the number of new eminent domain cases being referred to the division. On the other hand, because the demand for a range of transportation services had not declined, WSDOT had pursued a variety of approaches to managing the state's transportation system, sometimes

raising new and complex legal issues. A good example is the public-private initiatives program, under which WSDOT entered into a contract with a private company to construct a second bridge across the Tacoma Narrows, renovate the current bridge, and pay for the construction and operation of the upgraded facility with tolls. Because the project is controversial, it has generated a number of lawsuits and permit appeals as well generating a significant demand for client advice on a wide range of issues. In November 2000, the supreme court upheld the constitutionality of the public-private initiatives act, but found fault with one provision of the existing contract under current law.

Significant Cases and Their Impact

The following are typical of the kinds of matters handled by the division:

Endangered Species Act: The division works with WSDOT staff to assure compliance with the Endangered Species Act in connection with both planned construction and ongoing operations of the state's highway systems.

Ferry Construction Claims: In 2001, the division settled two claims (one for \$5 million and one for \$4.5 million) arising from contracts for rehabilitation of existing vessels.

Hazardous Waste Claims: WSDOT has been named as one of several potentially responsible parties in the EPA's Commencement Bay cleanup project. The cost of cleanup and the department's liability,

if any, have not been established.

Condemnations for Convention & Trade Center Expansion: Division attorneys handled several acquisitions necessary for the expansion of the Washington Convention and Trade Center, and the appeal of a court of appeals decision allowing property owners their attorneys fees, even though they did not comply with RCW 8.25.070. We are awaiting a determina-

... because the demand for a range of transportation services had not declined, WSDOT had pursued a variety of approaches to managing the state's transportation system, sometimes raising new and complex legal issues.

tion by the supreme court whether to accept discretionary review.

WSDOT Condemnations: In 2000, division attorneys resolved 23 cases with a total payout of \$4.6 million.

Second Narrows Bridge: In addition to the supreme court decision referred to above, division attorneys have handled a number of permit appeals and other legal matters relating to this project.

King Street Station: WSDOT is participating in multi-party, multi-million dollar project that involves a contract with a private party to renovate King Street Station and reconfiguration of the north half of the north parking lot by the new Seahawks stadium. A division attorney is advising the department on this complex project.

Telecommunications on Right of Way: An attorney from the division assisted WSDOT in negotiating with a private developer to install and operate telecommunications systems on limited access right of way, involving complex financing and regulatory issues.

Fast Ferry Litigation: Division attorneys are defending Washington State Ferries' introduction of high speed passenger-only service between Bremerton and Seattle, against claims by some Rich Passage property owners who are seeking monetary compensation for alleged property damage to their waterfront properties. They were successful in having a preliminary injunction requiring the vessels to slow down while transiting Rich Passage reversed by the Washington Supreme Court in March of 2000. This case is expected to go to trial in late 2001.

Construction Contract Claims: Division attorneys devote considerable time and effort in assisting WSDOT staff in avoiding and resolving claims from contractors on highway construction projects. Nonetheless, each year a number of such claims are presented by contractors seeking recovery for cost overruns. Many such claims are settled either through negotiations or as a

result of a Dispute Review Board hearing, but only after substantial preparation for the possibility of litigation.

Tacoma Zoning Ordinance

case: The division represented the DOC in a challenge to a city zoning ordinance that effectively would have precluded DOC from siting a work release center within the city except in industrial areas. The Growth Management Hearings Board recently agreed with the department's position and remanded the matter to the city to revise its ordinance.

Major Issues/ Events

Environmental Issues: As WSDOT projects continue to impact both the natural and built environment, the division is experiencing a growth in its permit-related advice and litigation caseload. This has

particularly increased with the listing of chinook salmon under the Endangered Species Act.

Blue Ribbon Commission on Transportation: This report's recommendations include a significant investment in the state's transportation system as well as structural changes in the governance of the WSDOT. Legislative action on these and related recommendations could generate additional demand for legal services from the division, with the nature and extent of course depending upon the particular legislative action taken.

Early Possession of Condemned Property: When a state agency must acquire private property to construct a public facility, the state Constitution allows the property owner to refuse to tender possession and use of the

property until there has been a full adjudication of the "just compensation" which must be paid for the property. In 1967, the Legislature enacted a provision giving property owners an incentive to allow early possession of the property in return for (1) immediate payment by the acquiring agency of its determination of value; and (2) an opportunity for the property owner to be reimbursed any attorneys fees incurred in the proceeding. The statute also encouraged settlement of these matters by both property owners and agencies. This year the court of appeals interpreted this statute as allowing property owners to retain possession of their properties until shortly before the trial and still receive their attorneys fees. If the supreme court does not accept review and overturn this decision, the cost of public projects will increase.

Utilities and Transportation

Division

Summary of Responsibility

The Utilities and Transportation Division provides legal services to the Washington Utilities and Transportation Commission (Commission or UTC). The Commission regulates, in the public interest, rates, charges, service, practices and safety of privately-owned utilities and a number of transportation companies operating in the state. These include telecommunications,

electric, gas, and water companies as well as solid waste companies, private ferries, buses, and certain aspects of railroads, such as rail crossings and train speeds.

Legal Services Provided

The principal component of the division's workload is handling regulatory litigation. The division represents the Commission in court both on appeals from Commission

decisions and in original actions, as well as in proceedings before various federal agencies, including the Federal Energy Regulatory Commission and the Federal Communications Commission (FCC). The division represents the Commission staff in rate proceedings and other regulatory actions before the Commission. It also assists in the preparation for and the disposing of more than 1,900 formal filings considered by the Commission annually.

Numbers/Trends

The division is currently handling 25 contested cases in state and federal courts, four formal federal administrative agency cases (not including participation in rule proceedings before the FCC), and a large number of administrative cases before the commission ranging from complex rate and pricing proceedings to small cases impacting only a few consumers. The number of formal filings with the commission has increased in recent years. In 1996 there were 1,656 filings; in 2000 there will be over 1900. The vast majority of filings are resolved without formal adjudication. They are either noncontroversial or resolved through negotiation or other alternative dispute resolution processes.

About half of the workload for the past year has been in telecommunications. Much of this is a function of the Federal Telecommunications Act of 1996 which defines for state public service commissions, like the UTC, a number of tasks to implement the federal pro-competitive policies. (The state of Washington's pro-competitive policies, both legislative and by the Commission, predate the 1996 Act.) The federal act has resulted in a substantial federal court caseload, primarily challenges to UTC decisions arbitrating agreements between incumbent local exchange telecommunications companies and potential competitors who may, under the federal act and state law, interconnect with them. In the past year, two such cases in which we prevailed in the Ninth Circuit Court of Appeals were appealed to the United

States Supreme Court. That court denied review of both cases. There still is one such case pending in the Ninth Circuit and six more pending in the United States District Court.

Significant Cases and Their Impact

Implementing the Interconnection Requirements of the Federal Telecommunications Act: The division currently is defending numerous decisions

In order to insure comparable rates among all consumers, the Commission is working to preserve and advance universal telecommunications service.

of the Commission implementing the requirements of the federal act that incumbent local exchange companies interconnect with their potential competitors. As described above, this contributes to the division's growing federal court case load. Issues include: terms and rates for interconnection to local exchange companies by competitors, residential and commercial

rates, and specific components of costs for such companies.

Implementing Access Charge Reform:

The Commission adopted a significant rule changing the way local exchange companies may charge other companies (e.g., long distance companies) access to their networks for originating or terminating calls. The rule is designed to implement the procompetitive policies of state law as well as those of the federal act. The Thurston County Superior Court upheld the rule against various challenges, and that ruling has been appealed to the court of appeals.

Major Issues/Events

Encouraging Competition in Telecommunications Markets While Preserving Universal Service: The Commission is implementing state and federal procompetitive policies by relaxing regulatory requirements for "competitive" companies and services and allowing flexible pricing. However, as competition increases in local telecommunications service, cost differences in service of urban and rural areas may lead to differential rates. In order to insure comparable rates among all consumers, the Commission is working to preserve and advance universal telecommunications service. Currently such universal service is preserved through a combination of rate averaging and high access charges. There have been several legislative proposals to replace these implicit subsidies to high cost areas with explicit support through a fund.

Energy Prices: Increased costs of wholesale electricity and natural gas have increased pressures on retail rates. Through “purchased gas adjustments” mechanisms, much of these costs are passed

through to retail ratepayers. In an effort to take advantage of competitive pressures in the wholesale market, some industrial customers purchase electricity from regulated utilities based on an indexed

“market” rate. However, spikes in the “market rate” have led to significant increased utility costs and requests to the commission to take action to ensure rates that are fair and reasonable.

Administration Division

Summary of Responsibility

The Administration Division provides nonlegal services for the Attorney General’s Office and is divided into six offices: Fiscal and Budget, Human Resources, Facilities, Information Systems, Law Library and Public Affairs.

Services Provided

Support services include centralized budgeting and accounting, personnel and training, library resources, planning and technical support for the office’s computer systems, management of the office’s buildings, internal and external communications and general office administration.

Numbers/Trends

Fiscal/Budget

The Fiscal Office annually processes approximately 140,000 transactions for vendor payment and employee travel reimbursement. In addition, more than 12,000 warrants are processed annually.

The Payroll Office processes a semi-monthly payroll for about 1,200 employees (including work-study students and law clerks) totaling \$2.7 million, or

an annual total of about \$65 million.

Human Resources Office

The Human Resources Office received and processed approximately 1,500 applications for employment in 2000. More than 597 applications were submitted for attorney positions. Approximately 450 applications were received for law clerk positions. From the applications received, the AGO appointed approximately 52 attorneys, made offers to 11 third-year law students for 2001 and filled 102 law clerk positions. Nine Washington Management Service appointments were made and approximately 100 appointments were made into the Washington General Service in 2000.

Training staff in the Human Resources Office coordinated 313 classes in 2000 with a total attendance of 5,950. The 313 classes included 52 continuing legal education courses, several specialized legal classes for professional support staff on topics such as court procedures, and management/supervisory training for the attorney manager and lead support staff. Core Investigator and Advanced Investigator courses were also provided to AGO investigators.

The Human Resources training staff have been instrumental in coordinating two highly successful videoconferences on Contracts and Appellate Practice. Over 200 staff were able to participate in these videoconferences in several cities throughout the state. These accomplishments have been made without adding any permanent staff. The average cost per attorney for training is about \$30.

The Human Resources Office manages a highly successful peer-driven employee recognition program for tenure and outstanding achievement. In 2000, 252 nominations were received in five categories. The Attorney General recognized 54 employees for their extraordinary contributions to the office in fulfilling its mission, and 168 employees were recognized for their length of service to the state.

Law Library

Four professional librarians provided reference library assistance and in-depth research services to the more than 500 attorneys and paralegals. Staff centrally ordered all agency library materials, checking in and distributing more than 16,900 publications in 2000.

More than 860 staff attended 132 training classes which were delivered or coordinated by Law Library staff in 2000. The classes were on efficient usage of online research services, the Internet as well as the more traditional research methods the agency uses to investigate historical sources.

Facilities

The Attorney General's Office has 24 office locations throughout the state for its more than 1,200 employees. Annual lease costs are approximately \$9.5 million.

A trend toward consolidation in the Thurston County area was accomplished with three divisions (Criminal Justice, Ecology, and Agriculture/Health) being relocated to a new building in Bristol Court in Olympia. This consolidation trend is following the ongoing short term Facilities Planning Study.

New procedures involving acquisition of "used furniture" and extensive internal redistribution of AGO used furniture and work station equipment was accomplished at an estimated cost savings of over \$100,000.

Information Systems

The AGO network contains 50 high capacity servers with storage capacity to hold 2.7 terabytes of data, a 300 percent increase over the previous year.

The AGO wide area network (WAN) was restructured last year. It now contains 60 individual Local Area Networks (LANs) and one Metropolitan Area Network (MAN) for all of the AGO Lacey office locations.

- ISD currently maintains 2,050 electronic mailboxes and 12.5 million stored messages, more than double the previous year.
- ISD maintains 22 telecommunications systems supporting 1,393 users, 1,135 voice mailboxes, and 1,798 separate phone lines.
- ISD processed 15,365 help desk calls last year.
- ISD managed 411 special service requests last year.

The Attorney General recognized 54 employees for their extraordinary contributions to the office in fulfilling its mission, and 168 employees were recognized for their length of service to the state.

- ISD managed the acquisition and installation of more than \$3.6 million of computer hardware and software.
- ISD held 84 classes, offering six different technical training courses, to 709 students last year.

Public Affairs

In April, Public Affairs launched the Cyber Clearinghouse, a website that offers tips for safe surfing, help for victims of cyber fraud, resources

to protect consumer privacy, contacts in law enforcement, and other information on high-tech issues. In October, Public Affairs supported the release by Attorney General Gregoire and State School Superintendent, Dr. Terry Bergeson, of the *Crisis Response Box* to 3,200 schools, school districts, and school boards in Washington State. The how-to-guide helps prepare schools to respond quickly and effectively in the event of a crisis. In addition, Public Affairs:

- Prepared and distributed more than 60 news releases.
- Responded to an average of 15 media calls each day.
- Researched and wrote an average of seven major AG speeches each month.
- Responded to approximately 300 constituent letters, phone calls and emails per month.
- Received the "WAGGY Award" from the Conference of Western Attorneys General for best overall website. (www.wa.gov/ago)

Major Issues/Events

Timekeeping System: A new timekeeping system was deployed to attorney, paralegal and investigator staff and to select support staff. The new system is much more efficient and flexible than its predecessor.

Billing System: Testing continues on a new billing system. The system employs a new rate based billing model that will result in more timely and predictable bills for our clients.

HR Core Supervisory Training: The HR staff developed extensive workshops for supervisors which include Positions Actions, Interview-Reference Checking, Corrective-Disciplinary Action, Performance Management, ADA/Reasonable Accommodations, and L&I Return to Work courses. Over 100 lead professional staff supervisors have received various components of this core training. The training will be offered several times and in several locations throughout the year.

On-line Training: Training is now being offered on-line through the Department of Information Services SmartForce courses. HR staff anticipate on-line training to grow significantly within the next year. HR staff is currently working on developing AGO New Employee Orientation on the Intranet.

Worker's Compensation and Return to Work: The AGO received a refund of \$41,710.69 based on lower than expected claim costs. The AGO is also participating in a pilot program sponsored by the Department of Personnel and Labor and Industries to bring injured workers back into the workplace. This program has been quite successful and will become a permanent program with statewide participation next year.

Recruitment Challenges: Recruitment difficulties are on the rise in the legal field. The AGO has experienced a serious shortage of professional support staff, especially legal secretarial staff in the Seattle Office and some regional offices. Solving these issues is

a complex task and one that will continue into the year 2001. A recruitment and retention manager has been appointed in the Seattle Office, with primary responsibility to market the legal profession and the AGO and work closely with high schools and community colleges to recruit high quality candidates. In addition, the HR staff is administering the State Civil Service exam

In October, Public Affairs supported the release by Attorney General Gregoire and State Superintendent, Dr. Terry Bergeson, of the Crisis Response Box to 3,200 schools, school districts, and school boards in Washington State.

for legal secretaries on site in the Seattle Office. Several other projects and reviews are currently in progress to further define the problem and develop viable solutions.

AGO Legal Support Review: The AGO is undertaking a review of legal support to AGO attorneys. The objective of the legal support review will be to

develop a new business model. This business model will reflect the workforce and technology factors today and will be flexible to adapt to changes over time so that we continue to best serve our customers.

Rapid Desktop Access: With the continued goal of providing rapid desktop access to Internet-based information, the Law Library oversaw an upgrade to the dedicated Westlaw line and also the migration of other key electronic information and research services such as Courtlink and Leglink to Internet interfaces. The major initiative to deploy Westlaw on the Internet to the more than 700 Westlaw users in all office locations was begun during the last quarter of 1999.

Library Tactical Plan for Downsizing: The plan, which focuses on reducing library space following the introduction of desktop access to electronic research technology, has been implemented in eight locations.

Case Management: ISD is implementing a new Case Management System. Completion of the project is scheduled for June 30, 2001. The project includes converting 20 existing Prime docketing systems data to the new system, upgrading all AGO staff workstations with the new software and training the entire AGO staff on the new system. Four of the Agency's 26 legal divisions have been converted to the new system and they are currently using the product.

WAN Upgrade: The AGO Wide Area Network was completely re-engineered last year. It was converted from a

largely copper wire-based, HP Server powered, 10 megabyte/sec, network to a fiber optic-based, Compaq Server powered, 100-megabyte/sec network. The resultant network infrastructure will be the foundation for future electronic services to the AGO such as Case Management, Document Management, and Internet/Intranet-based services to the AGO for the next four years.

Intranet Pilot: A new AGO Intranet was developed for

hosting agency publications and administrative application. This pilot project proved the viability of providing information services via an agency based web site.

CATS: A *Consumer Affairs Tracking System* purchased from Palm Beach County Florida has been implemented in the Consumer Protection Division and its Consumer Resource Centers around the state. Additions to the system that

reflected the unique business rules of the division such as On-Phone Reference and Volunteer Time Tracking were included as well as improved Word merge functionality.

Video Conferencing Pilot: A video conferencing system was established between Olympia and Seattle. This system is the beginning of a potentially larger effort to introduce video-conferencing to all AGO office sites across the state.