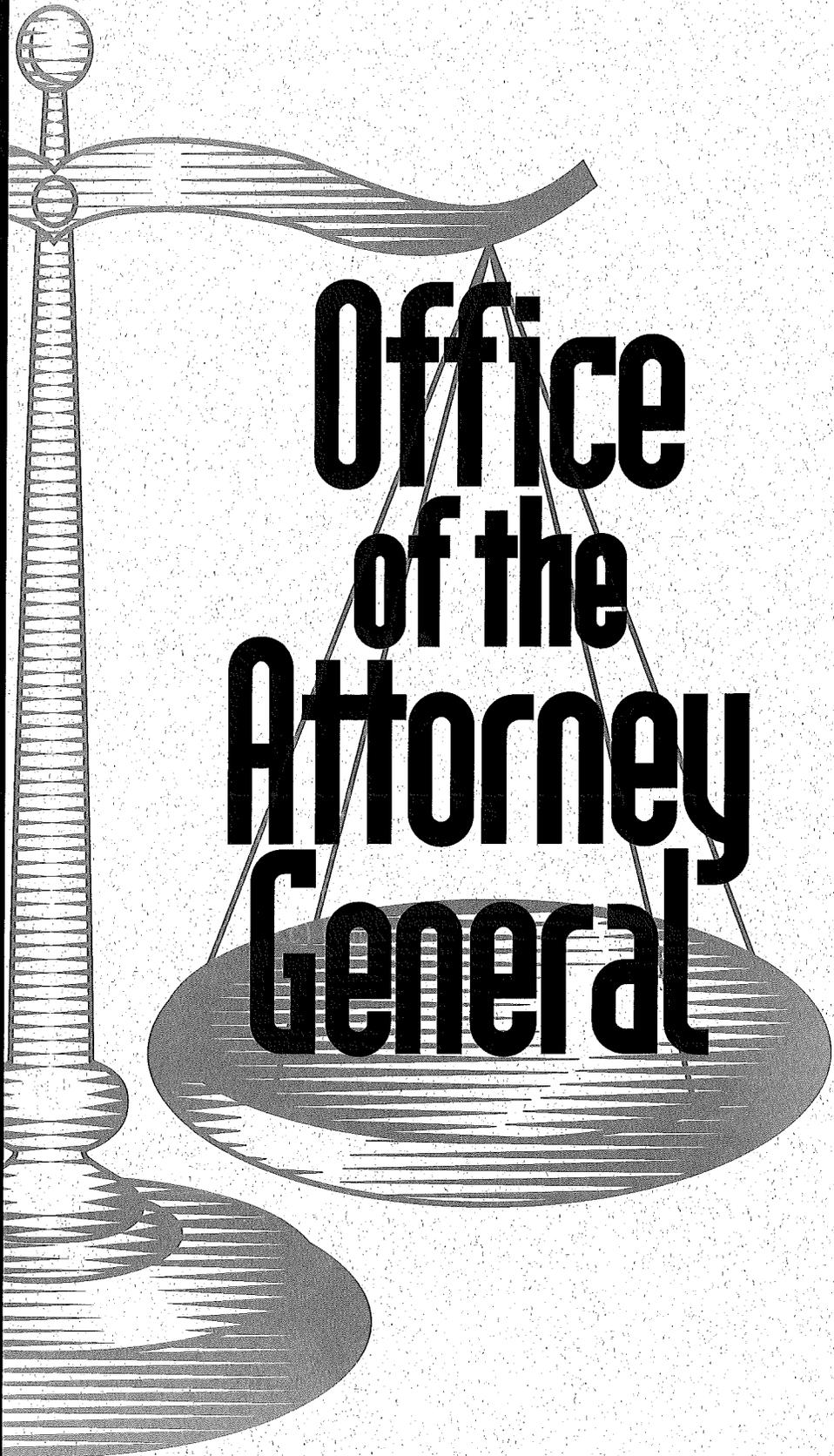


1996

ANNUAL

REPORT



**Office  
of the  
Attorney  
General**

Christine O. Gregoire  
Attorney General



Christine O. Gregoire

# ATTORNEY GENERAL OF WASHINGTON

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

March 1997

I am pleased to provide you with a copy of the 1996 Annual Report for the Office of the Washington State Attorney General.

Our office serves clients in more than 230 state agencies, boards and commissions and colleges and universities. The diverse legal and policy issues we deal with each day are as interesting and diverse as our state government.

This annual report is intended to provide you with an overview of the many cases and issues we have undertaken on behalf of the citizens of Washington State.

Sincerely,

CHRISTINE O. GREGOIRE  
Attorney General



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# Solicitor General Team

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*The team has primary or exclusive responsibility for several major cases, and a secondary role in dozens of others.*

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The Solicitor General Team was created in 1993 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;
- Coordinate complex litigation involving more than one division, and litigation not clearly relating to any single division;
- 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;
- Serve as the office's primary resource on matters of public employee ethics and professional responsibility;
- Coordinate Indian issues within the office and among state agencies, and provide

information and point of contact for local governments, tribes, and other interested parties;

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

## *Legal Services Provided*

A large part of the team's role is consulting with other divisions of the office concerning litigation strategy or appellate practice, or coordinating the office's client advice on issues of statewide significance, such as Initiative 601 and Indian law matters. 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 client advice through the preparation of formal opinions and interpretative memoranda, consultation with other divisions, or directly to agencies.

## *Numbers/Trends*

- The team consulted with other divisions concerning appeal questions or other strategies in approximately 118 cases.
- In 22 cases before the State Supreme Court, the team arranged briefing meetings with the Attorney General.
- The team coordinated mock arguments in approximately 66 appellate cases.
- Between December 1, 1995 and December

1, 1996, the office received 88 opinion requests for processing. Sixty-five were accepted and 23 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 72 opinions. Eighteen formal opinions were issued, on subjects as diverse as whether juvenile court records of truancy cases are confidential, the application of ethics laws to events hosted by other ports or foreign governments, what benefits state law requires or allows a school district to offer,

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***In June 1996, the office was the ninth state to file suit against the tobacco industry, alleging consumer protection and antitrust violations and seeking recovery of the state's increased medical costs for tobacco related diseases.***

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the constitutionality under current federal case law of including prayer as a part of a school commencement program, and the need for a 60 percent majority vote on an initiative relating to tribal gaming. The remainder were issued as informal opinions, except for a small number which were withdrawn by the requester, or combined with other requests for answering.

- Between December 1, 1995 and December 1, 1996, the team reviewed 72 requests for participation as amicus curiae or "Friend of the Court" in the State or U.S. Supreme Courts. The office joined in 28 briefs, and was the primary or sole author of six briefs.
- In 1996, the office processed 30 ballot titles, consisting of 19 initiatives to the people, and 11 initiatives to the Legislature. No referendum measures or referendum bills were filed

in 1996, and the Legislature submitted no constitutional amendments to the people for approval this year. Three of the ballot titles were challenged in superior court. Five measures were certified for the 1996 election ballot, consisting of three initiatives to the people filed in 1996 and two initiatives to the Legislature originally filed in 1995. The office provided explanatory statements for the Voters Pamphlet on these five measures. Two explanatory statements were appealed to superior court. No ballot title litigation reached the appellate courts.

### ***Significant Cases and Their Impact***

**Oil Spill Prevention Laws:** A member of the team worked with attorneys from the Ecology Division to defend the state's oil spill prevention laws against a challenge in federal court. The suit, filed by the International Association of Independent Tanker Owners (Intertanko), claimed Washington's laws and regulations improperly intruded into an area controlled by the federal government. The federal court upheld Washington's law, ruling that it was not preempted by federal law and did not violate the U. S. Constitution or international agreements. Intertanko has filed an appeal to the Ninth Circuit Court of Appeals.

**Tobacco:** In June 1996, the office was the ninth state to file suit against the tobacco industry, alleging consumer protection and antitrust violations and seeking recovery of the state's increased medical costs for tobacco related diseases. The team's litigation manager is coordinating the efforts of the office's trial team of AGO staff and three private firms in prosecuting the case, as well as working with the other suing states to coordinate several lawsuits.

**Shellfish Litigation:** During 1994 and early 1995, the state conducted settlement negotiations and litigation on the right of Indian tribes in Western Washington to take shellfish on state and private lands. The Solicitor General Team led the office's efforts on settlement as well as coordinated the work of the state's litigation team. The case went to

trial in the spring of 1994, and in December 1994, the federal court ruled substantially in favor of the Indian tribes. Subsequent orders of the federal court have defined where and how the tribes may exercise treaty rights to harvest shellfish. An appeal has been filed with the 9th Circuit Court of Appeals and the state has filed its opening brief. A mediator from the court's mediation program is exploring whether a settlement can be reached.

**Indian Gaming:** Team members have worked with the Indian tribes to carry out an agreement between the governor and attorney general and the tribes to seek judicial resolution of a dispute over whether the federal Indian

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*The Solicitor General Team is defending the validity of several appropriation item vetoes by the governor. At issue is the extent of the Governor's veto authority with respect to appropriations, a question of first impression under Amendment 62 of the state constitution.*

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Gaming Regulatory Act, when read in light of Washington law, requires the state to negotiate with the tribes over machine gaming on reservations. The resolution of these issues will define which games and gaming devices are to be included in, or excluded from, compacts negotiated by the state and the tribes.

**State Investment Board:** In 1994, the Legislature directed the office to take a major role in litigation brought by the SIB against The New England Life Insurance Co. and its real estate advisory subsidiary for breach of fiduciary duty and securities fraud in managing \$800 million in real estate investments. The team's litigation manager and other office staff worked closely with the private law firm

retained by the board to prepare the case for trial. A settlement was reached in April 1996 which unwound the investments, resulting in the SIB's recouping of \$163.5 million, the largest settlement in state history.

**Governor's Veto Authority:** The Solicitor General Team is defending the validity of several appropriation item vetoes by the governor. At issue is the extent of the governor's veto authority with respect to appropriations, a question of first impression under Amendment 62 of the state constitution. The case was argued in the Washington Supreme Court in March 1996; an opinion has not yet been issued.

**Baseball Stadium Law Challenge:** Two members of the team, along with general counsel for the secretary of state, defended the constitutionality of legislation allowing a public facilities district to construct and own a baseball stadium, and the validity of an emergency clause in the legislation. The Washington Supreme Court upheld the law, finding the legislation served a public purpose and that the emergency clause was valid.

**Physician Assisted Suicide:** A member of the team assisted in the briefing and preparation for oral argument of the physician assisted suicide case which was heard January 8, 1997 before the U.S. Supreme Court. The case involves the constitutionality of Washington's law prohibiting assisted suicide.

**Prisoner Challenges To Procedures At Prison Disciplinary Hearings:** A member of the team assisted attorneys in the Corrections Division in briefing and preparation for oral argument of a prisoner case heard before the U.S. Supreme Court. The issue is whether a prisoner may challenge prison disciplinary procedures in a § 1983 action or must, instead, exhaust the prisoner's habeas corpus remedies.

### ***Major Issues/Events***

Pursuant to a senate concurrent resolution, the Legislature requested an Attorney General Opinion on several questions concerning the authority, rights and responsibilities of state

agencies and institutions with respect to the state's federal grant lands and forest board transfer lands. The questions arose primarily in the context of the Board of Natural Resources' consideration of a habitat conservation plan for such lands under the federal Endangered Species Act. A special panel was appointed, composed of a Solicitor General team member, a retired Washington Supreme Court justice and a retired superior court judge (appointed as special assistant attorneys general). The panel answered a number of questions relating to the adminis-

tration of trust lands, the impermissibility of certain management expenses for lands which were granted at statehood for educational institutions, and the application of certain state laws to those lands.

On an annual basis, the team updates the attorney general checklist that better enables state agencies and local governments to evaluate proposed regulatory actions to help assure such actions do not result in an unconstitutional taking of private property. This update reflects changes in case law.



## *Protecting Consumers and Legitimate Businesses*

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- *Antitrust Section*
- *Consumer Protection Division*
- *Public Counsel Section*

# Antitrust Section

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*The multistate airlines case alleged a price-fixing conspiracy among major airlines. The settlement, totaling \$40 million, provided a 10 percent discount on government airline tickets until the fund was exhausted, which directly benefited state agency travel costs.*

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## **Summary of Responsibility**

The Antitrust Section enforces state and federal laws protecting consumers and businesses from anti-competitive practices such as pricefixing, bid rigging, monopolization and other conduct that interferes with fair competition.

## **Legal Services Provided**

The majority of the section's work focuses on representing consumers and state agencies in litigation seeking redress for violations of antitrust laws. The section also provides legal counsel to state agencies in antitrust-related matters. A significant component of the workload involves consumer and business education. Additionally, the section is charged with implementing major portions of the competitive oversight provisions of Washington State's Health Services Act of 1993.

## **Numbers/Trends**

While nearly \$20 million in damages and fees were recovered in 1995, including major recoveries in three multi-state actions dealing with petroleum, insurance and the

airline industry, only a comparatively small amount was recovered in 1996. This is not uncommon, as antitrust cases often extend over many years. Those cases resolved in 1996 were localized, injunctive cases as opposed to major multistate damage cases.

The multistate petroleum case, which alleged retail price-fixing of gasoline, settled after 17 years of litigation. Washington's share was 12 percent of the \$150 million settlement and about \$4 million in costs and fees. Fifteen percent of the damages to Washington were provided to the Department of Transportation for distribution to government entities. Distribution was completed in 1996. The balance is devoted to consumer projects: about \$1.5 million funded the Regional Transit Authority's commuter rail demonstration project in early 1995, and the rest has been distributed to projects recommended by a committee appointed by Governor Lowry, and approved by the Attorney General's Office. Three million dollars were devoted specifically to improvement of hazardous walking conditions for school children throughout the state.

The multistate insurance case involved claims that major insurance companies boycotted certain types of government insurance. About \$36 million in settlement funds have been used to create a Public Entity Risk Institute and a national data base of information on risk assessment, costs and fees. The case was settled after an appeal to the U. S. Supreme Court.

The multistate airlines case alleged a price-fixing conspiracy among major airlines. The settlement, totaling \$40 million, provided a 10 percent discount on government airline tickets until the fund was exhausted, which directly benefited state agency travel costs. Exhaustion of the fund occurred in August, 1996.

## ***Significant Cases and Their Impact***

State v. American Tobacco, et al.: This case is a major undertaking by the AG Office's Antitrust Section, Consumer Protection Division and private counsel. Set for trial in the fall of 1998, the case involves eight major tobacco companies and industry trade groups. About 15 million documents will have been produced. The section also is coordinating with a number of other states who have filed similar actions. The Washington case seeks broad injunctive relief related to marketing tobacco products to minors and failure to

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***The Attorney General's Office filed an antitrust action in federal court to block the owners of the Seahawks football team in their attempt to move the team to Southern California. Since the team has returned to Seattle, this action was temporarily stayed pending a possible sale to a new, local owner.***

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disclose adverse health effects and addictiveness of tobacco use. The suit also alleges the industry engaged in anti-competitive activities.

Multi-State Matters: Washington has a lead role in a price-fixing investigation concerning agricultural chemicals. The case has been tentatively resolved, and Washington is expected to receive a large share of the \$11.2 million settlement with two firms.

State Cases: The section filed a greater number of state court actions in 1996, as a

result of the section's emphasis on state investigations and public procurement issues. This trend is expected to continue.

Three state cases were filed in late 1995 and early 1996. The first case was based on claims that two Oroville pharmacies initially boycotted insurers providing the "Healthy Options" health insurance plans, but later agreed only to do business with the plans at fixed prices. Another case involved a real estate group which unfairly excluded discount brokers. The third concerned boycotts by construction companies of school construction bids. All three cases were successfully resolved with consent decrees.

Mergers: Two major hospital and banking merger investigations were concluded in 1995. At least three merger investigations were underway during 1996, one of which was resolved by a consent decree. These are time-consuming matters, and, with continued merger activity a certainty, can be expected to constitute a significant portion of the section's workload.

Health Care: At the request of the Legislature, the section has completed a nationally recognized study of the cases for and against immunity from the antitrust laws for the health care industry. This area will continue to be high priority. We also entered amicus appearances in three federal hospital merger cases.

Federal Court Matters: The Attorney General's Office filed an antitrust action in federal court to block the Seahawks football team from moving to Southern California. Since the team has returned to Seattle, this action was temporarily stayed pending a possible sale to a new, local owner.

We also joined with six other states and the Department of Justice in challenging the merger between two major publishers of legal texts. An agreement resolving the matter was reached, and is now under review by the court.

# Consumer Protection Division

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*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.*

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## **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 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.

**Lemon Law:** One of the division's key responsibilities is the administration of Washington State's Motor Vehicle "Lemon Law," which helps new vehicle owners with continuing problems on repairs. An arbitration procedure is available to consumers in resolving complaints.

## **Legal Services Provided**

**Overall '96 Priorities:** Priorities for the division in the last year included areas in-

volving vulnerable groups, such as youth and the elderly, and on industries with practices that harm consumers. Some of the enforcement actions taken by the division involved auto leases, fraudulent telemarketing, charities, travel sellers and deceptive advertising.

**Education:** Educating the public about its rights 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 including the advertising industry, auto dealers and financial institutions. The division made a special effort to reach out to financial institutions to help educate elderly consumers about fraudulent telemarketers.

In 1996, the division formed a partnership with the Puget Sound Educational Services District to develop a consumer education program for teenagers. The new consumer education program, which is being developed this year by Mount Rainer High School students, will make its statewide debut next year.

**Mediation:** Seven Consumer Resource Centers (CRCs) located throughout the state, staffed by division employees, volunteers, and students, handle consumer inquiries and complaints. The CRCs answer inquiries about businesses, send brochures and process written complaints about businesses. The staff notifies businesses of written complaints and attempts to mediate those complaints to settle disagreements between businesses and consumers.

**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***

The Consumer Resource Centers again

***An agreement was reached with America On-Line, an online service provider, resolving allegations that AOL had violated Washington's Consumer Protection Act by using a negative option sales plan in marketing their new pricing and service plan.***

broke their 1995 record in dollars saved for consumers. Telephone inquiries and referrals were also up from the previous year, while the number of written complaints dropped slightly.

- Telephone inquiries and other instances of service totalled 294,701. That's up from 1995's total of 288,181.
- 21,757 written complaints were handled by the Consumer Protection Division in 1996.
- Consumers saved more than \$5.5 million in cash refunds and other restitution, breaking the 1995 record of \$4.9 million.

## ***Significant Cases and Their Impact***

**Louisiana Pacific:** Louisiana-Pacific Corporation paid more than \$1.3 million to

settle a consumer protection case involving defective siding on up to 100,000 Washington homes, schools and businesses. Under the settlement, the forest products corporation will provide \$1 million to Washington State University for research on the durability of composite wood siding in the Pacific Northwest. The funding of on-going research to improve exterior products in the Northwest provides a unique long-term solution that will benefit consumers, businesses and the wood products industry.

The state also worked effectively with class action attorneys to facilitate a fair and efficient system for settlement of outstanding damage claims by tens of thousands of homeowners.

**America On-Line:** An agreement was reached with America On-Line, an online service provider, resolving allegations that AOL had violated Washington's Consumer Protection Act by using a negative option sales plan in marketing its new pricing and service plan. AOL had planned to bill its subscribers at a new \$19.95 rate for unlimited service without their positive assent to it. If subscribers failed to tell AOL they didn't want the service, they would have automatically been billed for it. The agreement required AOL to immediately notify customers of the upcoming pricing change by using a "pop-up" screen which appears when subscribers first access the AOL online system.

**Deceptive Advertising:** Levitz Furniture Corporation agreed to pay nearly \$1.2 million to Washington and seven other states to settle claims for advertising deceptive discounts off their "regular" furniture prices. Washington will distribute \$72,000 of its \$102,500 settlement to non-profit organizations to buy furnishings for low-income housing or shelters in the communities where Levitz did business.

**"Zero Interest/No Interest":** Washington also participated in multi-state actions against four major retailers advertising of "Zero Interest/No Interest" financing packages. Montgomery Ward, Tandy (Radio Shack, Computer City, McDuff and Incredible Universe), CompUSA and Best Buy signed an agreement with Washington and 11 other

states to clarify advertising by disclosing the terms consumers must meet to avoid paying financing charges. As part of the agreement, Washington will receive approximately \$100,000 of the \$925,000 to be paid by the four retailers.

**Auto Lease Advertising:** Mazda, General Motors, Honda, Isuzu and Mitsubishi have all agreed to change the way auto leases are advertised nationwide. The auto manufacturers will pay close to \$2 million to settle the actions brought by Washington, 22 other states and the FTC. Our investigation revealed that consumers typically ended up paying nearly \$800 to take a car home even though the auto leasing advertisements offered consumers a new car with no down payment.

**Telemarketing:** Cracking down on fraudulent telemarketers targeting the elderly and other Washington consumers continued to be a major focus through lawsuits and other actions initiated to return money to consumers and to halt these scam artists. The division was successful in pulling the plug on a telemarketing scam involving several major Canadian lottery ticket sellers. Long distance telephone service was disconnected to several Canadian lottery companies after division staff notified telecommunications companies that federal statutes require telephone service to be disconnected when lines are used for gambling activities.

Monitoring businesses who use telemarketing as part of their regular course of business resulted in the filing of action against Telemark, one of the largest telemarketing firms in Washington state. A \$316,000 settlement was reached with the company for deceiving customers, failing to provide services to clients and falsifying polling results. The firm was found to have fabricated results of political surveys for a wide spectrum of political clients including Patrick Buchanan, the Republican National Committee and Senator Ron Wyden of Oregon. They also misrepresented, omitted and falsified information while trying to sell long distance phone services and credit cards.

**Travel Sellers:** In an ongoing crackdown against unscrupulous travel sellers, last year the AG's Office filed six travel-related lawsuits

against sellers of travel services, their markets and camping resorts.

**Charities:** In a continued effort to stop unscrupulous fundraisers, a Seattle charitable fundraiser, Jensen and Associates, and its owner Mark Sterling Bergeson (Jensen), were banned from doing any fundraising in Washington for five years. The 1994 lawsuit alleged that the fundraiser lied to obtain charitable contributions while selling tickets to celebrity sporting events featuring profes-

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*The Consumer Protection Division was successful in pulling the plug on a telemarketing scam involving several major Canadian lottery ticket sellers.*

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sional athletes and local police and firefighters and solicited donations on behalf of organizations they did not represent.

In other action, two charitable fundraisers, Diamond Vision Consulting (formerly Tri-Star Promotions) and the National Association of Chiefs of Police, were ordered to pay nearly \$100,000 for allegedly lying to obtain contributions. Diamond Vision allegedly made numerous misrepresentations including claiming promotions were authorized by the Seattle Seahawks. They will be ordered out of business if further violations occur.

NACOP, a Texas Fundraiser, and Shamrock Publishing solicited donations from Washington consumers by telling contributors donations would be used to "support our men and women in blue... for safe streets in Spokane." The Spokane Police Department had no knowledge of the fundraising effort and received no money. In addition to paying costs and fees, the fundraiser was ordered to pay \$7,500 in restitution to Washington law enforcement officers injured or killed in the line of duty or their families.

# Public Counsel Section

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*The section also is an important voice for consumers in forums where the commission has asked interested parties to resolve utility regulation issues outside of the formal process.*

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## **Summary of Responsibility**

The Public Counsel Section represents consumer interests in utility proceedings before Washington's Utilities and Transportation Commission. The commission regulates the rates, services and equipment of the investor-owned telephone, electric and natural gas utilities operating in the state.

## **Legal Services Provided**

The Public Counsel Section advocates for the interests of consumers in a variety of ways: as a party in major rate cases; by presentations at UTC bi-weekly business meetings; and through informal study groups; dispute resolution proceedings; and various legislative committees. The staff maintains contact with the public through consumer education and a citizen advisory committee.

The section also is an important voice for consumers in forums where the commission has asked interested parties to resolve utility regulation issues outside of the formal process. These "collaborative" or "technical advisory" committees meet regularly to reach consensus on specific issues.

Public Counsel also provides consumers with information about proposed rate cases

and assists them in presenting their views before the commission. These services are performed by developing a summary of issues and assisting consumers in articulating their viewpoints, either in writing or in person, to the commission.

## **Significant Cases and Their Impact**

**US West:** US West, which serves more than 2.5 million customers statewide, attempted to increase total revenues by over \$200 million (about 20 percent) and to radically reallocate expenses among customers. It would have increased local service from about \$10 a month to more than \$22, including a shift to higher rates outside the four metropolitan areas. Public Counsel was an aggressive participant, working cooperatively with both large customers and senior citizen interests. In its April decision the WUTC adopted Public Counsel's recommendations, most notably rejecting an increase entirely, ordering a \$90 million decrease, setting a statewide residential rate of \$10.50, and explicitly finding that residential basic service is more than covering its cost of service. US West appealed the case to superior court and obtained a stay of the rate decrease, but not of the residential portions of the order. In November the judge ruled in favor of customers and upheld the commission's decision.

**Puget Power - Washington Natural Gas Merger:** The largest electric company in Washington proposes to acquire the largest natural gas utility in the state. Shareholders of both companies approved and the utilities sought UTC approval. Public Counsel retained six national experts to examine the proposal. Public Counsel recommended that the merger be approved but only with certain safeguards to protect customers: a five-year rate freeze; a strict service quality program with significant penalties (to avoid the service degradation experienced by US West customers when that

utility had a five year rate plan); a pilot program to determine the conditions for open choice by residential and small business customers; and certain other technical protections. A decision is expected in early 1997.

**Cascade Natural Gas:** Public Counsel participated in a settlement of the proposed rate case, which resulted in an increase of about \$3.8 million and avoided increases in monthly customer charges, which had been objected to by many customers. The utility also agreed not to file a case for three years and to lower its billing costs one-third.

### ***Major Issues/Events***

**Telecommunications Reorganization:** The telephone industry continues to experience major change, with the attendant need to protect consumers' interests. The movement towards a competitive industry, especially at the local level, has a long way to go, and is being fought by local companies such as US West. 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. Washington's commission was already moving in this direction with its "interconnection" decision, in January, which US West appealed to superior court. The Attorney General's Office was successful in defeating US West's attempt to stop implementation of the interconnection decision pending its litigation. The state and the FCC are considering revamping "universal service" programs in the new competitive situation. Public Counsel has participated at both levels, including chairing a national consumer group which submitted comments on the FCC proposals.

**Electric Utility Reorganization:** Movement continues toward some level of competition in the electric industry. Large industrial customers of Puget Power obtained special below tariff rates that will save them about 40% over

the next five years. At the same time the Bonneville Power Administration is proposing to withdraw the program that provides Puget's residential customers with access to cheap federal hydropower, potentially causing their rates to increase by 16 percent. Washington Water Power has offered its largest industrial customers a limited choice of supplier programs and is developing a pilot program to test offering choices to smaller customers. Puget Power's proposal to acquire Washington Natural Gas is part of its response to the potential for competition. Puget has the highest rates of any major utility in the

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***Large industrial customers of Puget Power obtained special below tariff rates that will save them about 40% over the next five years. At the same time the Bonneville Power Administration is proposing to withdraw the program that provides Puget's residential customers with access to cheap federal hydropower, potentially causing their rates to increase by 16 percent.***

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Northwest, partly as a result of its acquisition of certain expensive contracts over the past several years. Puget has been required to explore offering a pilot program for customer choice to its small customers by June 1997. Public Counsel is an active participant in the development of these programs.



## *Preserving Washington's Environment*

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- *Agriculture, Health and  
Community Resources Division*
- *Ecology Division*
- *Fish and Wildlife Division*
- *Natural Resources Division*

# *Agriculture, Health and Community Resources Division*

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*Growth in the state's population has resulted in increased pressures on the regulatory programs of the Department of Health, especially in the area of health professions.*

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## *Summary of Responsibility*

The Agriculture, Health and Community Resources Division provides legal advice and litigation services to several major state agencies: the Department of Health (including 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; and the Land Use Study Commission. The division also prosecutes enforcement actions brought by the Department of Financial Institutions and the Executive Ethics Board.

## *Legal Services Provided*

The division provides a full range of legal services to its clients, with significant effort devoted to legal advice and representation. The work includes the oversight of health care practitioners and facilities; regulation of activities posing threats to human health such as food processing, public drinking water systems, pesticides and radioactive materials; and prosecuting actions against regulated financial organizations. Other major efforts include assisting CTED in implementing the Growth Management Act; interpreting and enforcing the 1995 ethics law; reviewing archaeological site permitting;

reviewing distribution of economic assistance grants; and other activities promoting business development in the state. Finally, the division advises and represents its agency clients in their implementation of legislative initiatives to promote public health, community and economic development.

## *Numbers/Trends*

Enforcement actions for the Department of Agriculture have declined somewhat due to regulatory reform. State appeals under the GMA increased sharply in 1995 and continued at a relatively high level in 1996, but may decline again as implementation becomes established and/or with possible legislative amendments to the act.

Growth in the state's population has resulted in increased pressures on the regulatory programs of the Department of Health, especially in the area of health professions. The Division has worked with the department to review the process by which these issues are addressed, especially in light of the Regulatory Reform Act and the limited resources of both the agency and the Attorney General's Office.

## *Significant Cases and Their Impact*

**Physician Assisted Suicide:** In May 1994, U.S. District Court Judge Barbara Rothstein ruled that Washington's statute prohibiting one person from assisting in another's suicide unconstitutionally limited choices for terminally ill patients. The Office of Attorney General appealed this unprecedented ruling to the 9th Circuit Court of Appeals, which ultimately upheld Judge Rothstein's decision. The AGO has appealed this decision to the United States Supreme Court. Oral argument was presented January 8, 1997.

**Marijuana as a Controlled Substance:** A Pierce County Superior Court judge ruled that state law, which classifies marijuana as a

Schedule 1 controlled substance, was unconstitutional. This ruling was appealed to the State Supreme Court and a decision is pending.

**Growth Management Act cases:** Several cases raise constitutional challenges to various aspects of the Growth Management Act.

**Retired Public Employees Council v. Health Care Authority:** Plaintiffs claim that the HCA has improperly calculated premiums for retired public employees who participate in the Uniform Medical Plan. The Superior Court decision rejecting this claim was reversed by the Court of Appeals; the HCA has petitioned the State Supreme Court for review. Calculations of potential loss in the event the plaintiffs are successful run as high as \$50 million.

**Burbage v. State:** This class action lawsuit was brought by state employees who have purchased optional life insurance policies through the Health Care Authority. The employees are challenging the legislative transfer of \$8 million to the state general fund from an account used to stabilize the cost of premiums under the contract between the HCA and the insurance company that issues the policies, Northwestern National Life. The case is pending in Thurston County Superior Court where plaintiffs have sought to have a class certified.

**Legislative Amendments to I-607 (Denturist Initiative):** After Initiative 607 became law in 1994, the Legislature in January 1995, responding to concerns about potential conflicts of interests among some members of the Denturist Board, amended I-607 and transferred authority to the Department of Health to establish the licensing process. A lawsuit challenging the legislation was dismissed by the Thurston County Superior Court. The plaintiffs asked the State Supreme Court for direct review. The Supreme Court denied this request; the case is now pending in the Court of Appeals.

### **Major Issues/Events**

**Growth Management Act:** The division takes a lead role in appeals filed by the state challenging non-compliance with GMA. The

division monitors challenges to GMA-based decisions in appellate and superior courts and seeks intervention where appropriate.

**Health Care Professional Discipline:** The Department of Health and its associated licensing boards and commissions undertake hundreds of enforcement actions each year. Cases generally have grown more complex. Division attorneys are working with the department to review the handling of these matters so they will be consistent with regulatory reform, responsive to public concerns and focus resources on issues of highest priority.

**State Employee Health Care and Expansion of the Basic Health Plan:** The Health Care Authority has worked closely with the division in policy development and implementation of its role in administering the changes to state employee health benefits and expansion of the Basic Health Plan.

**Environmental Health Issues:** Water resources and hazardous waste cleanup remain the largest workload areas. Work is complicated by the number of agencies with regulatory authority. Division attorneys have initiated efforts to coordinate information and regulatory efforts.

**Executive Ethics Board:** Demand by the legislature and public for public employee accountability and an increasing awareness of the 1995 ethics law will increase the number of complaints to the Executive Ethics Board, many of which are politically sensitive. Division attorneys are also working to coordinate EEB enforcement with related enforcement such as agency personnel actions, criminal prosecutions and activities of the State Auditor's Office.

**Temporary Farmworker Housing:** The Department of Health and the State Board of Health are working to improve conditions for migrant farmworkers in the face of grower concerns and Columbia Legal Services' complaints of inadequate enforcement. CLS has filed litigation over these issues and division attorneys are coordinating with attorneys representing the Department of Labor and Industries, which is responsible for enforcing WISHA regulations in farm labor camps.

# Ecology Division

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*The division has continued its emphasis on practicing "preventive" law over the past year to avoid costly and lengthy litigation. It is also increasing its use of alternative dispute resolution (ADR) techniques such as mediation and arbitration.*

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## **Summary of Responsibility**

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

## **Legal Services Provided**

The Ecology Division provides a full-range of legal services to its client agencies including: representing agencies in litigation; assisting clients with regulation and policy development; and reviewing and providing advice on enforcement actions before they are issued. More than 50 percent of the division's time is spent representing agencies in litigation. Much of this litigation is before the Pollution Control Hearings Board or the Shorelines Hearings Board. However, division attorneys also spend considerable time in state and federal trial and appellate courts. The division has continued its emphasis on practicing "preventive" law over the past year to avoid costly and lengthy litigation. It is also increasing its use of alternative dispute resolution techniques such as mediation and arbitration.

## **NUMBERS/TRENDS**

Water resources and hazardous waste cleanup remain the largest workload areas. Due to a large number of water resource appeals arising out of numerous permit decisions last January, water resources comprised 40 percent of the division's workload. In 1995, the division spent 23 percent of its time on water resources. Hazardous waste cleanup comprised about 23 percent of its workload, water quality issues were 12 percent and shorelines issues were nine percent.

**Water Resources (136 cases):** These involve defending Ecology permit decisions and enforcement actions regarding water rights, and prosecuting general stream adjudications.

**Hazardous Waste Cleanup (78 sites):** These involve negotiating and enforcing consent decrees or orders requiring cleanup of hazardous waste sites and defending appeals of penalties and orders for violation of hazardous waste regulations.

**Shorelines (31 cases):** In these cases, division attorneys defend Ecology permit decisions and enforcement actions, and occasionally appeal shoreline permits issued by local governments.

**Water Quality (41 cases):** These involve defending Ecology permit decisions and enforcement actions and occasional superior court enforcement actions.

**Air Quality (10 cases):** These involve defending Ecology permit and enforcement actions.

**Other (26 cases):** These involve defending Ecology permit and enforcement actions relating to well drillers, solid waste, SEPA, etc.

The above numbers do not reflect the significant amount of general client advice given in each of these areas.

### ***Significant Cases and Their Impact***

**Water Resource Litigation:** Water resource issues dominated the division in 1996. We currently have seven cases in the appellate courts, including the three described below which are before the State Supreme Court.

**Hillis v. Ecology** involves a challenge to the process by which Ecology makes water right decisions. The plaintiff sought and received an order requiring Ecology to immediately process his application, thereby legalizing him ahead of 2,000 senior applicants statewide. **Yakima Tieton Irrigation District v. State** arises out of the general adjudication of the Yakima River. This appeal raises fundamental issues regarding how an irrigation district's water right should be quantified, and whether or not control over the Yakima River has largely been usurped by the federal government. **Theodoratus v. Ecology** raises the issue of whether a water right held by a municipality is subject to the same "use it or lose it" rules applicable to other water right holders. All of these cases are significant, and the Supreme Court's rulings will be critical to water law in this state.

The division's biggest workload area arises out of 500 water right permit decisions made by the Department of Ecology in January of 1996. Over 150 of these decisions were appealed to the Pollution Control Hearings Board. These cases have been in litigation since February and the trials started in September. The division now has about 10 decisions and have prevailed in all of them. These trials will continue until April of 1997, and then, almost certainly, a number of appeals will follow.

**Intertanko v. Lowry:** In July of 1995, Intertanko, a worldwide consortium of shipping companies, challenged the Office of Marine Safety's oil spill prevention regulations on a number of constitutional grounds. These regulations require ships entering Washington

waters to file oil spill prevention plans and to follow certain navigation, crew and equipment requirements. All of these requirements are designed to reduce the chances of an oil spill, and to make response to a threatened catastrophe more timely and effective. In November 1996, the Federal District Court upheld OMS's oil spill prevention regulations on all constitutional grounds.

**Model Toxics Control Act Policy Advisory Committee:** The MTCA PAC was formed two years ago by the Legislature to review how the Model Toxics Control Act was being

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***The division's biggest workload area arises out of 500 water right permit decisions made by the Department of Ecology in January of 1996. Over 150 of these decisions were appealed to the Pollution Control Hearings Board.***

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implemented by Ecology. The PAC's report and recommendations were due to the Legislature at the end of 1996. The division supported Ecology in the PAC process. A huge number of issues were raised and addressed by the PAC, and the division assisted Ecology in the intense negotiations between the various interest groups necessary to reach consensus.

**Federal Legislation:** Once again the division played a leading role in representing state interests in the federal legislative process. The division was involved in the attempts to reauthorize the Clean Water Act and the Superfund statute. Neither statute passed, but both bills were changed to better address state concerns.

# *Fish and Wildlife Division*

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*. . . the division advises the client agency in criminal matters, assists local prosecutors and provides general information to the public concerning natural resource issues.*

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## **Summary of Responsibility**

The Fish and Wildlife Division represents the Department of Fish and Wildlife and the Fish and Wildlife Commission in all types of legal matters before state and federal courts and administrative tribunals. In addition, the division advises the client agency in criminal matters and 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 for the department including Indian issues (state/tribal regulatory authority, state taxing authority, reservation boundaries, fishing/hunting rights), fish and wildlife resource management and protection, legislation, criminal prosecution, public disclosure, hydropower licensing and relicensing, enforcement, land resources acquisition and management, public works construction, endangered species issues, rule adoption, contracts, licensing appeals and seized property appeals, civil forfeitures, growth management act cases and appeals of hydraulic project approval permits.

## **Numbers/Trends**

In 1996 the following issues emerged which required and will continue to require legal services:

**Indian Treaty Rights to Shellfish:** The Shellfish case, U.S. v. Washington is pending before the Ninth Circuit Court of Appeals. The state has appealed the trial court decision regarding whether Indian treaty rights extend to deep water shellfish -- shrimp, crab, geoduck, etc. -- not used at treaty time; the equitable allocation of such shellfish; whether the treaty right applies on private tidelands; and whether the treaty right includes access over private uplands along the shore.

**Columbia River Salmon Endangered Species Act and Hydropower Issues:** Three Snake River salmon species were listed as threatened and/or endangered under the ESA in 1991. Since then, Washington has been actively involved in the issues surrounding use of the Columbia and Snake Rivers.

**Mid-Columbia Mainstream Habitat Conservation Plan Negotiations:** At the request of regional fish and wildlife entities FERC re-opened each of the original 50-year licenses to address protection of juvenile salmon and steelhead as they pass through these projects' reservoirs and dams. Each of the PUD's has since undertaken study and testing to develop adequate downstream passage protection methods. Recently, the PUD's requested a new negotiation to develop a prelisting Habitat Conservation Plan under the ESA for aquatic species including salmon and steelhead in the Columbia. Because such an HCP would relate to the FERC requirements and directly affect the state and tribes, the federal entities have requested the state and tribes join in the negotiations.

**Olympic Pipeline's Cross-Cascades Pipeline Proposal:** State law provides a "one stop" state permitting process for certain kinds of oil product pipelines and certain kinds of large non-federal, non-hydroelectric energy production facilities. Olympic Pipe Line Company currently operates one or more oil product pipelines from refineries in north Puget Sound south through the Puget Sound corridor to Portland. Olympic has proposed a new 230-mile pipeline, connecting existing facilities near Woodinville and traveling over Snoqualmie Pass to the Tri-Cities area.

The Energy Facility Site Evaluation Council reviews such proposals and forwards a recommendation to the governor. EFSEC is in the process of reviewing the Cross Cascade proposal. Most of the natural resource state agencies, in addition to others, and the affected counties and cities, and many other interested groups have intervened. EFSEC will likely hold a hearing on the proposal in middle 1997.

**Growth Management Act:** In order to protect the state's fish and wildlife resources, the department has participated in appeals of the comprehensive plans or critical areas ordinances adopted by four counties: Chelan, Kitsap, Snohomish, and Whatcom. The appellants have prevailed before the Growth Management Hearings Boards in all four cases.

**Endangered Species Act:** The division is actively involved in planning for and responding to ESA listings. Listings of previously harvested species require coordination of resource protection actions, analysis and adjustment with treaty tribal uses and resource recovery actions. The department is currently involved in court cases pertaining to the protection of listed salmon species on the Columbia River, spotted owls and grizzly bear.

**License Limitation Programs:** To combat over-fishing, the Legislature enacted new laws placing restrictions on coastal crab fishing. These laws will continue to generate appeals from denials of license applications. A number of petitions are pending for judicial review

in state courts involving denials of coastal crab licenses.

**Management of Fish Resources and Fishing Opportunities:** Many fish resources are experiencing declining populations due to pollution, habitat losses, fishing pressure and natural conditions. The division is increasingly called upon to assist the department in closing or limiting fisheries, and developing alternative strategies.

**Management of Game Resources, Hunting and Animal Damage Control:** Game resources are fluctuating throughout the state, with many in decline due to development encroachments

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*The division is assisting the department in effectively using existing authority by advising and assisting the development of new private landowner partnerships and hunting opportunities.*

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in game habitat. Initiative 655 which bans bear baiting hunting and some forms of hound hunting also represents a change in some forms of hunting recreation. The Legislature has responded to increasing claims for wildlife damage to crops. The division is assisting the department in effectively using existing authority by advising and assisting the development of new private landowner partnerships and hunting opportunities.

**Hydraulic Project Approval Cases:** The department issues hydraulic project approval (HPA) permits for construction work in state waters. The number of HPA cases set for administrative hearing has steadily increased. The division continues to seek creative ways to settle these private property/natural resource disputes short of proceeding through the administrative hearing process.

# Natural Resources Division

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*DNR also exercises extensive regulatory, environmental and fire protection responsibilities on 11.8 million acres of state and private forest lands.*

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## **Summary of Responsibility**

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

## **Legal Services Provided**

The division provides a broad spectrum of regulatory, proprietary, contract, and environmental client advice and litigation services. DNR manages three million acres of state lands, generating as much as \$300 million a year for trust beneficiaries, and 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 undertakes a variety of land management activities.

## **Numbers/Trends**

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

- **Major Planning Efforts:** Massive planning efforts, like the recently completed 70-

100 year, multi-species, 1.6-million-acre Habitat Conservation Plan, raise complex issues involving trust asset management, and landscape and watershed planning. A challenge to the plan has been filed in the Washington Supreme Court.

- **Proprietary Transactions:** DNR's transactions, which include multi-million dollar timber sales, and purchases, sales and exchanges of lands and commercial properties, raise issues involving the Forest Practices Act, State Environmental Policy Act, Growth Management Act, hazardous waste laws, water rights, and Endangered Species Act.

- **Forest Practices:** The Forest Practices Board is engaged in complex rule making to address increasingly contentious issues, including threatened and endangered species, the Columbia River Gorge, small landowner planning efforts, and water body typing and protection.

- **Hazardous Waste Sites:** Progress is being made to address the State's liability and responsibility for clean-up of hazardous waste sites in Puget Sound.

## **Significant Cases and Their Impact**

**Habitat Conservation Plan Project and Litigation:** DNR's Habitat Conservation Plan is intended to address all species under the federal Endangered Species Act. This plan will be embodied in a 70-100 year agreement with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The effort raises significant legal issues concerning the laws applicable to federal and state agencies, the substantive and procedural requirements of environmental laws, and the interests of trust beneficiaries for which the lands and resources are managed. Litigation challenging the plan has been filed in the Washington State Supreme Court. Petitioners

claim that the plan violates the state's trust duties and delegates state authority to the federal government.

**Loomis Forest Litigation:** Okanogan County and several school districts are claiming up to \$250 million in damages in this lawsuit. They allege that the 144,000-acre Loomis Forest in northeastern Washington has been mismanaged. The petitioners claim the state has not responded quickly enough to the mountain pine beetle infestation in the forest and that has resulted in damage to or death of lodgepole pine stands over an estimated 20,000 to 50,000 acres of the forest. The complaint calls for an interim timber harvest plan to deal with the dead, dying and at-risk timber, as well as a long-term plan to make Loomis a healthy forest while producing income for school trust beneficiaries. The state has developed and is implementing such a plan -- the Loomis Landscape Plan -- which was approved June 1996. Trial is set for July 15, 1997.

**Eagle Harbor Litigation:** The Departments of Natural Resources, and Transportation, PACCAR, the Environmental Protection Agency and the Navy reached a tentative settlement on the clean-up of and liability for the contamination of Eagle Harbor. Part of the settlement includes an agreement between DNR and EPA to address the state's land-owner liability at five other hazardous waste sites through negotiation.

**Milwaukee Railroad Corridor Title Case:** The Washington Supreme Court ruled that the state obtained fee simple title to the right of way formerly held by the Milwaukee Railroad which is now a cross-state recreational trail from about Cedar Falls to the Idaho border (with some gaps).

**Parks Rails to Trails Case:** The Ninth Circuit Court of Appeals ruled in the Parks and Recreation Commission's favor in a case challenging the conversion of a former Burlington Northern Railroad right-of-way in Klickitat County to a recreational trail, without first compensating adjacent landowners for their alleged reversionary interests.

## ***Major Issues/Events***

**Trust Lands Opinion:** This formal Attorney General Opinion gives guidance on the complex legal issues involved in managing state trust lands. The opinion was requested by the Legislature and was prompted by issues raised by DNR and trust beneficiaries (including the Universities, and common schools) as part of DNR's development of its Habitat Conservation Plan. The opinion answers fundamental legal questions involving the role, responsibilities, and powers of the state and Legislature as the trustee, the

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***The Departments of Natural Resources, and Transportation, PACCAR, the Environmental Protection Agency and the Navy reached a tentative settlement on the clean-up of and liability for the contamination of Eagle Harbor.***

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Department of Natural Resources as the trust manager, and the trust beneficiaries.

**Hazardous Waste Sites:** The state of Washington owns aquatic lands (submerged lands, tidelands, bedlands) in Puget Sound which have 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 cost of investigating and cleaning up the contamination. The state may be potentially liable even if it was not the polluter. The liability exposure of the state could be in the tens of millions of dollars. The division is reviewing the legal questions presented by the development of a unified state strategy for the cleanup and management of such sites.

**Reactivation of Railroad Service on the Milwaukee Road:** There is a proposal to reactivate railroad service on portions of the former Milwaukee Railroad Corridor in order to open a new rail line to Eastern Washington from Puget Sound ports. Most of the corridor is now a recreational trail running from Cedar Falls to the Idaho border. The project will require state negotiation of a franchise agreement and the acquisition of a replacement recreational trail.

**Olympic Pipeline Cross-Cascade Proposal:** A proposal by the Olympic Pipeline Company to build a major petroleum pipeline across Snoqualmie Pass to Eastern Washington is under consideration by the Energy Facility Siting Council. OPL's proposal includes crossing land managed by DNR and State

Parks (including a lengthy portion of the old Milwaukee Railroad Corridor). The council is conducting an adjudicative proceeding and will serve as the exclusive venue for issuance of regulatory permits. A formal hearing will likely begin in the fall of 1997.

**Contaminated Sediments Disposal:** DNR is under increasing pressure to make its aquatic lands available for disposal of contaminated sediments. Over the last year, DNR has worked with state and federal agencies to coordinate a Multi-User Disposal Site work group to study feasibility of siting one or more sites in Puget Sound. The demand for these sites has out-paced the planning efforts. Division attorneys will be assisting DNR as it attempts to coordinate the placement, use, and development of these sites.



## *Protecting Public Funds*

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- *Bankruptcy and Collections Unit*
- *Torts Division*
- *Revenue Division*

# ***Bankruptcy and Collections Unit***

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***A total of 3,337 bankruptcy and collections cases have been handled on behalf of the state since 1993 when BCU was created. Of those, 2,613 were closed producing nearly \$25 million, including \$9.1 million in payments made, \$2.8 in claims successfully defended, and \$13 million in future payments to be made to the state under court orders.***

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## ***Summary of Responsibility***

The Bankruptcy and Collections Unit 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 delinquencies on 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 Ecology, Health, Utilities & Transportation Commission, Transportation, University of Washington, Washington State University and the AGO Consumer Protection Division.

## ***Legal Services Provided***

The vast majority of the unit's work

consists of handling bankruptcy litigation. 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. The unit's attorneys also review proposed plans of reorganization to ensure proper treatment of agency claims and to enforce payment when taxes or payments under court-approved plans of reorganization are delinquent.

Although top priority is given to bankruptcy reorganization cases, the BCU handles a significant number of other bankruptcy and 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. Other bankruptcy cases include liquidations and wage-earner cases in bankruptcy court, and collections. The unit also devotes substantial resources to providing training and manuals for tax agency personnel who handle bankruptcy and collections claims.

## ***Numbers/Trends***

A total of 3,337 bankruptcy and collections cases have been handled on behalf of the state since 1993 when BCU was created. Of those, 2,613 were closed, producing nearly \$25 million, including \$9.1 million in payments made, \$2.8 in claims successfully defended, and \$13 million in future payments to be made to the state under court orders. The unit currently has 714 active cases with a total of \$59.2 million in agency claims.

## ***Significant Cases and Their Impact***

**Smith's Home Furnishings:** BCU attor-

neys represented a variety of interests of the state and its citizens in this case. These interests include major state tax claims -- the debtor owes the Department of Revenue \$1,860,000 and L&I \$135,000. In addition, BCU attorneys represented the interests of the many Washington consumers who are owed refunds of deposits which they placed on furniture purchases from the debtor. Finally, the BCU represented the state in the debtor's action to force the state to repay a \$450,000 consumer protection restitution payment that the debtor had made shortly before filing bankruptcy.

**Margolis:** This BCU case stemmed from a successful medicaid fraud prosecution by the office against defendant Margolis. Margolis subsequently filed civil rights claims against the Attorney General's Office based on the prosecution, but the office successfully defended those claims and was awarded fees and costs incurred in the effort. To enforce the judgment for costs and fees, the BCU garnished a stock account maintained by the defendant; the garnishment resulted in several years of litigation. In 1996, BCU attorneys received a check in the amount of \$123,308.85 as a result of the garnishment action.

## ***Torts Division***

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***In the past three to four 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.***

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### ***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 three to four 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, and 328 in 1994 and more

than 350 in 1995 and 1996. In the first four months of FY 97, new suits are running at an annual rate of more than 400. In addition, the division has also seen large 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.

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 \$11 million per year. However, this amount has increased significantly over the past two years and is likely to exceed \$20 million per year. The primary reason for the increased payouts has been the increased liability created by the courts and the Legislature for personnel matters (disability and harassment, among other claims) and for injuries to children who, directly or indirectly, are involved with DSHS.

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 three out of four cases.

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:** Over the past two or three years, local authorities in the Wenatchee area, with assistance from

DSHS, have 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 are now suing the local prosecutor, local police and DSHS employees, claiming they were negligently investigated, falsely arrested, or maliciously prosecuted. DSHS is also being sued by several employees who were terminated for poor performance in connection with specific

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***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.***

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earlier complaints concerning some of the abused children or specific wrongdoing in connection with the "sex-ring" investigations.

**Group Home Cases:** There are currently several dozen 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 two dozen of the group home claimants have settled their suits so far for over \$8 million in damages. Many more claims have been filed.

### ***Major Issues/Events***

**Wrongful Adoption Cases:** There are approximately 15 "wrongful adoption" cases pending against DSHS and its caseworkers. The claim is that caseworkers were negligent in not fully disclosing psychological or emotional problems of children before adoption. The parents generally seek damages for their emotional distress in raising the children and large damages for care and treatment of adopted children. Many of the lawsuits allege that the children have Fetal Alcohol Syn-

drome. These cases are factually difficult, and are potentially costly in terms of payout for settlements and verdicts. They are based on a legal theory which did not exist five years ago. It is likely the issue of wrongful adoption will come before either the Supreme Court or the Legislature to determine whether public policy should allow this kind of claim against adoption agencies. Many other states do not allow negligence claims in adoptions. The state has settled one of these cases and won two others at trial, one of which has been appealed to the State Supreme Court.

**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 the 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.

## *Revenue Division*

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### *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, assessment of business property owned by public utilities, and administration of the state's unclaimed property law are also handled by this division.

### *Legal Services Provided*

Most of the division's legal activities involve defending against excise tax refund claims in the state courts. Litigation of state tax issues relating to the state's Indian tribes and railroad and airline utilities are handled by the division attorneys in federal courts. Utility property tax litigation has also become a significant part of the division's caseload in recent years.

### *Numbers/Trends*

The division historically processes 45 to

65 new cases annually. The majority of approximately 130 cases in litigation in 1996 represented excise tax refund claims. The balance of the caseload involved property tax litigation, including challenges to appraisal methodologies used by the Department of Revenue in setting property tax assessments for major utilities. Tax revenues at issue in current litigation exceed \$500 million.

### *Significant Cases and Their Impact*

**Natural Gas Use Taxes:** Tax refund claims have been filed in superior court by major industrial natural gas users. The claims assert that use taxes imposed by the state and cities on gas obtained from interstate suppliers, other than regulated utilities, violate the Commerce Clause of the U.S. Constitution. Allowance of the claims by the courts would have a significant adverse impact on those cities imposing the tax.

**Interstate Manufacturers:** Pending before various state courts are business and occupation tax refund claims brought by over

100 interstate manufacturers seeking tax refunds in the aftermath of the 1987 decision of the U.S. Supreme Court in *Tyler Pipe Industries v. Dept. of Revenue*. That decision invalidated a portion of Washington's business and occupation tax. These cases will most likely be appealed to the U.S. Supreme Court, if the manufacturers are unsuccessful in their claims for refunds. Tax refunds implicated in these actions approach \$400 million.

### ***Major Issues/Events***

**State Court Rulings:** In 1996, the Thurston County Superior Court, in a decision from which no appeal was taken, rejected a constitutional challenge brought on behalf of numerous manufacturers, wholesalers and retailers to invalidate the 1994 extension of taxes on cigarettes and alcoholic beverages enacted by the Legislature and approved by the voters. The decision preserves significant funding dedicated for violence prevention measures authorized in the 1994 legislation.

A 1996 opinion issued by the Washington Supreme Court in the Interstate Manufacturers' litigation referred to above has overruled a 1988 decision by that court which had held that the decision of the U.S. Supreme

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Court in *Tyler Pipe Industries* should be given only prospective application, thus denying retroactive relief in the form of full tax refunds. However, the 1996 decision has limited refunds to credits allowed by the Legislature for certain gross receipts taxes paid to jurisdictions outside Washington. A petition for review of the decision by the U.S. Supreme Court is expected to be filed in 1997.



## ***Strengthening Washington's Educational Systems***

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- *Education Division*
- *University of Washington Division*
- *Washington State University Division*

# ***Education Division***

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***The division is now electronically linked to the clients, which promotes a timely and efficient exchange of information. In addition, regionalization of services has allowed clients easier physical access to their attorneys which results in many matters being resolved before they involve litigation.***

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## ***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 Communications Technology Center. In addition, the division serves the Office of the Superintendent of Public Instruction, nine area-wide educational service districts and the State Board of Education.

## ***Legal Services Provided***

Services are intended to reduce the amount of litigation. These include: client counseling; internal policy review; contract review and training programs for clients in ethics in government service; student discipline; community and technical college tenure; and the law and technology.

## ***Numbers/Trends***

The work load 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 of their time to hearings and litigation involving administrative hearings, arbitrations and cases before the U.S. District Court and 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.

## ***Major Issues/Events***

Because client agencies are dealing with reduced budgets, it has become even more important for the division to work more efficiently. The division is now electronically linked to the clients, which promotes a timely and efficient exchange of information. In addition, 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

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

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## **Summary of Responsibility**

The University of Washington Division provides legal services to the University of Washington in Seattle, with branch campuses in Bothell and Tacoma. The university currently has 34,368 enrolled students. It is one of the largest employers in King County, with about 13,000 staff and 3,500 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 legal issues of a large corporation, and many legal issues unique to this state. 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. Division attorneys have a close working relationship with attorneys in the Torts Division that handle the university's litigation. In addition, the division coordinates or supervises the work of outside attorneys appointed as special assistant attorneys general to represent the university in other matters.

## **Numbers/Trends**

Providing legal advice to the University of Washington requires both a broad base of knowledge and specialization. The following trends have increased demand for legal advice:

- The University of Washington is facing increased federal and state regulation, as well as diminished state and federal funding;
- The medical centers and the school of medicine are responding to changes both in the marketplace for health care services and in funding health care education;
- The university has not escaped the national trend of increasingly complex employment law, requiring increasingly sophisticated legal advice;
- The university's leadership role in research, computing and communications, and high technology has significantly increased request for advice on intellectual property issues. These include copyright, licensing of technology and access to computer-based information;
- In addition to providing client advice and training, there are approximately 135 active lawsuits against the university and its affiliated hospitals. Approximately one-quarter of them are medical malpractice cases. Employment litigation is the next most frequent type of litigation, comprising between 25 and 30 cases. Claims for statutory violations, personal injury, and construction claims round out the top five categories of litigation; and
- Federal agencies and investigators nationwide are increasing their scrutiny of universities and hospitals receiving federal funds.

## ***Significant Cases and Their Impact***

The Ninth Circuit will soon hear argument in Baldetta v. Harborview Medical Center, et al. This case involves a former Harborview nursing assistant who was suspended from his duties when he refused to cover his tattoo, which read "HIV POSITIVE." The employee said he displayed the tattoo to stimulate discussion about HIV and/or AIDS. Harborview, concerned about the reaction of its vulnerable trauma surgery patients, suspended the employee.

The district court upheld Harborview against the employee's claims that Harborview had violated his First Amendment rights, and had discriminated against him on the basis of his disability.

## ***Major Issues/Events***

**Medicaid Billing:** The federal government issued a massive subpoena to 135 hospitals,

including the University of Washington Medical Center, as part of its investigation into the practice of billing Medicare for certain medical devices, which the federal government has approved for national clinical trials, but not yet for marketing.

**IRS Coordinated Program Audit:** The Internal Revenue Service has selected the university as one of more than 20 schools (including Michigan, Stanford, Wisconsin and the University of California) to be audited. This comprehensive review is part of a nationwide program to evaluate non-profit entities. Based on the experience of other schools, this audit will last at least two years. The IRS is exhaustively examining the payroll system, pension plans, unrelated business income, technology transfer, use of facilities financed by tax-exempt bonds and more. The division provides legal advice to the university; manages outside counsel with special expertise; and consults lawyers at other audited universities.

# ***Washington State University Division***

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***The university has expanded in recent years. It has opened branch campuses in Spokane, Vancouver and the Tri-Cities. More than 18,500 students are currently enrolled system-wide, with about 17,000 on the Pullman campus.***

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## ***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 four attorneys, with support from members of other divisions assigned in specialized areas of responsibility, provide legal services to four campuses, agricultural research and extension operations statewide, and extension field offices in every county.

## ***Legal Services Provided***

Many of the legal services also provided involve complex issues unique to an academic environment such as NCAA compliance and athletics; various student rights and programs; faculty tenure and promotion; fundraising and development; environmental health and safety; and animal welfare and related veterinary issues. The division handles a wide variety of tasks pertaining to labor and personnel, employment, discrimination and sexual

harassment, public works, audit and budgeting, ethical compliance, regulatory affairs and revenue/taxation issues.

### ***Numbers/Trends***

The university has expanded in recent years. It has opened branch campuses in Spokane, Vancouver and the Tri-Cities. More than 18,500 students are currently enrolled system-wide, with about 17,000 on the Pullman campus. Enrollment projections for the year 2010 are for 30,000 students system-wide, including 25,000 in Pullman.

The number of employee grievance appeals among the 1,150 staff has increased during the past few years. Tenure and promotion disputes among the 1,800 faculty members are also on the increase. This increase is not unique to WSU but rather is a developing trend in higher education.

### ***Major Issues/Events***

**University Expansion:** The establishment of branch campuses has generated a number of legal service needs relating to facility services and personnel.

**Managing Claims:** Over the past few years, the division worked closely with the university's Business Affairs Office to minimize and effectively manage claims resulting from more than \$50 million in construction projects. This has helped keep projects at or under budget and avoid costly litigation. The

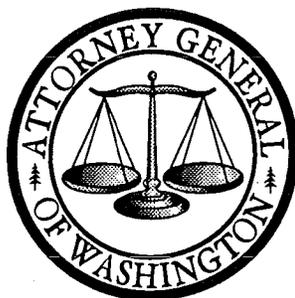
system is continually challenged, however, as claimants on major construction projects more aggressively pursue remedies for alleged wrongs.

**Unionized Workforce:** Major portions of the university's workforce recently unionized. While the university is strongly committed to a collegial relationship with the new locals, the university has been working closely with the division on the legal policy issues which arise with this type of change.

**Rewriting of Policy:** The division recently assisted in rewriting the university's academic integrity policy, making it more efficient and consistent with current law. The university's faculty manual is also being revised, and the institution's first handbook for administrative and professional staff is being drafted.

**Litigation:** The university has successfully resolved a number of difficult tort cases. These include discrimination, personal injury and property damage issues. The close liaison between the WSU Division and the Torts Division is instrumental in achieving these results.

**Other Issues:** Intellectual property rights and other issues surrounding the university's participation in the development of Northwest Net, the area's main connector to the internet system, will continue to raise difficult challenges. The university's commitment to "Virtual WSU," a major investment in cyberspace innovations, will generate a host of cutting edge questions.



## *Representing the Public*

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- *Corrections Division*
- *Criminal Division*
- *General Counsel Unit*
- *General Legal Division*
- *Labor and Personnel Division*
- *Labor and Industries Division*
- *Social and Health Services Division*
- *Transportation and Public Construction Division*
- *Utilities and Transportation Division*
- *Administration Division*

# Corrections Division

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*The department has projected there will be nearly 73,000 offenders under its jurisdiction by 1998. Consequently, the division will need to find better ways to handle the expected increase in cases and meet the legal demands of the client.*

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## **Summary of Responsibility**

The Corrections Division represents the Department of Corrections, the Indeterminate Sentence Review Board, the Governor's Clemency and Pardons Board, and the Governor's Office on Extradition and Detainers. It also represents the state in all federal habeas corpus matters, including capital cases.

## **Legal Services Provided**

The division represents all the divisions of the Department of Corrections: Division of Prisons; Community Corrections; Offender Programs; and Correctional Industries. Typically, these cases address alleged violations of inmates' constitutional rights, or challenge the fact or length of confinement. The division provides client advice, training, policy drafting and review, and represents the Division of Community Corrections in parole revocation proceedings before the ISRB. It also represents the department in siting and land issues dealing with the construction of new correctional and work release facilities. The division serves the ISRB in personal restraint petitions and all other actions filed against the ISRB.

## **Numbers/Trends**

The increase in the offender population, scope of the department's responsibilities and continuing changes in sentencing laws has caused the demand for legal services to grow. Increased inmate population and overcrowding contribute to increased civil rights litigation. The state's recent "Three Strikes And You're Out" sentencing option will increase the number of habeas corpus petitions handled by the division. In addition to the capital cases in the appellate level of review, there are 14 death penalty cases at the prosecutorial stage which will greatly impact the workload of the division.

There were more than 820 active cases on the Corrections Division docket in 1996, including more than 400 new cases opened: 100 in habeas corpus; 119 in civil rights; 118 personal restraint petitions (including 25 involving the Indeterminate Sentence Review Board); 34 parole revocation hearings; and 12 post-sentence petitions.

In addition, there were 339 cases disposed of in 1996, including 124 dismissals, 110 on summary judgment, eight settlements and one at trial. Of the 339 cases disposed of in 1996, 65 were appealed.

The department has projected there will be nearly 73,000 offenders under its jurisdiction by 1998. Consequently, the division will need to find better ways to handle the expected increase in cases and meet the legal demands of the client.

## **Significant Cases And Their Impact**

**Capital Litigation:** The division handles the federal court review of death penalty cases for the state. There currently are 13 individuals on death row in Washington. Four of these cases are being actively litigated by the division at this time: Jeffries, Lord, Rice and

Rupe. Below is a summary of the status of these cases:

**Jeffries v. Wood:** This Clallam County capital case is once again before an 11-judge panel of the Ninth Circuit Court of Appeals. After previously setting aside Jeffries death sentence due to claimed juror misconduct, the court reinstated the sentence acknowledging that its previous decision was flawed. However, en banc review was granted and the court is reviewing the application of the recently passed federal habeas corpus reform to this case.

**Rupe v. Wood:** This Thurston County capital case is pending before the United States Supreme Court on the state's petition for certiorari. At issue is whether the state trial court committed error when it refused to admit the results of a polygraph taken by a state's witness. Both the district court and Ninth Circuit vacated the death sentence on this ground.

**Lord v. Wood:** This Kitsap County capital case is still at the district court stage and currently involves discovery and pre-evidentiary hearing issues.

**Rice v. Wood:** This King County capital case has been "fractionalized" with some legal issues before the district court for an evidentiary hearing, some before the Ninth Circuit three-judge panel, and some before the Ninth Circuit en banc panel.

### ***Other Capital Issues***

In 1996 the state received a favorable decision in State v. Benn et al., a case involving the state's method of execution. In Benn, the Walla Walla County Superior Court found that the former version of RCW 10.95.180 should be interpreted such that if a capital defendant attacked one method of execution they have inferentially chosen the alternate method.

Also during 1996 the state Legislature changed RCW 10.95.110 (method of execution) so that lethal injection is the presumed

method and hanging must be affirmatively chosen by the inmate under sentence of death. The change in the statute, coupled with the decision in State v. Benn et al., will reduce the amount of litigation over the method of execution.

### ***Other Major Cases:***

**Edwards v. Balisok:** This case was argued before the United States Supreme Court case in November. At issue is whether inmates claiming procedural due process violations must first successfully exhaust state court remedies before pursuing relief in federal court. The state's position, if successful, will curtail inmate litigation in the federal courts.

**Hoptowit v. Ray:** The operation of the Washington State Penitentiary has been "guided" by a court-ordered injunction for more than 15 years. The state has now asked the court to lift that injunction to allow operation of the institution without court oversight.

**National Electrical Contractors Association v. DOC:** This Pierce County Superior Court matter weighs the merits of NECA's claim that DOC violated the state bid process and prevailing wage and licensure provisions when it used inmates to assist in electrical work at a facility under construction. The Department of Labor & Industries was also named as a defendant, but has been dismissed.

**Hallett v. Payne:** This federal district court civil rights action challenged the medical services system at the Washington Corrections Center for Women. The settlement of the case resulted in ongoing monitoring of the system to assure that it remains constitutionally adequate.

**Stearns v. Gregoire:** At issue in this federal appellate case is the statutory provision requiring sex offenders to register with local authorities. It also allows the department and local law enforcement to give public notification of the release and residence of a sex offender. The district court upheld the statute and the case is now under review in the Ninth Circuit.

# Criminal Division

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*The SVP Unit handles all aspects of cases referred, including pre-filing investigations, trial, and any post-commitment proceedings such as direct appeal, personal restraint petitions, and habeas corpus petitions in state and federal court.*

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## **Summary of Responsibility**

The Criminal Division, at the request of or with the concurrence of the governor or a county prosecutor, assists local or state criminal justice agencies in investigating and prosecuting cases where special expertise is needed or a conflict of interest is involved. Division units include: Criminal Litigation, Sexually Violent Predator, Homicide Investigation and Tracking System (HITS), Medicaid Fraud Control, and Economic Crimes.

## **Legal Services Provided**

**Criminal Litigation Unit:** The unit assists county prosecutors and the governor in complex cases, including multi-county, white-collar crime and governmental corruption. The unit also prosecutes major violators of the state environmental protection statutes. The U.S. Environmental Protection Agency or the State Department of Ecology investigate these cases. In addition, the unit manages HITS, a multi-state database of investigative information, primarily on homicides and sexual assaults, which assists local law enforcement agencies.

**The Sexually Violent Predator Unit:** The Sexually Violent Predator Unit was estab-

lished in 1990 following enactment of the statute providing for indefinite civil commitment of convicted sex offenders who, by virtue of a "mental abnormality or personality disorder," are likely to reoffend in a predatory, sexually violent manner. By law, authority to prosecute these cases rests with the county prosecutor or the attorney general, if requested by the prosecutor. By arrangement with the counties, the Attorney General's Office handles cases from all counties, with the exception of King, Snohomish and Pierce, with which the unit consults. The SVP Unit handles all aspects of cases referred, including pre-filing investigations, trial, and any post-commitment proceedings such as direct appeal, personal restraint petitions, and habeas corpus petitions in state and federal court.

**Medicaid Fraud Control Unit:** The Medicaid Fraud Control Unit investigates, and where appropriate, prosecutes health care providers who defraud Medicaid, the state's health care system for the poor, and health care providers who abuse patients in Medicaid-funded nursing facilities.

**Economic Crimes Unit:** The Economic Crimes Unit provides criminal law enforcement at a statewide level for crimes committed against state agencies. The unit is composed of AGO personnel and is jointly funded by the departments of Revenue and Labor and Industries. ECU investigates and prosecutes tax fraud as well as false statement and theft crimes committed against the state. The unit also will assist state agencies in the areas of fraud detection, training and task force coordination.

## **Numbers/Trends**

About 40 to 60 cases are referred annually to the Criminal Litigation Unit for review or assistance. Most requests come from prosecuting attorneys, with a few coming from

the governor. In 1996, these cases included:

- A governor-requested investigation into school construction problems in 10 Eastern Washington schools. Findings were referred to a workgroup formed by State Board of Education to address problems found;
- An investigation and charges against owners and employers of Farwest Electric for false certification of electrician licensing documents. Guilty pleas entered by all principal defendants and the company, with a \$150,000 fine and restitution and other conditions to be set at sentencing;
- Prosecution of the former Clerk/Treasurer of South Bend, who entered a guilty plea to five counts of first degree theft and one count of second degree theft involving the theft of over \$150,000 from the city;

On average, seven to ten cases are filed statewide each year by the Sexually Violent Predator Unit. Since 1990, 193 cases have been referred for investigation and 49 were filed to prevent the release of sexually violent offenders into the community.

Data from more than 5,000 murder investigations and more than 6,200 sexual assaults has been collected through HITS to assist local law enforcement. Currently, approximately 20 police agencies have direct access to the HITS computer, which contains more than 6.1 million pieces of information. All law enforcement agencies in the state provide information to the HITS Unit and have access to HITS staff for assistance in their investigations.

The Medicaid Fraud Control Unit focuses on home health care, managed care and national cases. With 40 percent of the Medicaid population currently under some form of managed care, the unit is anticipating new forms of fraud. To a greater degree, all states are participating in prosecuting national health care providers for fraud.

In 1996, two medical providers were convicted in Medicaid fraud cases. Restitu-

tion and overpayments totaling approximately \$37,000 were ordered.

The unit also reviews and investigates allegations of patient abuse in Medicaid-funded facilities. This year the unit investigated 238 referrals of alleged patient abuse statewide. These investigations resulted in seven prosecutions. Of these, the unit directly handled six cases and the other case was prosecuted jointly with the King County Prosecuting Attorney's Office. Increasingly, these cases involve more serious crimes with felony convictions this year for assault and rape. Forty of these investigations were referred by the unit to the various licensing boards for administrative action.

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***With 40 percent of the Medicaid population currently under some form of managed care, the (Medicaid Fraud) unit is anticipating new forms of fraud. To a greater degree, all states are participating in prosecuting national health care providers for fraud.***

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In addition to its investigative and prosecutive functions, the Economic Crimes Unit also provides assessments of program vulnerability to the departments of Labor and Industries and Revenue, and offers assistance and training to staff and management in the areas of audit programs, fraud detection and case development. The unit assists the two agencies in the collection of civil and administrative assessments and penalties. Environmental Crimes Unit personnel assisted in a successful prosecution in King County, where more than \$300,000 in restitution will be sought as a result of conviction of two defendants for first degree theft against both agencies. Another case is pending trial in Clark County.

## ***Significant Cases and Their Impact***

**Constitutionality of the Sexually Violent Predator Statute:** In August 1993, the Washington State Supreme Court upheld the constitutionality of the sexually violent predator statute. One of the plaintiffs in that case, Andre Brigham Young, subsequently filed a petition Writ of Habeas Corpus in federal court, again challenging the constitutionality of the sexually violent predator statute. In August 1995, U.S. District Court Judge John Coughenour declared the statute unconstitutional. The Attorney General's Office appealed this decision, and the case was argued before the Ninth Circuit Court of Appeals in March of 1996. In June, the United States Supreme Court accepted review of the Kansas State Supreme Court's decision invalidating their sexually violent predator statute, a law modeled on and essentially identical to ours. After the court granted review, Washington joined 43 states and territories in submitting a second amicus brief addressing the substantive due process aspects

of the Kansas decision. Oral arguments were heard December 10, 1996.

**LabCorp of America:** The Medicaid Fraud Control Unit played a leading role in the settlement of a nationwide case involving overbilling to 44 state Medicaid programs. The settlement included a \$5 million fine and \$182 million in restitution to state and federal health care programs. The total Medicaid program share is approximately \$20 million.

**OK Boys Ranch:** The Criminal Litigation Unit, after a lengthy investigation, filed criminal charges against the former director, assistant director and head counselor at the OK Boys Ranch, a group home in Olympia. The trial judge dismissed the case, pre-trial, on the grounds that the conduct alleged did not, as a matter of law, constitute the crime of criminal mistreatment, with which the defendants had been charged. The state is appealing the decision to the State Supreme Court.

# General Counsel Unit

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*There has been an increase in the number of legal issues related to referendums and initiatives.*

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## **Summary of Responsibility**

The General Counsel Unit provides coordinated legal advice to statewide elected officials. The unit represents the 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 and the Higher Education Facilities Authority. The unit provides legal advice and representation in litigation and regulatory enforcement proceedings. The unit also provides administrative staff for the Executive Ethics Board. The duties and responsibilities of the board include enforcing the Ethics in Public Service Act; investigating complaints; imposing sanctions, reprimands and monetary penalties; recommending suspension or prosecution when appropriate; and developing educational materials regarding ethics for state agencies.

## **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 contracts, finance, public records and administrative law. Attorneys in the unit are involved in drafting and reviewing proposed legislation.

The unit also handles litigation. During election periods, there is generally 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. 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**

There has been an increase in the number of legal issues related to referendums and initiatives. The state insurance commissioner has embarked on a new program of premium rate regulations for health benefit plans, and enforcement of the "every category of provider" law, which has resulted in an increased litigation workload and numerous procedural challenges.

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 1996, the State Auditor's Office saw a 60 percent increase in the number of assertions received under the state Whistleblower Act. This trend has resulted in devoting additional legal resources to issues relating to alleged improper governmental activity.

## **Major Issues/Events**

**Auditor:** The attorneys will be advising the State Auditor's Office as they seek legislative changes in the state whistleblower program. Additionally, assistant attorneys general are working with the Auditor's Office to draft written policies and procedures ad-

addressing the conduct of whistleblower investigations.

**Election Related Issues:** The unit has seen an increasing number of election-related cases and requests for advice over the years. The attorney assigned to advise the secretary of state has also been involved in questions and litigation regarding ballot measures and candidate eligibility. Recently, this has included litigation over the construction of a new stadium for the Seattle Mariners. The State Finance Committee and Treasurer's Office have instituted a debt management

program for issuing state debt. This includes consideration of issuing variable interest rate obligations, stand-alone taxable general obligation issuance and an ambitious lease purchase financing program for state facilities. The Attorney General's Office will continue to provide more direct support on these types of financial transactions.

**Coordinating Legal Advice:** Attorneys in the unit continue to coordinate advice on sensitive legal issues to elected officials and their staffs to ensure consistency.

## ***General Legal Division***

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***The year 1996 saw an increase in the number of Public Disclosure Commission actions and liquor and tobacco violation cases. The number of growth management appeals to court also has increased significantly.***

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### ***Summary of Responsibility***

The General Legal Division serves 40 state agencies, including medium and small departments, boards and commissions. These include the Washington State Patrol, the Public Disclosure Commission, the Gambling Commission, the Liquor Control Board, the departments of General Administration, Retirement Systems, and Personnel, the Environmental Hearings Office and the Growth Planning Hearings Boards.

### ***Legal Services Provided***

The division provides a wide range of legal services, including defense of multi-million

dollar lawsuits and drug property forfeiture litigation. The division represents agencies at administrative hearings and subsequent court appeals on issues ranging from liquor license revocations to eligibility for retirement. In addition, the division offers client advice and litigation on contracts, real estate acquisition and disposal, general government issues, public disclosure, campaign practices, defense of construction claims and government procurement bid challenges.

### ***Numbers/Trends***

Due to the wide variety of client agencies, it is difficult to quantify workload for the division as a whole. The year 1996 saw an increase in the number of Public Disclosure Commission actions and liquor and tobacco violation cases. The number of growth management appeals to court also has increased significantly.

### ***Significant Cases and Their Impact***

**Public Disclosure Commission:** The division defended several constitutional challenges to the Public Disclosure Law, and also prosecuted major campaign funding related enforcement lawsuits. These include—

**Washington Education Association v. Public Disclosure Commission:** In this lawsuit, the division is defending a challenge to the

constitutionality of the part of Initiative 134 dealing with authorization of payroll deductions for political committees.

**Senate Republican Campaign Committee:**

The Public Disclosure Commission found that the Senate Republican Campaign Committee illegally solicited contributions during the legislative session. At the commission's request, the division filed an enforcement lawsuit seeking penalties and impoundment of the contributions collected. The superior court entered an enforcement order and impounded the funds. The Senate Republican Campaign Committee appealed to the state Supreme Court. Argument is set for March 29, 1997.

**Seattle School District:** The Public Disclosure Commission referred a case to the AG's Office regarding alleged illegal use of school district facilities to support a school bond levy. The division filed a lawsuit against three officers and employees of the Seattle School District seeking significant monetary penalties. This matter is pending in superior court.

**State ex rel. Public Disclosure Commission v. 119 Vote No! Committee:** The division is defending the constitutionality of the law which prohibits false campaign advertising. The superior court upheld a portion of the law and ruled other parts unconstitutional. Appeals were filed by both sides and will be argued to the state Supreme Court in 1997.

**WEA-WEA/PAC:** In November, the Public Disclosure Commission referred charges against the Washington Education Association-Washington Education Association/Political Action Committee to the AG's Office for enforcement. The charges concern the non-reporting of several hundreds of thousands of dollars in political contributions.

**Labor:**

**Spokane District Court v. Public Employment Relations Commission:** The district court judges in Spokane challenged the constitutionality of the law which gives district court employees the right to collectively bar-

gain. The superior court held the law unconstitutional as a violation of the separation of powers doctrine. This decision is on appeal to the state Supreme Court.

**Spokane Prosecutor v. Public Employment Relations Commission:**

The Spokane Prosecuting Attorney challenged the applicability of the collective bargaining law to deputy prosecuting attorneys. The superior court held that deputy prosecutors are not public employees as defined in the collective bargaining law. This decision is on appeal to the state Supreme Court.

**Tradeworkers v. Department of Personnel:**

Employees in certain job classes in general government are challenging the differential between their pay and the pay of similar job classes at higher education institutions. This case is in superior court.

**Horse Racing:** Several lawsuits have been and are being defended in superior court and the court of appeals concerning licensing and racing dates for the horse racing tracks in Spokane and Yakima.

**Gambling:**

**State v. Confederated Tribes, et al.:** This declaratory judgment action is an agreed upon method for various tribes and the state to resolve differences in the scope of gambling which can be negotiated for tribal casinos in Washington.

**Spokane Tribe v. State:** The AG's Office filed an amicus brief in the U. S. Supreme Court in Seminole Tribe v. Florida. The brief was filed on behalf of 31 states and challenged federal court jurisdiction over suits by an Indian tribe against the state under the Indian Gaming Regulatory Act. Washington had an identical case pending before the U. S. Supreme Court, Spokane Tribe v. State, and the court's ruling in Seminole that the 11th Amendment barred such suits was the basis for the dismissal of that suit.

**Colville Tribe:** The Gambling Commission seized 96 slot machines being transported to an illegal casino operated by the Colville Tribe.

The machines, worth approximately \$330,000, are the subject of a seizure lawsuit which the division is handling.

**Retirement:**

**Grabicki v. DRS; Olson v. DRS.** In these two cases, the Court of Appeals affirmed DRS' determination that "education incentive pay" cannot be used for the purpose of ballooning a LEOFF 1 pension.

**Arnold v. DRS:** The Supreme Court upheld the LEOFF 1 survivor benefit statute

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*The state won several major victories in the appellate courts against constitutional challenges to the statutes that provide for forfeiture of property used in the manufacture, distribution or sale of illegal drugs.*

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against a challenge that it violated procedural due process.

**Norris, et al. v. DRS:** This action seeks to require DRS to include retirement incentives as compensation for purposes of ballooning pensions in TRS 1. The plaintiffs, having lost before DRS and the superior court, have appealed to the Court of Appeals.

**Major Issues/Events**

**Drug Enforcement:** The state won several major victories in the appellate courts against constitutional challenges to statutes that provide for forfeiture of property used in the manufacture, distribution or sale of illegal drugs. The statutes were found not to constitute double jeopardy, excessive punishment or in derogation of homestead protections. A similar challenge to the RICO law also was rejected by an appellate court. In 1996, we successfully obtained several hundreds of thousands of dollars in forfeitures of real and personal property under these laws.

**Growth Management:** The number of challenges to local ordinance compliance with the Growth Management Act have increased substantially. Our representation of the Growth Management Hearings Boards has likewise experienced a large increase in cases.

**Liquor and Tobacco Enforcement:** The number of liquor licensing cases we handle, after declining for several years, rose significantly. Also, enforcement of the law against selling tobacco to minors has resulted in many more hearings. One tobacco company has challenged the Liquor Board's authority to regulate the distribution of samples on non-publicly owned property.

**Lottery Assignment Cases:** In 1996, the Legislature enacted a law allowing assignment of lottery prizes under certain conditions of IRS provided a ruling that winners who choose not to assign their prizes would not suffer adverse tax consequences as a result. The Lottery requested and received an IRS ruling which it does not believe satisfies the statutory requirement. The issue of whether the legislative proviso was satisfied is on appeal to the Supreme Court.

# ***Labor and Personnel Division***

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***The caseload has grown substantially over the past year as state government streamlines, reorganizes and institutes new, innovative personnel management programs.***

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## ***Summary of Responsibility***

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

## ***Legal Services Provided***

The division represents state agencies in unfair labor practice complaints and grievance arbitrations before the State Personnel Resources Board and Marine Employees Commission. It also represents agencies in disciplinary, disability separation, and some reduction-in-force appeals before the Personnel Appeals Boards. 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. Over the past year, the division has conducted training for state agencies on employee misconduct investigations, the handling of grievance arbitrations, the Public Records Act, and participated in

the annual Department of Personnel training on corrective-disciplinary actions. 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.

## ***Numbers/Trends***

The division's current caseload totals approximately 562 actions. This does not include numerous pending cases contemplated by state agencies for which the division provides consultation and advice. The caseload has grown substantially over the past year as state government streamlines, reorganizes and institutes new, innovative personnel management programs. The division also assumed responsibility for several new clients in 1996, including Washington State Ferries and Superintendent of Public Instruction.

**Personnel Appeals Board:** There are approximately 479 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 22 actions involve either grievance arbitrations under collective bargaining agreements or litigation of unfair labor practice charges.

**Marine Employees Commission:** With 12 current cases, the division is involved in either grievance arbitrations under collective bargaining agreements or litigation of unfair labor practice charges.

**Discrimination Complaints:** The division is currently representing state agencies on three discrimination complaints before the Human Rights Commission or the Equal Employment Opportunity Commission. This is a decrease from last year as the division has worked with

client agencies to enable them to take more active rolls in their responses to complaints.

**Tort Cases:** As part of its original mission, the division has substantially increased representation for employment related tort cases. There are currently 30 cases where employees have alleged discrimination on the basis of race, sex, age, disability, or retaliation. In 1996, the division tried three employment discrimination cases, with defense verdicts awarded in two. Additionally, through the use of alternative dispute methods and participation in the Thurston County Superior Court ADR Week, the division settled six tort cases this year; two cases were withdrawn and one was dismissed on summary judgment for the state. Finally, the division has worked to resolve cases at the claim filing stage.

### ***Major Issues/Events***

**Contracting Out:** The continuing trend toward reducing costs by contracting out for work traditionally done by state civil service employees has resulted in increased litigation by unions. Even where legislation is enacted to authorize contracting out, unions are vigorously challenging its constitutionality and scope.

**Collective Bargaining Reform:** The division anticipates attempts to expand the scope of collective bargaining and civil service reforms for state employees. Any reforms will require additional legal services for agencies.

**Downsizing of State Government:** As state government examines ways to reduce costs, the Legislature is eliminating funding for full-time equivalents and programs. The Legislature also is eliminating or merging state agencies. As a result, the division anticipates the need for additional legal services as state employees challenge these actions.

There has been an increase in litigation from requests for preliminary injunctions, unfair labor practice complaints and workplace safety complaints to the Department of Labor & Industries.

**Fair Labor Standards Act:** This past year has seen federal cases in this area diminish completely because of the U.S. Supreme Court's decision in the Seminole Tribe of Florida v. Florida case. As a result of the Seminole decision, federal courts have ruled employees cannot maintain a FLSA-based lawsuit in federal court. The plaintiffs have now moved their efforts to state court and continue to pursue these claims, but at a much reduced level. There is currently pending before the U.S. Supreme Court a case that could potentially

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***The number of requests for public records continues to rise as employees and the public attempt to gain more information on the operations of state government.***

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eliminate FLSA coverage for public employees, thereby eliminating claims under the FLSA completely.

**Public Disclosure:** The number of requests for public 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, resulting from situations where a party challenges an agency action by personally attacking the competency of the individual who made the agency decision.

# ***Labor and Industries Division***

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***Attorneys handle approximately 50 workers' compensation cases at one time. Each caseload represents several millions of dollars of exposure to the accident and medical aid funds administered by the department.***

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## ***Summary of Responsibility***

The Labor and Industries Division represents the Department of Labor and Industries by providing defense of department orders at the state and federal level.

The Department of Labor and Industries is one of the largest state agencies with more than 2,500 employees. A major component of the department is serving as the trustee and administrator of the \$6 billion workers' compensation fund which is funded by premiums paid by workers and employers. The department also administers a self-insured employers' fund composed of some of the state's largest employers. This fund is used to compensate employees who are temporarily or permanently unable to work as a result of workplace injuries. L&I is one of the nation's largest workers compensation insurance carriers.

The second largest component of L&I's responsibility is enforcement of the Washington Industrial Safety and Health Act (WISHA). In order to assure safe and healthy working conditions, Washington law 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.

In addition to workers' compensation and WISHA issues, L&I enforces wage and hour laws, a crime victims' compensation program, a boiler inspection program, electrical inspection, apprenticeship training, and a comprehensive program for assessing and collecting insurance premiums. The department maintains programs to prosecute individuals who fraudulently collect workers' compensation benefits; criminally prosecute those who willfully violate the provisions of the Industrial Safety and Health Act; and pursue legal action against those who intentionally fail to make insurance premium payments and attempt to defraud workers of their wages.

Attorneys handle approximately 50 workers' compensation cases at one time. Each caseload represents several millions of dollars of exposure to the accident and medical aid funds administered by the department.

## ***Legal Services Provided***

Division attorneys defend orders issued by L&I in response to claims filed by injured workers before the Board of Industrial Insurance Appeals as well as 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 workers' compensation cases at one time. 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. In addition to the files handled by attorneys, hundreds of additional files are handled by paralegals as part of the division's ADR program.

Of the remaining 40 percent of the legal work, a significant percentage consists of prosecuting employers who allegedly violate work place 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 hours 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 L&I Division has a substantial litigation caseload. Division-wide, there are approximately 6,000 open litigation files. There has been an overall increase of 10 percent over the last year in the number of industrial insurance cases appealed to the Board of Industrial Insurance Appeals. However, despite this increase in appeals, the actual number of cases resolved by litigation will probably decrease in large part because of an aggressive ADR program mounted by L&I, the Board of Industrial Insurance Appeals and the AG's Office. This includes a greater number of cases reconsidered by the department, and cases resolved short of trial through the Board's mediation process. Currently, 50 percent of the new workers' benefit cases received by the division are resolved short of litigation by paralegals working under the direction of division attorneys.

Current caseloads for the division include:

- More than 70 significant cases currently pending in state and federal courts;
- More than 1,800 new administrative appeals received during the third quarter of 1996;
- Approximately 3,000 workers' benefit cases currently in litigation or pending settlement at the administrative level.

## ***Significant Cases and Their Impact Litigation***

**Aviation West, et al. v. Department of Labor & Industries:** This case was a lawsuit brought by the Tobacco Industry challenging Washington's recently promulgated indoor air quality regulations. Effective in October 1994, these regulations required employers to maintain tobacco smoke-free offices throughout the state. In May 1996, the Thurston County Superior Court upheld the regulations, rejecting the plaintiff's numerous statutory and constitutional challenges.

**Farmworkers Litigation:** On December 16, representatives of farmworkers filed a class action civil suit in Thurston County on behalf of all farmworkers in the state of Washington. The suit alleges that the Department of Health and the Department of Labor & Industries have failed to enforce farm safety and health regulations as they pertain to farmworker housing.

### ***Electrical Licensing***

The discovery of electrical installation defects in new school construction in schools in Chelan County triggered a statewide investigation of the supervision and certification of journeyman electricians by the Department of Labor & Industries and other government agencies. Related to this investigation was the discovery that a Clark County electrical contractor was allowing unsupervised and improperly certified electricians to perform electrical installations. In Farwest Electric, L&I Division attorneys initiated civil prosecution of electrical law violations by Farwest. These violations were resolved and fines paid as part of a global settlement of both civil citations and criminal charges involving Farwest. A settlement resulted in the entry of numerous guilty pleas to felonies and the payment of substantial fines.

### ***ADR Highlights***

In 1995 L&I issued citations to the Seattle Fire Department alleging violations of WISHA regulations regarding proper procedures to protect firefighters at the scene of a fire that

killed four in January 1995. In the summer of 1996, following lengthy negotiations involving the department, the City of Seattle, King County, and various firefighter labor unions, the City of Seattle admitted numerous violations and paid a substantial fine to the department.

### ***Major Issues/Events***

**WISHA Penalty Structure:** Division attorneys have worked closely with the department to revise its penalty structure in the

enforcement of WISHA cases. This is expected to reduce the number of appeals by employers from WISHA citations.

**Emerging Areas of the Law:** Division attorneys are working closely with the client agency in other emerging areas of the law, including: assisting the agricultural industry with worker safety issues, protecting minimum wages for minors, reducing long term disability of injured workers, and utilizing complex information systems.

# ***Licensing and Employment Security Division***

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***Over this last year, the division has continued to focus on achieving greater efficiencies to bring cases to resolution and closure.***

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### ***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 discipline cases for the Department of Health's boards and commissions.

The division handles more than 3,120 cases each year in a variety of administrative, state, and federal forums, with about 1,653 cases coming to closure.

### ***Legal Services Provided***

The division's legal services include

advice and counselling on rule-making, contracts, policy writing, proposed legislation, open meeting and public records issues, 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, implied consent and unemployment denial appeals in superior court and in other actions against the state brought in federal courts or appealed to Washington's State Court of Appeals or Supreme Court.

In 1996, the division continued to focus on achieving greater efficiencies to bring cases to resolution and closure. This has included great success in introducing alternative dispute resolution (ADR) methods into the administrative law setting.

### ***Numbers/Trends***

The different kinds of litigation handled by the division include:

- **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 (984 cases).

- **Financial Responsibility:** These are license suspension administrative hearings for uninsured drivers involved in vehicle accidents where there is personal injury or property damage (406 hearings).
- **Unemployment Benefit Denial Appeals:** These are appeals in Washington State courts seeking review of claims in which unemployment benefits were denied (526 cases).
- **Professional Licensing/Department of Licensing:** These are licensing misconduct matters initiated by the Department of Licensing against non-health professional licensees, such as real estate licensees (347 cases).

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*During the 1994 and 1995 legislative sessions, extensive revisions were made to criminal and civil processes of the state statute prohibiting driving under the influence, including several revisions under the authority of the Department of Licensing.*

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- **Vehicle Services/Department of Licensing:** These are regulatory misconduct matters brought against vehicle dealers or tax assessment matters against motor vehicle fuel distributors (123 cases).
- **Professional Licensing/Department of Health:** These are licensing misconduct

matters initiated by the Department of Health for violations of the Uniform Disciplinary Act (916 cases).

- **Human Rights Commission:** These are discrimination complaints filed with the commission and appeals from commission decisions (22 cases).
- **Office of Minority and Women's Business Enterprises:** These are appeals from the denial of certification and decertification (26 cases).
- **Miscellaneous:** This category includes other legal challenges brought by or against the division's clients (176 cases). For example, the division is currently defending the state in two lawsuits challenging the constitutionality of recent amendments to the firearms law.

### **Major Issues/Events**

**DUI Legislation:** During the 1994 and 1995 legislative sessions, extensive revisions were made to criminal and civil processes of the state statute prohibiting driving under the influence (DUI). In addition to existing implied consent cases, the agency now is conducting civil administrative hearings to determine whether an individual was driving under the influence. The division has assisted in the implementation of the legislative changes and is currently representing the department in several appeals challenging the new changes to the DUI laws.

**Health Licensing Litigation:** The division is working closely with the Department of Health and boards and commissions on process changes so DOH can more expeditiously address complaints against licensees. Recent innovations include informal mediation and improved threshold criteria for screening complaints and cases.

# Social and Health Services

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*Currently, 70 percent of the legal services support juvenile dependency and parental termination cases as well as the other child welfare services programs.*

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## **Summary of Responsibility**

The Department of Social and Health Services, our largest client, 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, CHORE 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 and advice and representation for DSHS headquarters in Olympia. Currently, 70 percent of the legal services support juvenile dependency and parental 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 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, day care facilities and child placement agencies.

**Child Support Program:** Services provided to the Division of Child Support include legal advice to the program and representation in litigation. Litigation includes class action lawsuits challenging administration of the program; actions by parents seeking to avoid collection of child support; DCS initiated modification of child support orders; lawsuits against employers who do not honor collection activities; and representation of DCS in appeals to Superior Court. In most counties day-to-day litigation is being handled by prosecutors on behalf of DCS.

**Medical Assistance:** Attorneys provide legal advice and litigation support to the Medical Assistance Administration. Issues include: compliance with Title XIX of the Social Security Act which governs the Medicaid program and sets forth conditions for states' eligibility for federal funding; compliance with complex legal requirements governing the level of reimbursement to Medicaid providers; implementation of managed care programs for medical assistance clients; implementation of changes to federal Medicaid eligibility requirements; and individual challenges to denials of eligibility for medical assistance.

**Aging and Adult Services:** The DSHS Aging and Adult Services Administration requires a wide range of legal services. Programs include adult protective services, Medicaid personal care/COPES/CHORE services, nursing home licensing and certification, nursing home audit and rates, and licensing of adult family homes.

**Mental Health:** The DSHS Mental Health Division operates the two state mental hospitals, the Child Study and Treatment Center, and contracts with Regional Support Networks to provide Medicaid and state-funded community mental health services. We provide legal advice and representation in all civil commitment cases. These involve determinations as to whether individuals have serious mental disorders and, if so, whether commitment to a state facility or release into the community is appropriate.

**Special Commitment Center:** The Special Commitment Center houses DSHS's program for the involuntary treatment of sexually-violent predators. Litigation has primarily involved civil rights lawsuits filed by residents.

**Alcohol and Substance Abuse:** The DSHS Division of Alcohol and Substance Abuse is responsible for developing prevention and treatment services for substance abuse. Legal advice and representation primarily focus on contracting and certification issues and litigation.

**Developmental Disabilities:** This division operates five residential habilitation centers for the developmentally disabled and contracts with counties and private providers for home and community-based residential 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 right to community placement, and medical decision-making in institutions.

**Juvenile Rehabilitation:** The Juvenile Rehabilitation Administration (JRA) provides for the care, custody, rehabilitation and community supervision of court-committed juvenile offenders. JRA operates five institutions and several state-operated group homes and contracts for additional community residen-

tial placements. Legal services include program advice on a variety of issues including terms and conditions of confinement, right to treatment, conditions of parole, public disclosure and community protection requirements. Cases currently in litigation include a class action civil rights lawsuit regarding conditions of confinement at the Green Hill School, a challenge to JRA's authority to transfer assaultive juveniles into DOC, and a challenge by JRA to a decision by the federal government to discontinue SSI coverage for juvenile offenders in JRA community programs.

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*We provide legal advice and representation in all civil commitment cases, which involve determinations as to whether individuals have serious mental disorders and, if so, whether commitment to a state facility or release into the community is appropriate.*

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**Economic Services:** Programs encompassed by Economic Services includes Aid to Families with Dependent Children, Food Stamps, General Assistance, SSI, Telephone Assistance and Refugee Assistance. Litigation ranges from individual appeals of reductions to or denial of benefits to class action lawsuits challenging program implementation. Client advice has centered around welfare reform and interpreting the new federal legislation implementing comprehensive changes in AFDC, Food Stamps and SSI. Other significant issues include notice requirements under the new ACES information system, electronic transfers for public assistance benefits, and ongoing advice on proposed and enacted legislation and administrative regulations on both the state and federal levels. Current litigation involves individual appeals of reductions or denials of benefits, guidance and direction

to DSHS on increasing the availability and use of alternative dispute resolution in fair hearing appeals.

**Management Services:** Legal services are provided to many other DSHS programs under the Management Services Administration including advice and litigation support provided relating to contracts, public disclosure, Office of Fraud Investigations, safety (LEI and WISHA), budget, lands and buildings, information systems and financial recovery.

### **Numbers/Trends**

**Child Welfare Litigation:** As of October 31,

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*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.*

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1996, there were 5,800 total child welfare cases pending in the Attorney General's Office. Approximately 3,880 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. From January 1 through October 31, 1996, there were more than 435 terminations of parental rights and 385 guardianships were established.

**Child Support Litigation:** As of October 31, 1996, the Attorney General's Office had 668 child support cases pending. A year ago,

there were 1,278 child support related cases pending. This continuing reduction reflects a decision made by the office three years ago to transfer the majority of the high-volume child support litigation to county prosecuting attorneys throughout the state. This transition should be completed by the end of June 1997. The office will retain certain categories of child support litigation.

**Appellate Litigation:** Appellate litigation in state and federal courts totalled 148 cases as of September 30, 1996. The majority involve child welfare issues, but a variety of other programs and legal challenges to DSHS are involved. Nursing home rate appeals have very significant state and federal financial implications.

### **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.

**Washington State Coalition of the Homeless v. DSHS:** Over the last four years, division attorneys have defended a request that DSHS provide housing assistance to families who are homeless or at risk of being homeless. The trial court's oral ruling held that DSHS must have a statewide plan for coordinating services for homeless children and their families, but DSHS is not required to provide specific services or expend significant funds without a more specific legislative directive and appropriation. In March of 1995, the trial court issued a written ruling ordering

DSHS to submit within six months a comprehensive and coordinated plan for housing homeless children. DSHS appealed and obtained a stay of the order pending review by the Washington State Supreme Court. The Supreme Court heard oral argument in the case in October 1996.

**In re J.C.:** Reversing a court of appeals decision, the State Supreme Court held that when a parent's abuse of alcohol is used to establish that a child is dependent, DSHS is not required to prove at a subsequent termination of parental rights hearing that the parent is continuing to use intoxicating substances.

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*The State Supreme Court found that a fifteen-year old girl's statutory rights were violated when her request to leave inpatient mental health treatment at a private hospital was denied.*

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**State ex rel. T.B. v. State, CPC Fairfax Hospital, et al.:** The State Supreme Court found that a fifteen-year old girl's statutory rights were violated when her request to leave inpatient mental health treatment at a private hospital was denied. The child had been admitted by her parents, without the child's consent, under provisions of the 1995 Run-away/At-Risk Youth Act.

**Horton v. Williams:** A class action has been filed in federal court on behalf of juvenile offenders at the Green Hill School and challenges conditions of confinement. The parties reached a partial settlement on issues relating to the facility, use of restraints, due process rights, education, translation services and grievances, and a supplemental settlement agreement resolved issues concerning mental health services and other rehabilitation programs at the institution. A monitor has been selected to oversee implementation of the settlement.

**Monroe v. Soliz:** This class action in federal court challenges the constitutionality of a state law permitting DSHS to transfer a juvenile offender from a juvenile institution to an adult prison if the juvenile offender is a danger to others at the juvenile institution. The trial court ruled the statute is unconstitutional. Oral arguments were heard by the State Supreme Court and a decision is pending.

**South Sound Radiologists, Inc., et al. v. DSHS:** Over 3,000 providers of Medicare Part B services to qualified Medicare beneficiaries are seeking in state court retroactive reimbursement back to 1989. The federal court ruled on January 8, 1996 that the states must pay up to the Medicare upper payment as opposed to the Medicaid upper payment level for services to this population. DSHS has changed its payment prospectively in compliance with the court's order. What remains is the state court suit for retroactive relief under a variety of legal theories.

**Allenmore, et al. v. DSHS:** This lawsuit, brought by 1,300 pharmacies, has been certified as a class action and challenges DSHS's Medicaid reimbursement for pharmacy services from 1978 to present. Plaintiff class seeks to take advantage of a 1994 State Supreme Court ruling in Failor's Pharmacy, et al. v. DSHS, which invalidated the pharmacy contracts back to 1978 and held that pharmacy dispensing and ingredient cost fee schedules must be adopted by regulation.

**SelectCare v. DSHS:** SelectCare was an unsuccessful bidder in the 1997 Healthy Options request for proposal. Following the awarding of contracts to the successful bidders, SelectCare filed a number of motions in an attempt to be named a successful bidder in the Cowlitz/Wahkiakum area. The Court of Appeals accepted discretionary review of DSHS's appeal of a decision by Cowlitz County Superior Court requiring the state to award a contract to SelectCare, and take the contract away from another successful bidder, QualMed. The case will be heard by the court during its spring term.

**Turay v. Weston:** This civil rights action challenged the conditions of confinement at the Special Commitment Center 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 nine reports evaluating the progress that SCC has made toward improving its treatment program. A hearing reviewing the injunction and the special master's findings was held on January 13, 1997.

**Sharp v. Weston:** This is a civil rights action by persons detained in the Sexually-Violent Predator Program challenging conditions of confinement. The case is currently stayed pending United States Supreme Court review of Kansas' sexually-violent predator law which is identical to Washington's sexually-violent predator law.

**People First of Washington v. Rainier School:** A class action lawsuit seeking declaratory and injunctive relief was filed by several named clients of Rainier and by a number of advocacy organizations. Plaintiffs allege the care and services provided to Rainier residents violate their legal rights under the constitution and the ADA, and that DSHS and OFM have failed to provide required community placements.

### ***Major Events/Issues***

**Welfare and Medicaid Reform/Block Grants:** The president signed legislation which replaces federal entitlement programs with a single Temporary Assistance to Needy Families block grant to the states. Each state will now receive a set grant for the year to fund state programs. Eligibility will be left to the states, although specific requirements regarding duration of benefits, citizenship, work participation and data reporting are imposed, with penalties for failure to conform. The office

currently is advising a DSHS work group charged with planning and implementing the changes required by the welfare reform legislation.

**Implementing Runaway Legislation:** Division attorneys continue to work closely with DSHS on the implementation of the Run-away/At-Risk Youth Act and amendments.

**Long-Term Care Issues:** DSHS continues to revise its long-term care and aging programs. Controlling nursing home costs remains a critical issue. There also continues to be an increased emphasis on providing care for the elderly in community and home settings rather than nursing homes. New regulations have been implemented for adult family homes and assisted living facilities. It is possible there may be an increase in adult family home licensing actions and other civil fine actions due to new enforcement authority.

**Investigation of Fircrest School:** In September 1995, the U.S. Department of Justice, acting under the federal Civil Rights of Institutionalized Persons Act, conducted a fifth and final on-site evaluation of services provided by DSHS to approximately 375 developmentally disabled residents of Fircrest School in Seattle. DOJ attorneys and consultants have been visiting the facility approximately once per year since 1991. To close the investigation, the parties have agreed to bring in two consultants to evaluate remaining concerns for DOJ. Consultants were selected by DSHS and approved by DOJ. They have scheduled a series of visits to Fircrest over a six-month period. The consultants will issue a final evaluation of treatment programs at the facility, after which DOJ will either close the investigation or initiate further legal action.

# *Transportation and Public Construction Division*

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*An increasing demand for a range of transportation services, coupled with a proportionately smaller gas tax revenue has led the department to pursue new and different approaches to transportation planning.*

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## ***Summary of Responsibility***

The Transportation and Public Construction Division represents the Department of Transportation and Transportation Commission. The division also provides legal services to the Board of Pilotage Commissioners, the County Road Administration Board, the Transportation Improvement Board and the Washington Traffic Safety Commission. TPC also handles significant construction claim litigation, arbitration and mediation for other state agencies, and upon request, represents other agencies in environmental claims relating to hazardous waste cleanup issues, and in eminent domain and land acquisition problems.

## ***Legal Services Provided***

In addition to litigation caseload, TPC attorneys provide assistance in mediation, arbitration, and other forms of dispute resolution. Division attorneys also provide client advice, draft agreements and handle administrative hearings, rule adoptions, grievance hearings, interest arbitrations, industrial insurance appeals, WISHA hearings, as well as general problem solving and negotiation.

Although litigation is the major work component, approximately 40 percent of the division's workload is client advice designed to avoid litigation.

## ***Numbers/Trends***

An increasing demand for a range of transportation services, coupled with a proportionately smaller gas tax revenue has led the department to pursue new and different approaches to transportation planning. For example, recent legislation authorized the Department of Transportation to arrange improvements to the transportation system through public-private initiatives. This led to an increase in the division's workload and more creative staff assistance to help the department implement these approaches.

The division has also seen more problems in litigation on environmental issues, including hazardous waste.

Legislation has increased the department's responsibility for freight and passenger rail service. The department has embarked on acquiring trains, operating agreements, and trackage rights to provide enhanced passenger rail service from Vancouver, B.C. to Portland, Oregon. The division has been involved in structuring agreements, acquiring property and crossing closure proceedings. This is becoming an important part of the division's business.

## ***Significant Cases and Their Impact***

**Condemnation Cases:** The Department of Transportation has proceeded incrementally to improve SR 18 from Auburn to I-90. This has required a significant number of condemnation cases to be filed and that is expected to increase as DOT progresses along SR 18. Increasing development has created high prop-

erty values and access issues. The construction project for Spokane's "Division Street" involves many high-value commercial properties and partial takings. One owner alone has approximately 16 properties that will need to be acquired. Most of the cases involve unique condemnation issues and, if they cannot be settled, may require lengthy trials.

**Hazardous Waste Cleanups:** The division currently is involved in a federal action seeking financial help from the U.S. Navy for the Eagle Harbor Superfund Site on Bainbridge Island. The U.S. Environmental Protection Agency has brought a claim to recover administrative and potential cleanup costs. A settlement in principle has been reached, but details have not been finalized. The division is also part of a cleanup recovery action against Washington Natural Gas in state court. Although no recovery actions have started, the Commencement Bay Superfund Site has impacted both SR 705 construction and SR 509, the latter highway resulting from the Puyallup Indian land claim settlement. The Division is helping to resolve contract, construction, pollution and other issues and claims related to the Superfund.

**Construction Cases:** While claims may still be litigated in superior court, the department has shifted many of the contract claim disputes to the mediation and arbitration forums.

### ***Major Issues/Events***

**Public/Private Initiatives:** The implementation of the Public/Private Partnership Initiatives Act has produced significant issues for the division. DOT selected six demonstration projects that cut across all traditional high-

way planning and construction procedures and raise complex legal issues on matters such as financing concepts, tolls and bonding concerns.

**Environmental Issues:** The Growth Management Act raises new legal issues including permits, regulations, SEPA and other compliance requirements. One of the most important is highway run-offs and storm water management areas.

**Regional Transportation Agency:** The Regional Transportation Agency's proposed multi-modal transportation system for King, Pierce and Snohomish counties was approved by the voters in November 1996. A significant portion of the proposal calls for improvements to DOT freeways. It is not yet clear to what extent DOT will be involved in the construction of those facilities, and, in turn, how that will impact the division.

**Possibility of Revenue Source Enhancement:** The effects of inflation and increasing motor vehicle fuel efficiency combined with other factors have reduced motor vehicle moneys available to the department for significant highway system improvements. If additional revenues are not authorized for transportation projects, the division's workload may decrease over future biennia, although no reduction is forecast for the 97-99 biennium. On the other hand, any additional revenues devoted to transportation projects will likely increase the number of eminent domain cases, and create other legal services associated with project initiation (contract review, bidding disputes, etc.), and create an increased workload as those projects go forward.

# Utilities and Transportation Division

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*In what is perhaps the largest rate case before the commission (over \$300 million at issue on an annual basis), the King County Superior Court recently upheld the commission's order which rejected US West's request for a \$200 million rate increase and imposed instead a rate decrease of over \$90 million.*

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## **Summary of Responsibility**

The Utilities and Transportation Division provides legal services to the Washington Utilities and Transportation Commission. 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. The division represents staff in rate proceedings and other regulatory

actions before the commission. It also assists in the preparation for and the disposing of more than 1,600 formal filings considered by the commission annually.

## **Numbers/Trends**

The division is currently handling 22 contested cases in state and federal courts, six formal federal administrative agency cases (not including participation in rulemakings before the FCC), and a number of administrative cases before the commission ranging from major proceedings involving mergers of utilities (see below) to modest cases of disputes involving consumers. The number of formal filings with the commission continues to increase, reaching more than 1,500 for the first 11 months of 1996. Many of these involve state action under the Federal Telecommunications Act of 1996 and participation in proceedings before the FCC. The vast majority of filings are resolved without formal adjudications. They are either noncontroversial or resolved through negotiation or other alternate dispute resolution processes.

## **Significant Cases and Their Impact**

**Telecommunications Cases:** The division is handling numerous cases involving telecommunications companies (particularly US West) both before the commission and in superior court. The issues include: terms and rates for interconnection to local exchange companies by competitors; residential and commercial rates; rates for pole attachments; and specific components of costs for such companies. In what is perhaps the largest rate case before the commission (over \$300 million at issue on an annual basis), the King County Superior Court recently upheld the commission's order which rejected US West's request for a \$200 million rate increase and imposed instead a rate decrease of more than \$90 million. The case has been appealed to the state Supreme Court.

**Commerce Clause Litigation:** In Franks & Son v. State, a class of interstate motor carriers has challenged the commission's pre-existing fee structure imposed on all carriers, both intrastate and interstate. The plaintiffs are claiming discrimination on interstate commerce, and are seeking refunds of fees back to 1987, plus interest, which would amount to more than \$30 million.

### ***Major Issues/Events***

**Transition from Monopoly to Limited Competition -- Telecommunications:** In Electric Lightwave v. WUTC, the state Supreme

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***The proposed merger between Puget Power and Washington Energy is currently in litigation before the commission, as its approval is a prerequisite to the merger.***

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Court held that state law does not provide for franchise territories in the telecommunications industry. This opinion opened up the local exchange telecommunications market to competition from other providers, much like the long distance market was opened up several years ago by the break-up of AT&T. The transition from monopoly regulation to limited competition will not be smooth. It is replete with regulatory issues, including the preservation of services at reasonable rates in light of competitors wishing to serve only large businesses. In response, the commis-

sion issued an order facilitating interconnection by competitors to local exchange carriers. To date, the courts have upheld commission decisions to allow individual companies to enter into competition with the LECs. Recent federal legislation has required the commission to undertake substantial new types of proceedings including arbitrations between potential competitors for the local exchange market. The commission just recently has concluded its first arbitrations, and we are awaiting further developments, possibly including litigation in the federal courts pursuant to the new federal act.

**Transition from Monopoly to Limited Competition -- Energy:** Several providers of electric service currently are attempting to market power to large users within the service territory of other providers. Such actions raise questions of who should pay for stranded investment of utilities whose customers depart the system and the effect of that departure on residential ratepayers. FERC has issued lengthy and complex rules relating to these concerns on the interstate level, and the Bonneville Power Administration has a pending rate case in this matter. The division is active in both proceedings on behalf of the Utilities and Transportation Commission, and is providing advice on legal issues regarding potential transition to greater competition.

**Utility Mergers:** The proposed merger between Puget Power and Washington Energy is currently in litigation before the commission. Commission approval is a prerequisite to the merger. The division represents the commission staff in that proceeding and has proposed approval with substantial conditions for the ratepayers to share in the benefits of the merger.

# Administration

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## *Summary of Responsibility*

The Administration Division provides non-legal services for the Office of the Attorney General and is divided into six offices: Fiscal & Budget, Human Resources, Facilities, Information Services, Law Library and Public Affairs.

## *Services Provided*

Support services include centralized budgeting and accounting, personnel coordination 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 36,000 employee travel and vendor payment vouchers, which include court costs.
- The Payroll Office processes a semi-monthly payroll for about 1,100 employees (including work-study students and law clerks) totaling \$1.7 million, or an annual total of about \$40 million.

### *Facilities*

- The Attorney General's Office consists of 24 office locations throughout the state.
- The Facilities Office completed more than 200 significant sized moves throughout the state, and primarily utilized used furniture, surplus equipment and excellent contract movers, with an estimated savings of more than \$150,000.
- Seventeen of our 24 offices received facility changes or improvements, primarily in security, lease renewals, safety and managerial requirements.

## *Information Systems*

- The AGO network has more than 50 file servers with the storage capacity to hold over 100,000,000,000 characters of data.
- The AGO has approximately 825,000 documents and related files on its network servers.
- ISD processed almost 11,000 help desk calls during 1996.
- During 1996, over 2,050 site visits were made to repair phone and computer equipment and install software as a result of help desk calls. In addition, ISD processed approximately 800 special project requests that resulted in approximately 1,000 additional site visits.
- ISD purchased and installed more than \$1.25 million worth of hardware and software components.
- ISD staff provided more than 4,000 hours of technical training to AGO staff.

## *Law Library*

- The Law Library system consists of 20 branch library locations and 42 divisional libraries totaling 72,906 volumes, valued at \$3.6 million.
- Twelve of 13 office locations now have access to Westlaw, and four office locations now have access to CD Law.
- The Library responded to approximately 650 reference questions each month during 1996.

## *Human Resources*

- The Human Resources Office received and processed approximately 2,210 applications for employment in 1996. Of those, 800 applications were received for professional staff and Washington Management

Service positions, 500 applications were received and processed for attorney positions, and approximately 500 applications were received from third-year law students.

- Training staff in the Human Resources Office coordinated 90 training sessions in 1996 (an increase of 21 sessions over last year), with a total of 2,965 participants.

### **Public Affairs**

- During 1996, over 60 news releases were prepared and distributed, and staff responded to an average of 10 media calls each day.

### **Major Issues/Events**

**Budget Development:** The Budget Office completed and submitted the AGO's 1997-99 biennial budget. Completion of this project required working closely with office staff and the Office of Financial Management, as well as other stakeholders. Total request was \$152.9 million.

**Facility Improvements:** The Facilities Office completed numerous facility, safety, security, ADA and risk management improvements. The office:

- Provided ADA accessibility for program services in all offices;
- Established AG space standards and specifications, which were adopted by GA and approved by OFM; and
- Increased office security alarm systems by 37 percent in 1996.

**ISD Initiatives:** ISD has completed connecting approximately 1,250 employees to its new Local and Wide Area Networks. All work stations are now either 486 or Pentium-based machines. All AGO employees have been trained in the use of Windows, Schedule+, and Microsoft Mail.

ISD is actively involved in re-engineering applications that replace systems that currently run on the offices's central PRIME computer to client-server systems which will

better serve the office. The initial focus of this re-engineering effort will be on applications that support Consumer Protection, time keeping and billing, and agency-wide docketing.

**Law Library:** The office's library system is moving forward with several on-line systems. The main Law Library currently has many reference and research support databases, including Westlaw, Lexis-Nexis, LegLink, CD Law, Netscape, Counsel Connect, Pacer, SCOMIS, The Library Locator and LaserCat.

A Library study was completed. The study directs the office to move into more electronic research.

**Human Resources:** A legal secretary class study was conducted and implemented this year. As a result, the office is able to utilize legal secretaries in dual roles of legal secretary/paralegal, legal secretary/computer power user, legal secretary/office manager. This successful study has allowed the office greater flexibility in use of personnel resources and allowed for career opportunities and growth for existing employees. The Human Resources Office will lead a management review of the various investigator classifications in 1997.

The Human Resources Office worked closely with the Department of Personnel and the Governor's Affirmative Action Policy Committee on the 1996 update of the office's comprehensive Affirmative Action Plan. The plan is designed to eliminate any barriers which may exist and improve employment opportunities available to under-utilized protected groups.

The office also decentralized personnel operations into three areas with an on-site personnel office in Seattle. This structure affords managers and employees greater personnel services and access to employment related information.

The office implemented the Washington Management Service Program in 1996. Fifteen positions have been transitioned or

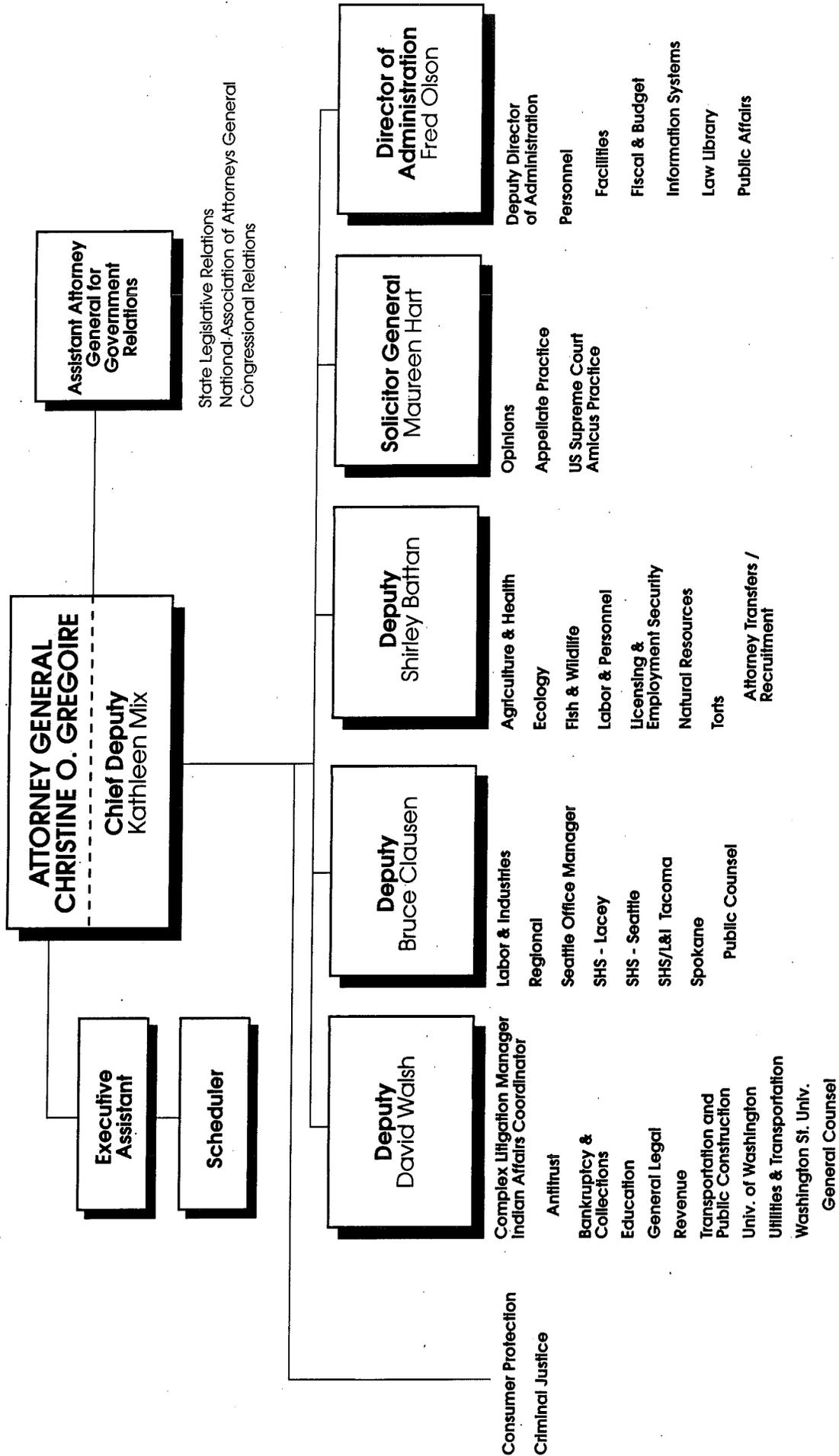
established in the Washington Management Service.

**AGO Homepage:** In 1996, Public Affairs developed and launched the AG homepage which expanded our outreach and distribution of AG news releases, media advisories, legal briefs on major cases such as the tobacco litigation and assisted suicide, and

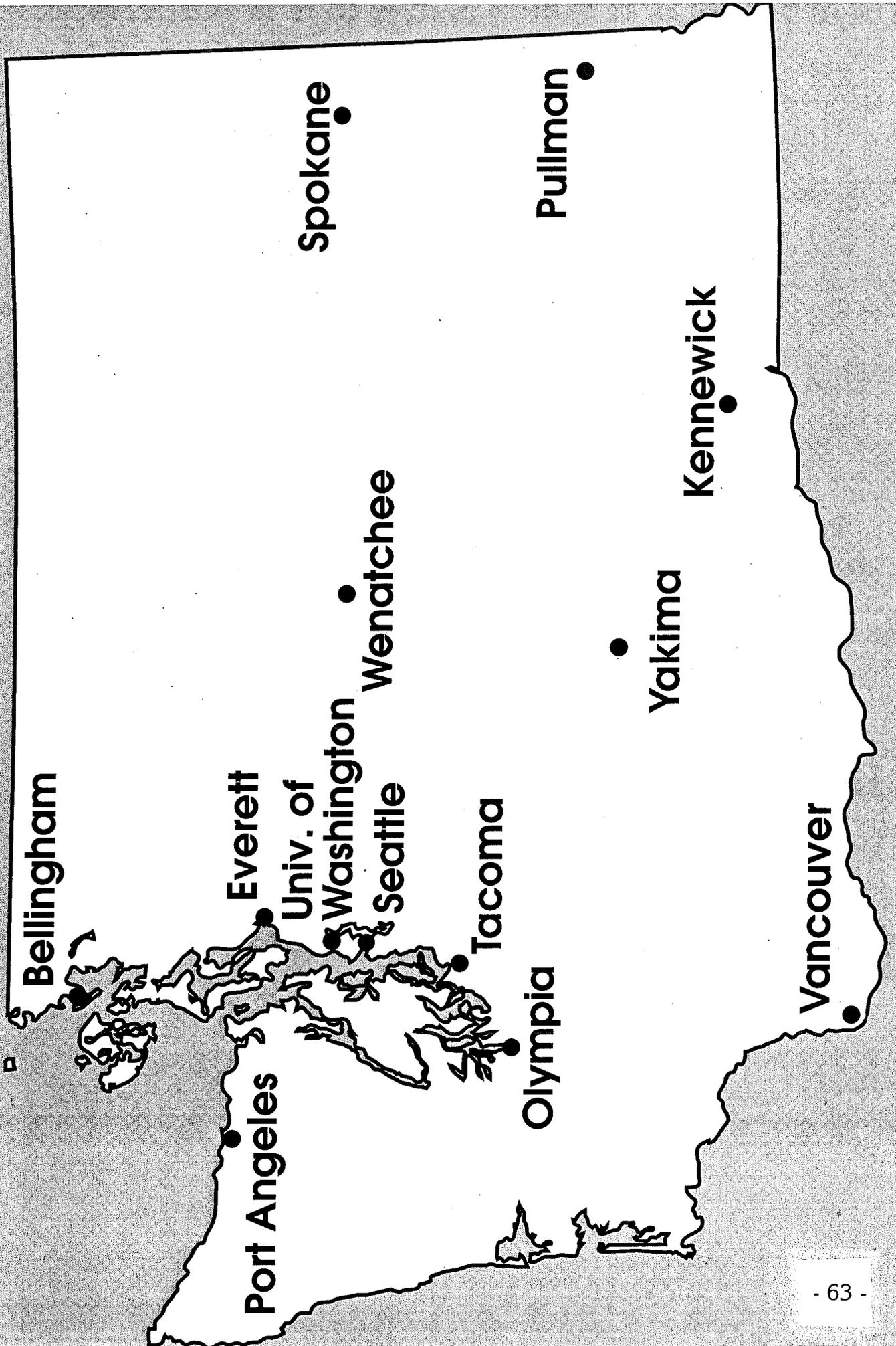
copies of consumer protection brochures and other educational materials. Since June, the office has had over 21,000 Homepage hits.

**Business Reviews:** Human Resources staff have played a key role in Administration Division business reviews: Print Shop, Fiscal Office and Information Services. The Human Resources Office will be undertaking an internal business review in 1997.

# Office of the Attorney General



# Attorney General's Office Locations





Office of the Attorney General  
PO Box 40100  
Olympia, Washington  
(360) 753-6200

<http://www.wa.gov/ago>