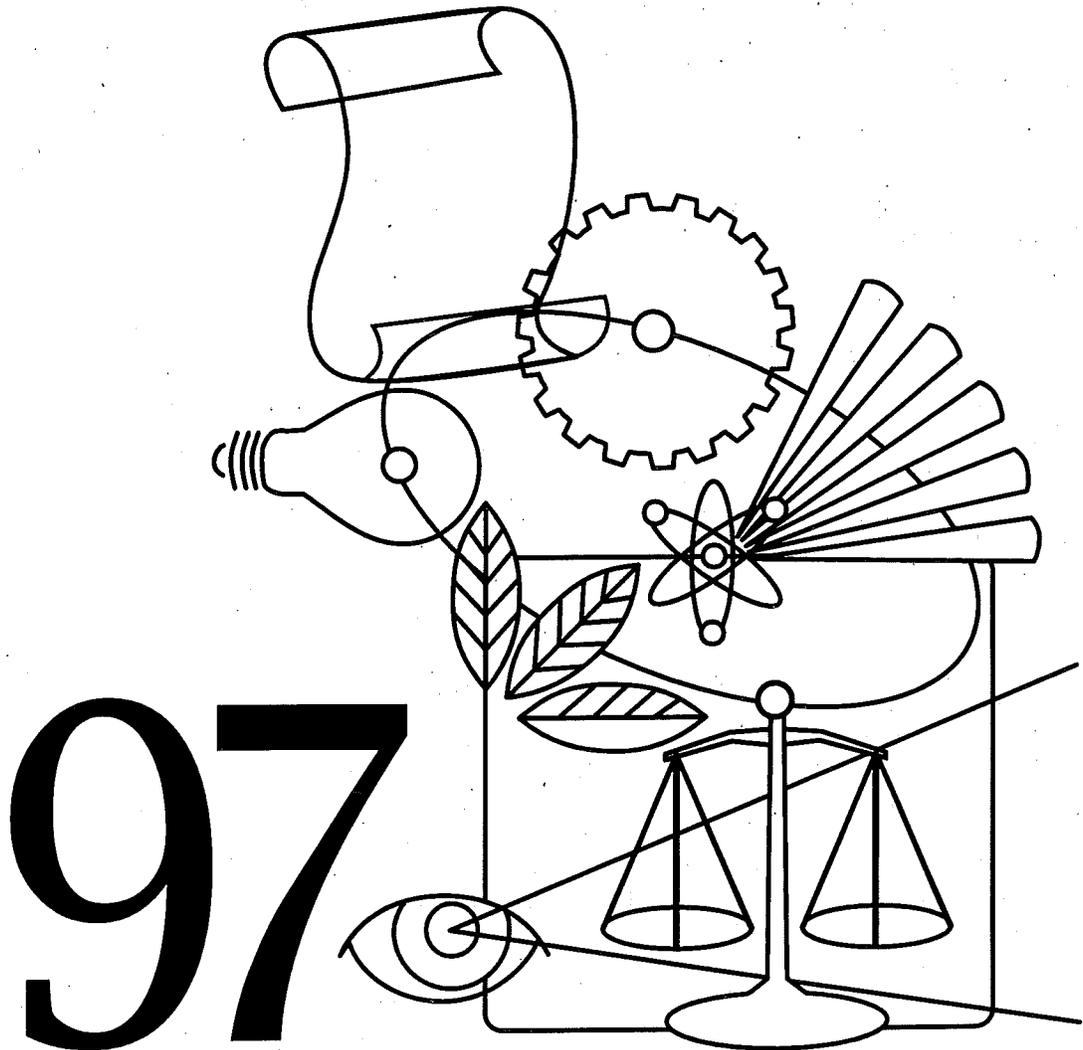


ANNUAL REPORT



**WASHINGTON STATE
OFFICE OF THE
ATTORNEY GENERAL
CHRISTINE O. GREGOIRE**



97

ANNUAL REPORT

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Tobacco Settlement

The agreement is aimed at trying to prevent 3,000 of our children a day from becoming addicted to tobacco products and stopping 420,000 deaths that occur each year from tobacco-related illnesses.

A historic settlement between 40 state attorneys general and tobacco companies was reached on June 20, after nearly three months of negotiations. If approved by Congress, the settlement will bring about the most significant change in tobacco policy for this country in history, and would arm the nation with a complete arsenal of weapons to combat the leading cause of preventable death in America.

Attorney General Christine Gregoire was one of five attorneys general who negotiated on behalf of the states with representatives from tobacco companies. Based on her interest in children, Gregoire took the lead on the public health portion of the settlement with a particular emphasis on reducing youth smoking.

The agreement is aimed at trying to prevent 3,000 of our children a day from becoming addicted to tobacco products and stopping 420,000 deaths that occur each year from tobacco-related illnesses.

The settlement provides a comprehensive regulatory regime, strong anti-smoking prevention and cessation programs, tough new enforcement measures, clear FDA authority to regulate nicotine as a drug, a change in corporate culture, full disclosure of industry research, protections from environmental tobacco smoke, and a financial settlement package which includes industry payments in perpetuity (\$368.5 billion in 1997 dollars over the first 25 years). The settlement is now in the hands of Congress. President Bill Clinton announced he wants a tobacco deal to protect children.

Congress already has held hearings on a number of tobacco issues. Tobacco legislation is expected to be a key issue before Congress in 1998.

Until Congress acts, Washington is aggressively pursuing its own lawsuit against the tobacco companies. The case is scheduled for trial on September 14, 1998.

Washington's lawsuit is based in large part on traditional consumer protection and antitrust claims. The state alleges defendants engaged in unlawful and deceptive advertising targeted at children, and that defendant manufacturers and their trade associations acted in concert to hide critical information to deny consumers informed choices, and conspired to withhold safer products from the market.

The state also alleged common law and constitutional causes of action, but these were dismissed by the court, and will be the subject of further appeals. The lawsuit seeks injunctive relief to stop the advertising to children, point-of-sale restrictions to make it more difficult for children to acquire tobacco, disgorgement of profits for the illegal and anticompetitive conduct of the industry, dissolution of the trade associations, antitrust damages and recovery of Medicaid and other health care costs attributable to tobacco use incurred by the taxpayers of the state.

A significant ruling occurred in November. King County Superior Court Judge George Finkle ordered that the Attorney General's Office be given access to key tobacco company documents for use in the state's lawsuit. The state had gone to court seeking release of the records because the industry claimed the documents were confidential due to attorney-client privilege.

The judge found the documents provide evidence that supports the state's assertions that the tobacco companies used the Council for Tobacco Research to mislead the public and/or that the R.J. Reynolds Company concealed health risks associated with its products.

The Council for Tobacco Research was created to conduct industry supported research on the health effects of tobacco and to develop so-called "safer" tobacco products. Gregoire and other attorneys

general believe the council was a front for the industry to hide behind the truth and dupe the public into believing that scientific research could not prove the dangers of tobacco use.

Tobacco companies had gone to court to block release of the records. The tobacco industry has appealed the ruling.

U. S. Supreme Court Activities

AG's Office made its mark by having direct involvement in seven cases that were argued and decided by the court.

In a busy U. S. Supreme Court term filled with significance and drama, the AG's Office made its mark by having direct involvement in seven cases that were argued and decided by the court. The court also denied a petition for writ of certiorari in a tax case against the state.

In the 1996-97 term, the justices extended free-speech rights to the Internet, struck down the Religious Freedom Restoration Act and a part of the Brady gun control bill, upheld laws in Washington and New York that prohibit assisted suicide, and said states can civilly commit sexual predators after they serve their prison sentences, if they are mentally ill and dangerous. In all, the term yielded 80 signed decisions, five more than the 1995-96 term.

This term the court heard two cases from Washington.

In Washington v. Glucksberg, which was handled by Attorney General Christine Gregoire and Sr. Assistant Attorney General Bill Williams, the court upheld a Washington law banning physician-assisted suicide. The justices said no constitutional right to assisted suicide exists, although they left it to the states to decide if they want to legalize the practice.

The court also heard Edwards v. Balisok which was handled by Chief Deputy Attorney General Kathleen Mix, and Assistant Attorneys General Talis Abolins, Mary Fairhurst and Dan Judge. The court ruled that inmates challenging prison disciplinary procedures must first successfully exhaust all remedies at the state court level, before they can bring a civil rights action in federal court. This

decision should further limit the volume of frivolous inmate cases in our federal courts.

In addition to these two cases the Attorney General's Office wrote or helped write amicus briefs in five other cases that have a direct impact on Washington.

Kansas v. Hendricks: The court declared a Kansas law that permits the indefinite civil commitment of convicted sex offenders constitutional. The ruling validates Washington's law which has detained 51 of the state's most violent sex offenders for supervision, evaluation and treatment. Assistant Attorney General Sarah Sappington wrote two amicus briefs and helped the Kansas attorney general prepare for oral argument.

California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.: The court ruled a California law that allows a certified apprenticeship program to pay apprentices less than the prevailing wage wasn't preempted by the federal Employee Retirement Income Security Act (ERISA). Washington has a similar law and two cases on the same issue pending before the Ninth Circuit. Assistant Attorneys General Jeff Kray and Lynn Hendrickson drafted two briefs — one in support of the petition for certiorari and one in support of merits of the case — and helped California prepare for oral argument.

Idaho v. Coeur d' Alene Tribe: The court held the 11th Amendment bars a federal action by an Indian tribe against a state and its officials alleging title to submerged lands and beds of Lake Coeur d' Alene. Washington was interested because of a similar issue involving Lake Roosevelt. Assistant Attorney General Jay Geck helped California write an amicus brief on the merits of the case.

Glickman, Secretary of Agriculture v. Wileman Bros. & Elliot, Inc.: The court upheld a federal marketing order that imposed assessments to help

pay for generic advertisements to bolster sales of agricultural products. The decision reversed a Ninth Circuit decision that held this practice violated the First Amendment. Washington State has many commodity commissions that make assessments for similar advertising that would have been affected by the court's ruling. Assistant Attorney General Suzanne Shaw helped California write the amicus brief.

Lindh v. Murphy: The issue in this case was whether the new limitations in the federal habeas corpus statute applied to cases filed before the Antiterrorism and Effective Death Penalty Act went into effect. Washington has a number of these cases. The court held the new standards for habeas corpus laws apply only to cases filed after the new laws became effective. Assistant Attorneys General Paul Weisser and John Samson worked with Ohio to draft an amicus brief on the merits of the case.

The AGO also won an important victory in Digital Equipment v. Department of Revenue which was

handled by Senior Counsel Don Cofer. Digital Equipment claimed Washington State owed them refunds for the period when the U.S. Supreme Court had declared the business and occupation taxes unconstitutional. The Washington State Supreme Court ruled the state did not have to pay refunds. Digital Equipment filed a petition for certiorari and it was denied. The case could have involved hundreds of millions of dollars. Cofer wrote the brief opposing the petition for a writ of certiorari.

The office joined 24 other amicus briefs on various cases at the Supreme Court between July, 1996 and June of this year.

In addition to the attorneys mentioned above, Senior Assistant Attorney General Bill Collins was responsible for coordinating the office's involvement with cases in the U.S. Supreme Court and assisted in the briefing and preparation of cases for argument before the court.

Office - Wide Initiatives

Stewards of Justice

Attorney General Christine Gregoire has been urging AG employees and attorneys in private practice to work to improve the public's understanding and support of the legal profession. She has challenged them to be stewards of justice to work to carry out the true meaning of justice.

Gregoire introduced this concept in response to what she saw as a serious decline in public confidence, support and understanding of our judicial system. She encouraged AG employees to work hard to help restore public confidence in the law and suggested some ways to work to be good stewards of justice.

According to Gregoire, good stewards of justice follow these principles:

- Work to make the law work in the real world.
- Recognize the law cannot be used as a barometer for good ethics.
- Remember it is essential to be civil and ethical.

- Live up to the highest professional standards and make sure other attorneys meet those same standards.
- Help clients by anticipating issues.
- Fight for access to the legal system for everyone.
- Make the system work for those who don't have the ability to be heard.

Washington State Bar Association Participation

Many AG employees are active in various bar associations and their activities. Assistant Attorney General Mary Fairhurst became president of the Washington State Bar Association in 1997. Fairhurst, who works in the office's Criminal Justice Division, is the first public sector attorney, and second woman, to head the Bar.

As one of her main themes, Fairhurst will carry on Gregoire's challenge that all attorneys be stewards of justice to help improve the public understanding and perception of the justice system.

LASER Project

The Attorney General's Office, in conjunction with the Washington State Bar Association and the Office of the Superintendent of Public Instruction, sponsors the Lawyers and Students Engaged in Resolution (LASER) Project.

The LASER Project is a rapidly growing statewide volunteer program that seeks to reduce youth violence by setting up and supporting peer mediation programs. LASER volunteer lawyers "adopt" an individual school for two years. During this period, the LASER volunteers work with the school to train selected students in mediation skills; educate the school community about the peer mediation program; and provide follow-up training and mentoring to the student mediators.

The LASER Project has grown by 300 percent in the last year. Beginning as a pilot project in two Seattle high schools in the 1995-96 school year, LASER now has teams of volunteer lawyers assigned to 13 schools statewide.

Alternative Dispute Resolution

The Attorney General's Office continues to look for ways to develop alternative dispute resolution methods and practices to resolve legal matters before they go to trial. Using alternative dispute resolution methods, such as direct negotiation and mediation, not only saves the state money, it also helps relieve a clogged court system and enhances public confidence in the justice system.

A good example of how the Attorney General's Office is using ADR is in the Torts Division. A program has been developed to identify cases and claims which are ripe for early resolution. If plaintiffs agree, the parties expedite discovery and push the matter towards fair resolution. Matters in this program have been typically resolved within a few months of filing or returned to prepare for trial.

In collaboration with statewide legal and judicial leaders such as the Washington State Bar Association, Bureau of Judicial Administration, Superior Court Judge's Association and the Office for the Administrator of the Courts, the Attorney General's Office continues to encourage local superior courts, bar associations and ADR providers to create or enhance the availability of ADR services within their jurisdictions so that all citizens are provided prompt, affordable and fair dispute

resolution services. In 1997, superior courts expanded or created ADR services in response to this call. Increasingly, jurisdictions are making ADR a vital part of their case processing systems.

Elder Rights

The Elder Rights Project was formed in the spring of 1996, with a mission to coordinate the resources of the office to address the needs of older adults; cooperate with individuals and organizations outside the office on behalf of older adults; provide education on issues that affect older adults; and advocate for changes in public policy that address the needs of older adults.

The project, in conjunction with AARP, provided training to staff on how to improve communications with older persons. The project also developed a Senior Resource Directory and provided training for agency and AG staff on guardianships. Patient abuse legislation was also developed and a majority of the proposal was passed by the 1997 Legislature.

End of Life Issues

The Attorney General's Office is working with the Washington State Medical Association to refine a publication on end of life concerns. An internal work group has met to discuss end of life issues with an eye towards consistency of advice and sharing information.

Open Meetings/Open Records

The Attorney General's Office continues to work with Allied Daily Newspapers and local governments to provide training on open public meetings and open public records law. The office has developed a workshop which it offers to various organizations around the state.

Legislative Agenda

The office was successful in a number of areas in the 1997 Legislative Session. The office obtained including a budget appropriation of \$1 million for attorney salary increases to help it recruit new attorneys and retain its most experienced attorneys.

Of the three bills proposed by the AG's Office, two were enacted into law. A bill that strengthens the criminal penalties for abuse and neglect of vulnerable adults was passed after being combined with another similar bill. The Legislature also passed a bill that established a study group charged with the responsibility of developing model policies

and procedures to be used by state civil investigators. The group, chaired by the Attorney General and the State Patrol Chief, met during the 1997 interim.

The study group concluded that training for many state investigators is inadequate and that there are no uniform standards for their training. In addition, members concluded that while comprehensive written policies and procedures for investigators are desirable, many agencies do not have them.

The study group recommended:

- Adoption by Governor's Executive Order of uniform standards for training all state investigators;

- Adoption of an Executive Order requiring each investigative agency in state government to review the study group's model policies and procedures and use them to either create their own written policies or to review and revise their existing policies; and
- Creation of an investigative training coordinator at the Department of Personnel to organize training programs for investigators and ensure existing training programs in state agencies meet the recommended standards.

Solicitor General Team

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

- Coordinate cases at the appellate levels in both state and federal courts, and conduct appellate assistance and review programs for the Attorney General's Office;
- Coordinate the office's involvement with cases in the U. S. Supreme Court;
- Coordinate 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;
- Coordinate legal advice on issues of statewide significance;

- Serve as the office's primary resource on matters of public employee ethics and professional responsibility;
- Serve as the office's liaison to the state court system and the state bar association, and provide legal counsel to courts and judicial agencies as needed; and
- 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. 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 128 cases.

- In 26 cases before the State Supreme Court, the team arranged for briefings of the Attorney General.
- The team coordinated practice arguments in 71 appellate cases.
- Between December 1, 1996 and December 1, 1997, the office received 99 opinion requests for processing. Sixty-six were accepted and 33 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 61 opinions. Eight formal opinions were issued on subjects as diverse as: the effect of a deferred or suspended sentence on future criminal history, the calculation of a residency requirement for elected city officials, the inclusion of private and religious institutions in a statewide telecommunications network, the requirement that governments pay full value for property transferred from one government to another, the interpretation of the laws regarding exempt wells and groundwater withdrawals, the appointment of city attorneys, and the interpretation of the election laws regarding "major parties." The remainder were issued as informal opinions. The office issued fewer formal opinions than usual in 1997, due in part to the nature of the requests received and in part due to an effort to expedite opinions by use of the less time consuming informal opinion process.
- Between December 1, 1996 and December 1, 1997, the team reviewed 114 requests for participation as amicus curiae or "Friend of the Court". These requests primarily involved participation before the U.S. Supreme Court but also included participation before the Washington appellate courts and other state and federal courts. The office joined in 36 briefs, and was the primary or sole author of six briefs.
- In 1997 members of the team processed 24 initiative titles, consisting of 11 initiatives to the People, and 13 initiatives to the Legislature. Five of these measures were certified for the 1997 general election; all five were initiatives to the People. The team provided explanatory statements for the Voters Pamphlet on these five measures. One ballot title and three ex-

planatory statements were appealed to the superior court.

- In addition, the Legislature referred two bills to the People: one at a special election in June 1997 and one at the November 1997 general election. The Legislature also submitted two constitutional amendments for ratification at the 1997 general election. Team members supplied explanatory statements and ballot titles for all of these measures. The ballot title and explanatory statement for one referendum were appealed to the superior court.

Significant Cases and Their Impact

Oil Spill Prevention Laws: A member of the Solicitor General Team, working with attorneys from the Ecology Division, is defending 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. The appeal will be argued in February 1998.

Term Limits: In early 1997, several citizens and legislators challenged the state office portions of Initiative 573, a 1993 enactment which imposed term limits on the offices of governor and lieutenant governor, as well as members of both houses of the state legislature. (The federal office portions of the same law were held unconstitutional by the federal courts in 1995.) The Solicitor General's Team (assisted by a member of the General Counsel Unit) defended the law in an original action in the State Supreme Court. The Supreme Court decided the case on January 8, 1998, ruling that the initiative was an unconstitutional attempt to add qualifications for office additional to those established in the state constitution.

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 Ninth Circuit Court of Appeals. The team assisted with preparation for oral argument. A decision has not yet been issued.

Indian Gaming: In 1995, the office filed a declaratory judgment action in federal court pursuant to an agreement with several of the state's Indian tribes, seeking clarification of the state's duties with respect to the types of gambling permitted on Indian lands within the state. In September 1997, the district court entered a summary judgment finding: (1) that the Indian Gaming Regulatory Act permits only those forms of Class III gaming as are permitted to others under state law; (2) that those "gambling devices" which permit individual play against a machine, including traditional slot machines, are unlawful in Washington, and therefore not negotiable in a tribal/state compact; and (3) that some other "gambling devices" would be negotiable if they did not meet the definitions contained in the state law prohibition. In late 1997, the Attorney General and the Gambling Commission commenced negotiations with Indian tribes in response to the summary judgment. The litigation and the negotiations have been conducted by a team which includes a member of the Solicitor General's Team, as well as the attorney for the Gambling Commission.

Governor's Veto Authority: The Solicitor General Team is defending the validity of certain appropriation item vetoes by the governor. At issue is the extent of the governor's veto authority and its

effect with respect to appropriations under Amendment 62 of the state constitution.

Baseball and Football Stadium Challenges: Members of the team assisted in two cases either challenging the state legislation authorizing construction of a new baseball stadium or challenging aspects of its implementation by local government. The Supreme Court rejected all challenges. In 1997 the Legislature passed a bill authorizing the creation of a public facilities authority to construct a new football/soccer stadium and to demolish the Kingdome; this bill was referred to the People in a special election held in June. A challenge was filed, seeking either to have the election canceled or for a declaration that portions of the bill were unconstitutional. The superior court stayed the action pending the June election, at which the voters approved the bill. Subsequently, the superior court upheld the challenged legislation on all grounds, and at the end of 1997 a motion for direct review in the State Supreme Court was pending.

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 U.S. Supreme Court upheld Washington's statute prohibiting assisted suicide.

Indigent Legal Services: Under a rule of the State Supreme Court regulating the practice of law, real estate closing officers deposit client funds that would not earn interest for the client into a pooled trust account. A similar rule applies to lawyers. Interest is generated by the pooled funds and supports legal services for indigent persons. Litigation seeking to invalidate the rule is pending in federal court. A member of the team is defending against the suit.

PROTECTING CONSUMERS AND LEGITIMATE BUSINESSES

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

Antitrust Section

Set for trial in the fall of 1998, the case involves eight major tobacco companies and industry trade groups. About 22 million state documents have been produced, and defendants have produced in excess of 30 million documents.

Summary of Responsibility

The Antitrust Section enforces state and federal laws protecting consumers and businesses from anti-competitive practices such as price fixing, 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

The section recovered approximately \$900,000.00 in damages, costs and attorneys' fees in 1997.

Significant Cases and Their Impact

State v. American Tobacco, et al.: This case, a major undertaking by the Antitrust Section, Consumer Protection Division and private counsel, is one of more than 40 actions brought by state attorneys general against the tobacco industry. Set for trial in the fall of 1998, the case involves eight major tobacco companies and industry trade groups. About 22 million state documents have been produced, and defendants have produced in excess of 30 million documents. The section also is coordi-

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

Multistate Matters: Washington had a lead role in a price-fixing investigation concerning agricultural chemicals. The case has been resolved, and Washington received about \$400,000 of the \$11.2 million settlement with two firms.

The section also successfully resolved an action against crab fishers, in conjunction with Oregon, California and the U. S. Department of Justice. The case involved price fixing.

A third multistate case was filed by a number of states, including Washington against Toys R Us. The action charges that the firm's agreements with toy manufacturers and wholesalers unfairly restrain competition by denying certain toys to discount stores. The action follows a Federal Trade Commission determination that the activity violates the antitrust laws.

State Cases: The section filed and resolved a case against Washington Dental Service in 1997. The resolution of the case enjoins WDS from using "most favored nations" clauses in contracts with providers. The clauses, which require a provider to charge WDS the lowest rate it charges any other insurer, facilitates price uniformity and curtails discounting. This was a novel case and of national significance.

Mergers: Two major merger investigations were concluded in 1997, and two others are in the process. The resolved investigations concern the merger of Tosco and UNOCAL, and Texaco and Shell. In each, major divestitures were required. The AG's Office worked in conjunction with other states and the Federal Trade Commission on these matters. The Antitrust Section continues to look at a merger between two dairy processors in Eastern Washington, which will probably resolve in early 1998, and a grocery store merger. 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.

Amicus: The Section appeared as amicus in Federal Appeals Court in support of a Federal Trade Commission action involving a hospital merger, in the U. S. Supreme Court on a vertical price fixing case, and in the District Court in support of the FTC's action opposing the merger of Office Depot and Staples.

Health Care: At the request of the Legislature, the section now has oversight responsibility for conversion of non-profit hospitals to for-profit status. Healthcare continues to be a high priority for the section.

Federal Court Matters: The Attorney General's antitrust action in federal court to block the Seahawks football team from moving to Southern California was voluntarily dismissed following completion of the sale of the team to Paul Allen's group and the approval of the ownership change

by the National Football League. Other communities are very interested in our case. This is the only known instance where a professional sports team which had already left was forced to move back.

Investigations: The section concluded a number of investigations without legal action during the year, and a number of others continue. Of particular interest are the following continuing investigations: Stock brokerage price fixing [multistate], wholesale pharmacy merger [federal and multistate], paper products price fixing [multistate], merger of Internet providers [multistate], merger of voting machine manufacturers [federal and multistate], and golf tying arrangements and attempt to monopolize [Washington only].

Consumer Protection Division

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.

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 warranty repairs.

An arbitration procedure is available to consumers in resolving complaints.

Legal Services Provided

Overall 97' Priorities: Priorities for the division in the last year continued to be areas involving 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 charities, fraudulent telemarketing, deceptive sales practices in the credit insurance and auto industries and travel sellers.

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. Special workshops for advertising professionals were held throughout the state featuring a newly revised manual on laws and practices impacting the advertising industry called "Write it Right."

In 1997, the new teen home page made its debut on the Attorney General's home page. Part of a partnership with the Puget Sound Educational Services District to develop a consumer education program for teenagers, the page was written and

designed by students from Mount Rainier High School in Des Moines.

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

For the second year in a row, the Consumer Resource Centers broke their previous year's record in dollars saved for consumers in 1997. Telephone inquiries and referrals were up 14% over the previous year, while the number of written complaints increased by 3%.

- Telephone inquiries and other instances of service totaled 310,717. That's up from 1996's total of 294,701.
- 22,434 written complaints were handled by the Consumer Protection Division in 1997.
- Consumers saved a record \$6.2 million in cash refunds and other restitution, topping the 1996 record of \$5.5 million by 15 %.

The Lemon Law Administration handled consumer arbitration requests which resulted in more than \$8 million in awards and settlements for vehicle replacements or refunds for defective vehicles.

Lemon Law responded to more than 24,000 telephone inquiries in 1997. As a result of the law and the direct assistance to consumers and manufacturers; many of the disputes were resolved and did not go to arbitration.

Significant Cases and Their Impact

Credit Insurance/Auto Industry Deception: In September, two lawsuits and six settlements were filed involving a widespread deceptive sales practice in the automobile industry known as "packing" or "loading" payments. The practice occurs when a customer agrees to buy and finance the car through a dealership. The dealer quotes a monthly payment usually \$20 to \$40 higher than needed to finance the car. The extra money "packed" into the payment allows the dealer to trick the customer into buying extra products such as credit insurance, service contracts and security devices by implying they are included in the price or at no extra charge. Because it appears the extra products are free or at a very low price, customers don't object and the products are written into the final sales contract.

The four auto dealerships and two insurance consulting firms agreed to pay \$1 million and to set up a complaint handling process to provide relief for consumers who feel they were deceived. Lawsuits were filed against Associate Dealers Group of Bellevue, (aka); Resource Dealer Group of Illinois; and Underwriters Life Insurance Company and Underwriters Service Corp. of Missouri after they did not agree to settle.

Police & Fire Fund-Raiser Crackdown: As part of a nationwide sweep, Washington filed lawsuits against three fund-raising organizations who use and abuse the name of police and fire fighters to deceive consumers into donating thousands of dollars each year. Part of the FTC's "Operation False Alarm," lawsuits were filed against Police-men/Firemen Killed in Action, Cam-Ty Productions and the State Police Enforcer's Journal, published by Advantage Publishing. Among the violations cited in the lawsuits were that telemarketers misrepresented themselves as police officers; strong-armed businesses into purchasing advertisements by making underlying threats that police protection won't be available if they didn't contribute; and collected money to help families of police and firemen killed in action, that the owner admitted never went to any charitable cause.

Foreign Lottery Closed Down: Cracking down on telemarketers continued to be a priority in 1997 with the highlight of this year's activities culminating in November when the CP Division joined forces with the British Columbia Ministry of Attorney General's, freezing assets and closing down a Vancouver, B.C. telemarketer selling foreign lottery tickets to United States consumers.

On November 10, 1997 action was filed in Federal District Court against Final Round and Golden Packages, a Vancouver, B.C.-based reseller of lottery tickets which victimized U.S. citizens. The B.C. Director of Trade Practices also filed action against the same defendants with the court approving freezing of the defendant's assets and seizure of their business documents.

Ten staff members of the Washington AG's office worked along with representatives from the B.C. Attorney General's Office, the FTC, the Vancouver Police Dept. and the Royal Canadian Mountain Police to search nine different sites. More than \$5

million in assets were frozen in the action against two telemarketing companies.

This cooperative effort is all part of ongoing activities aimed at obtaining restitution for U.S. consumers from Canadian companies and establishing a working relationship in the area of cross-border telemarketing fraud.

Travel Sellers: Complaints against travel sellers jumped to the number one position this year as we continued to take action against various travel sellers engaged in deceptive practices. Lawsuits were filed against Budget Travel of the Tri-Cities; Vacation Time Worldwide of Bellevue; Vacation Break of Fort Lauderdale FL; and Ultima Travel of Bothell. In addition, the office obtained Consent Decrees against Travel Express International of Georgia, a Summary Judgment against Ibex Travel in Seattle, and Consent Decrees and Stipulated Judgments against four major defendants in the Platinum Passport litigation.

Public Counsel Section

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

Summary of Responsibility

The Public Counsel Section represents consumer and small business interests, which would not otherwise have an effective voice, regarding the rates, services and equipment of the investor-owned telephone, electric and natural gas utilities operating in the state. Most cases and issues are conducted in proceedings before Washington's Utilities and Transportation Commission.

Legal Services Provided

The Public Counsel Section advocates for the interests of consumers in a variety of ways, including as a statutory party in major rate cases, by

presentations at UTC bi-weekly business meetings, through technical study groups, court appeals, and by providing information to the legislature and other policy makers. Public Counsel routinely seeks the advice of independent, expert consultants to analyze utility issues in areas such as accounting, economics, finance, engineering and rate design.

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

The section maintains contact with the public through personal contact, letters and telephone calls from consumers in major rate cases and a citizen advisory committee. In major rate cases, Public Counsel provides consumers with information about the positions of all parties and assists consumers in presenting their views, either in writing or in person, to the commission. For instance, to the 1997 US West rate case Public Coun-

sel put into evidence over 1,600 letters which were received from consumers.

The citizen advisory committee is appointed by the Attorney General to provide a sounding board for utility issues of concern to citizens. Its 15 members come from all over the state and from various backgrounds and interests. The committee meets five times a year to provide advice and to learn about pending utility issues.

Significant Cases and Their Impact

US West: In 1995, 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 obtain the increase from residential customers. Public Counsel was an aggressive participant, working cooperatively with both large customers and senior citizen interests. In its April 1996 decision the WUTC adopted several Public Counsel recommendations, most notably rejecting an increase entirely, ordering a \$90 million decrease, setting a state-wide residential rate of \$10.50, and explicitly finding that residential basic service is more than covering its cost of service (i.e. is not subsidized). U S West unsuccessfully appealed the decision to Superior Court and the State Supreme Court. Public Counsel continued its representation of consumers in these appeals, and will also do so in litigation over refunds owed consumers, and in finally putting the lower rates into effect.

In 1997 US West also sought to increase rates for depreciation by \$106 million per year. Public Counsel, UTC staff and US West settled on \$36 million. All parties agreed that this provides US West a reasonable opportunity for capital recovery and reasonable incentives to invest in its telecommunications network in the state. US West also sought a general increase of an additional \$34 million, again proposing to place most of the burden on residential customers. A decision is pending.

Puget Power - Washington Natural Gas Merger: Following extensive litigation, Public Counsel reached a negotiated settlement with Puget Power, Washington Natural Gas and the UTC staff. In February 1997, the UTC accepted the settlement. The five-year rate plan provides rates for all customers that are \$200 million lower than the utilities requested, and \$25 million lower than the

commission staff recommended. For residential customers the result is \$220 and \$130 lower, respectively. Public Counsel proposed and obtained a comprehensive service quality index with penalties up to \$7.5 million per year. This provides the utility with strong incentives to maintain and improve service quality as it cuts its costs, in order to avoid the degradation in service that occurred when US West was under a multi-year rate plan. The principle parties have continued negotiations on remaining service quality index benchmarks.

Washington Water Power Natural Gas: Public Counsel joined the utility, commission staff and industrial customer intervenors to reach a settlement of this case prior to extensive litigation. The result increased rates by \$5.2 million rather than \$7.9 million as requested. The residential increase is phased in.

Major Issues/Events

Telecommunications Reorganization: The telephone industry continues to require major attention. The movement towards a competitive industry, especially at the local level, has a long way to go and has created much litigation. 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. The state and the Federal Communications Commission are considering revamping "universal service" programs in the new competitive situation.

Electric Utility Reorganization: Debate continues regarding restructuring the electric industry to introduce more competition. Public Counsel is frequently called upon to articulate the interests of consumers. The section looks at: Whether there is any benefit and/or harm to residential and small business consumers to a restructured industry; What mechanisms would be needed to protect consumers; What should be done about potential stranded costs; and, How will public purposes currently achieved through electric utilities be accomplished in a different structure.

These and many related issues will be the subject of public policy debates in 1998 and beyond.

PRESERVING WASHINGTON'S ENVIRONMENT

- **Agriculture and Health**
- **Ecology**
- **Fish and Wildlife**
- **Natural Resources**

Agriculture and Health

The increasing number of people in DOH licensed facilities and the need for higher level care in these facilities will necessitate a higher level of regulatory oversight and may result in an increased number of enforcement actions.

Summary of Responsibility

The Agriculture and Health Division provides legal advice and litigation services to several major state agencies, including 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; the Land Use Study Commission; and the Northwest Compact on Low Level Radioactive Waste Management. 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 representation to its clients, both legal advice and litigation services. 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, both within the state and internationally. 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

State appeals under the GMA increased sharply in 1995, continued at a relatively high level in 1996, but declined somewhat in 1997 as the need for implementation became more accepted at the city and county level. 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 processes 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. The increasing number of people in DOH licensed facilities and the need for higher level care in these facilities will necessitate a higher level of regulatory oversight and may result in an increased number of enforcement actions.

Significant Cases and Their Impact

Skagit County v. State: Plaintiffs challenged the constitutionality of statutory provisions allowing the Growth Management Hearings Board to invalidate local land use ordinances which do not comply with the requirements of the Growth Management Act. The case was argued before the State Supreme Court in November 1997 and a decision is pending.

Retired Public Employees Council v. Health Care Authority: Plaintiffs claimed that the HCA had 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 and the case remanded to superior court where plaintiffs' damage claims are pending. Plaintiffs assert damages that together with costs, interest and attorneys fees, exceed \$80 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 was argued in the Court of Appeals and a decision is pending.

Saldana v. Department of Health: The Department of Health has been working to improve conditions for migrant farmworkers. Among DOH's efforts is a provisional licensing program which has allowed deviating from regulatory standards in on-farm housing provided by cherry growers. This effort succeeded in establishing licensed housing where none had been provided historically. Plaintiffs have filed a class action challenging the provisional licensing program.

Dawn Mining: The Department of Health licensed the Dawn Mining Company to fill an excavation pit near Spokane with uranium mill tailings. The Spokane Indian Tribe and Dawn Watch, an environmental group, brought an administrative action challenging licensure. The Thurston County Superior Court affirmed the final administrative approval of licensure. The case is now pending before 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 has increased the number of complaints to the Executive Ethics Board. 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.

Ecology

The contentious nature of these issues, whether it is defending a minimum instream flow designed to protect endangered salmon, or defending individual water right permit decisions, will keep the division busy for the foreseeable future.

Summary of Responsibility

The Ecology Division represents the Department of Ecology, 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 60 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 continues to be the division's largest single workload. This work consists of both litigation and advice. The contentious nature of these issues, whether it is defending a minimum instream flow designed to protect endangered salmon, or defending individual water right permit decisions, will keep the division busy for the foreseeable future. The division has been re-

markably successful in this area prevailing in a number of Supreme Court decisions over the last year.

Other major work areas include: Hazardous waste cleanup, which comprised 22 percent of the workload; water quality issues, which comprised 13 percent of the workload; and shoreline issues, which comprised 9 percent of the workload.

Water Resources (95 cases): These involve defending Ecology permit decisions and enforcement actions regarding water rights, and prosecuting general stream adjudications.

Hazardous Waste Cleanup (24 sites): These involve negotiating and enforcing consent decrees or orders requiring cleanup of hazardous waste sites. One of the focuses in this area has been negotiating "pre-purchase" agreements which allow a person to buy a parcel of contaminated property, and in exchange for completing a partial cleanup of the site, avoid the usual liability that comes with owning a contaminated piece of land. These agreements result in properties being cleaned up that would otherwise not be, and that would remain unused for the foreseeable future.

Shorelines (37 cases): In these cases, division attorneys defend Ecology permit decisions and enforcement actions, and appeal shoreline permits issued by local governments.

Water Quality (75 cases): These involve defending Ecology permit decisions and enforcement actions and superior court enforcement actions.

Air Quality (18 cases): These involve defending Ecology permit and enforcement actions.

Other (28 cases): These involve defending Ecology permit and enforcement actions relating to well drillers, solid waste, SEPA, oil spill prevention and cleanup, 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 continue to dominate the division in 1997. Several significant cases were resolved by the Supreme Court or the Court of Appeals, and several more are pending. Following is a description of some of the more important cases:

Hillis v. Ecology involved a challenge to the process by which Ecology makes water right decisions. The plaintiff sought and received from the superior court an order requiring Ecology to immediately process his application, thereby "leap-frogging" him ahead of 2,000 senior applicants statewide. The Supreme Court reversed the superior court's order because it was unfair and contrary to law.

Yakima-Tieton Irrigation District v. State arose out of the general adjudication of the Yakima River. This appeal raised 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. The court ruled in the state's favor, holding that an irrigation district's water right should be quantified like any other persons, i.e., the quantity of water the person has consistently used over time is the quantity of water to which the water right holder is entitled, and that the Yakima River is subject to state law, and has not been "federalized."

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. This case has been briefed and argued, but no decision has been issued.

Hubbard v. Ecology involved the connection between groundwater and surface water, also referred to as hydraulic continuity. In this case, the Court of Appeals upheld Ecology's view that a water right permit allowing a withdrawal of groundwater can only be issued if the withdrawal will not reduce the flow in a nearby stream, where a minimum flow has been established for the stream and it is not being consistently met. Over that last year the division has worked extensively with the Department of Ecology on a number of difficult water resource issues which are not yet, at least, the subject of litigation. For example, how the state responds to the listing of certain salmon species as endangered or threatened is a

very significant and difficult issue with many legal ramifications. How to meet a growing demand for water, fueled by population growth and economic development, while still protecting endangered salmon is more difficult still. These issues will remain a challenge over the next decade and more, whether they are dealt with through litigation or policy development, and this division will be involved with both.

Intertanko v. State: 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. Soon thereafter, Intertanko appealed the decision to the Ninth Circuit Court of Appeals. The United States has intervened in support of Intertanko on some issues. Argument is currently scheduled for February 1998. This case raises fundamental issues of federal preemption and other constitutional issues.

Air Quality Issues: This has been the single largest growth area over the last year. Just as with water resources, growth in population and economic activity contributed to the growth in air quality issues. In addition, the state is now beginning to implement the Clean Air Act of 1990, which was a dramatic rewrite of the federal Clean Air Act, and which imposed significant new obligations on states. One of these is a permitting program for major point sources of air pollution. Surprisingly, a comprehensive air pollution permitting program has not previously existed. The division has assisted Ecology with the many legal issues that have arisen as the state program has been developed.

The division has spent a considerable amount of time defending restrictions on grass seed field burning imposed over the last two years by Ecology. The department has now cut the allowed burning by 66 percent. Many grass seed producers have challenged these restrictions. The burning, which typically occurs in August and September of each year, has caused significant adverse

health effects in Spokane and other grass seed production areas, and the burning restrictions have been deemed necessary by Ecology to avoid these health effects. The division has been suc-

cessful thus far in defending the field burning restrictions.

Fish & Wildlife

Current issues in hunting rights cases include: the geographic scope of the treaty right (is it limited to the tribe's ceded area), the definition of "open and unclaimed" land, and the extent of state authority to regulate treaty hunting based on a "conservation necessity."

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 a wide variety of civil and criminal matters, assists local prosecutors, and provides general information to the public concerning natural resource issues.

Legal Services Provided

The division provides litigation and advice services covering a wide range of legal issues for the department including; tribal issues (state/tribal regulatory authority, reservation boundaries, fishing/hunting rights), fish and wildlife resource management and protection, legislation, criminal prosecution, public disclosure, hydropower licensing, enforcement, land resources acquisition and management, public works construction, endangered species issues, rule adoption, contracts, licensing and seized property appeals, civil forfeitures, Growth Management Act cases, and appeals of hydraulic project approval permits.

Numbers/Trends

In 1997 the following major issues emerged which required and will continue to require legal services:

Indian Treaty Rights to Shellfish: The shellfish subproceeding in United States v. Washington was argued to the Ninth Circuit Court of Appeals in May. A decision is expected in the coming months. The state appealed several aspects of the trial court decision including: whether 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.

Indian Treaty Rights to Hunt: Various state courts, including the state Supreme Court, are being called upon to interpret the nature and scope of treaty hunting rights. Current issues in hunting rights cases include: the geographic scope of the treaty right (is it limited to the tribe's ceded area), the definition of "open and unclaimed" land, and the extent of state authority to regulate treaty hunting based on a "conservation necessity." While the answers to these questions are being formulated by the courts, the division is assisting the department in working cooperatively with the tribes to manage hunting effort and protect the wildlife resource.

Columbia River Fish Management Plan: The framework management agreement, adopted pursuant to U.S. v. Oregon, expires December 31, 1998. Significant changes in both harvest and production aspects of the plan will likely be needed due to Endangered Species Act listings of several salmon and steelhead stocks. The division has been preparing for negotiations on the plan's renewal. Active negotiations will begin in early 1998.

Columbia River Salmon Endangered Species Act and Hydropower Issues: Three Snake River salmon species were listed as threatened and/or endangered under the Endangered Species Act in 1991. Two steelhead species were listed in 1997. Additional listings are anticipated in early 1998. The division will continue to be actively involved in the numerous and complex issues surrounding the use and protection of the Columbia and Snake River basins and their natural resources.

Mid-Columbia Mainstream Habitat Conservation Plan Negotiations: At the request of regional fish and wildlife entities, the Federal Energy Regulatory Commission reopened each of the original 50-year licenses to address protection of juvenile salmon and steelhead as they pass through the five mid-Columbia hydropower projects (reservoirs and dams). Each of the PUDs which own these projects has since undertaken study and testing to develop adequate downstream passage protection methods. Recently, the PUDs requested a new negotiation to develop a prelisting Habitat Conservation Plan under the Endangered Species Act 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 Pipeline Company currently operates 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-Cascades proposal. Most of the natural resource state agencies, the affected counties and cities, and many other interested groups have intervened. EFSEC will likely hold a hearing on the proposal in late 1998.

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 tribal uses and resource recovery actions. The division is currently involved in court cases pertaining to the protection of listed salmon species on the Columbia River, spotted owls and grizzly bears.

Interjurisdictional Fisheries: Fish do not recognize political boundaries. Consequently, interjurisdictional bodies have been created to manage fisheries that have interstate and international aspects. The division advises Washington's representatives to the Pacific Salmon Commission, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and other fishery management bodies. Litigation sometimes arises concerning interjurisdictional fisheries. Currently, the division is defending the state against a lawsuit by British Columbia concerning salmon management.

License Limitation Programs: In 1994, the Legislature enacted a law restricting crab fishing off the Washington coast. Many unsuccessful license applicants appealed the denials of their applications. The division has been litigating over two dozen crab license appeals in superior court. Several are still pending, and one has advanced to the court of appeals.

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: The division is called upon to assist in the resolution of a wide variety of resource management and hunting related issues. Game resources are fluctuating throughout the state, with many in decline due to encroaching development. As a consequence, historical seasons for some species are being curtailed and creative management solutions being employed. Initiative 655 which bans some forms of bear hunting and hound hunting also represents a change in some forms of hunting recreation. The Legislature has also 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 de-

velopment 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 litigation.

Wild Salmonid Policy: The Fish and Wildlife Commission, with the Washington Treaty Indian

Tribes, has been studying a comprehensive set of policies to protect and restore declining runs of wild salmon and avert or minimize the effects of Endangered Species Act listing of Washington salmon. Together, the collective harvest, hatchery, and habitat policies and programs are called the proposed Wild Salmonid Policy. The division assisted in the preparation of environmental statements and advises the department and commission on this broad initiative to address the complex problems facing salmonids.

Natural Resources

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.

Summary of Responsibility

The Natural Resources Division represents the Commissioner of Public Lands, Department of Natural Resources (DNR), Board of Natural Resources, Forest Practices Board, Board of Geographic Names, and other related 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 state courts.

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.

Parks: State Parks manages several properties as linear parks. These trail properties often bisect privately-owned lands, and raise unique legal and management issues concerning title, access to adjoining lands, and landowner liability, and multiple use.

Significant Cases and Their Impact

Habitat Conservation Plan Litigation: Two counties (Lewis and Clallam), a school district (Mary M. Knight), a port (Port of Port Angeles), and two cities (Port Angeles and Forks) have filed suit challenging the HCP. They raise numerous claims but chief among them is the claim that the HCP is a bad deal for the trusts because other alternatives would yield significantly more revenue. Plaintiffs will likely begin depositions in early 1998. Numerous defense preparations have been completed or are in progress.

Loomis Endangered Species Act Litigation: This case involves a federal court challenge by several environmental groups to DNR's Loomis Forest harvest and road construction plans alleging such activities will result in the "take" of a grizzly bear under the ESA. Judge Van Sickle, U. S. District Court, Eastern District of Washington, has denied the plaintiffs' motion for a preliminary injunction, finding that significant disputes of fact exist over whether grizzlies are using the Loomis and whether any avoidance of the Loomis by grizzlies would significantly impair essential behavioral patterns. Trial is expected in early Spring 1998.

Loomis Water Quality Litigation: This case involves a state court (Thurston County) challenge by the same environmental groups to the Loomis Plan on the grounds that the plan will degrade water quality in violation of state law. We expect to move for summary judgment in early 1998. The Northwest Ecosystem Alliance has also sent a 60 day notice of intent to sue EPA and DNR on grounds that the Loomis Plan implementation will violate the federal Clean Water Act.

PACCAR v. State (Eagle Harbor): In 1993 the federal government filed a CERCLA cost recovery action against the state of Washington. This suit arose from a related contribution action filed in federal court by the state and PACCAR against the U. S. Department of Defense. These consolidated lawsuits dealt with the issue of liability for contamination in Eagle Harbor. In August of 1996 a settlement between all parties was proposed and accepted. Since that time, the private parties and

the Navy have entered into a consent decree. The state and EPA continue to negotiate the final details of the settlement.

Alpine Lakes Protection Society v. DNR: The Department of Natural Resources (DNR) is attempting to obtain direct review from the state Supreme Court of a trial court decision invalidating a watershed analysis near the federally-designated Alpine Lakes Wilderness Area. This case is important on two fronts. An adverse decision will make watershed analysis unattractive to landowners. Also, attorney's fees were awarded against DNR under the Equal Access to Justice Act for expenses incurred at both the administrative and judicial levels even though DNR's decision was affirmed by the Forest Practices Appeals Board at the administrative level.

United States v. 556.15 Acres of Land: The United States has filed condemnation proceedings against the State Parks and Recreation Commission. The United States Army has condemned a 21-mile segment of the former Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way in Eastern Washington. The corridor is operated by State Parks as a segment of the John Wayne Pioneer Trail, which links up with other segments to form the Cross-State Trail. The Army's failure to comply with a 1991 agreement in which it agreed to construct an alternate recreational trail upon condemnation of the property is also at issue. The case is set for a January 20, 1998 trial.

Major Issues/Events

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 costs 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. DNR and EPA have just completed a memorandum of understanding--framework agreement that creates a process for the state and EPA to negotiate a settlement of any liability arising from the state's status as landowner. The memorandum describes a process for allocating the state's "fair share" of liability, a process of addressing funding of any orphan share of liability, and a means of coordinating pollution prevention efforts.

Olympic Pipeline Cross-Cascades 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 Site Evaluation Council. OPL's proposal includes crossing land managed by DNR and State Parks (including a lengthy portion of the old Milwaukee Railroad Corridor). The proposal also raises forest practices, archeological and resource protection issues of interest to DNR. The council is conducting an adjudicative proceeding and will serve as the exclusive venue for issuance of regulatory permits. The draft environmental impact statement is expected to be released in early 1998 and a formal hearing will take place no earlier than the fall of 1998.

Contaminated Sediments Disposal: DNR is under increasing pressure to make its aquatic lands

available for disposal of contaminated sediments. Through the memorandum of agreement -- framework agreement signed by EPA and DNR in the Eagle Harbor litigation, DNR hopes to coordinate and control decisions allowing disposal of contaminated sediments in the context of CERCLA liability negotiations.

Champion Exchange: DNR and Champion Timber Company exchanged forest land in three counties worth approximately \$65 million on each side of the exchange. It is one of the largest land exchanges in DNR's history. The exchange consolidates state ownership, improves access to state lands, reduces land survey costs, increases sustainable harvest, and improves productivity of the trusts. The deal closed in the spring of this year and is illustrative of the real estate work done by the division.

PROTECTING PUBLIC FUNDS

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

Bankruptcy and Collections Unit

A total of 4,477 bankruptcy and collections cases have been handled on behalf of the state since the BCU was created in 1993. Of those, 3,789 have been closed, producing more than \$30 million, including \$11.9 million in payments made, \$3.4 million in claims successfully defended, and \$14.8 million in future payments to be made to the state under court orders.

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 delinquent sales and business and occupation taxes, industrial insurance premiums and unemployment fund contributions.

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

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

Legal Services Provided

The vast majority of the unit's work consists of handling bankruptcy litigation. The unit's attor-

neys provide legal services at all stages throughout a bankruptcy case. A typical case would include appearing early on behalf of the agency, obtaining all financial information necessary to analyze the agency's claims, asserting secured or trust fund status, if appropriate, and defending any challenges to agencies' claims. The unit's attorneys also review proposed 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 business '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.

As general counsel for the state Convention Center, the unit's work has recently focused on the Convention Center's current expansion project, in which the exhibit space in the center will double. This work has included negotiating and drafting contracts for expansion work, researching legal issues, working on the acquisition of property for expansion and the relocation of tenants on the expansion site to other locations, assisting with the environmental review and the financing of the expansion, and working on issues relating to potential co-developers on the expansion project.

Numbers/Trends

A total of 4,477 bankruptcy and collections cases have been handled on behalf of the state since the BCU was created in 1993. Of those, 3,789 have been closed, producing more than \$30 million, including \$11.9 million in payments made, \$3.4 million in claims successfully defended, and \$14.8 million in future payments to be made to the state under court orders. The unit currently has 718

active cases with a total of \$66.4 million in agency claims.

Significant Cases and Their Impact

George Platis, Inc: BCU attorneys represented the Departments of Revenue, L&I, and Employment Security in two successive bankruptcy cases involving the operator of a former Cadillac dealership in Seattle. The issues in the cases were very complex due to the amount of the firm's debts and security interests, and competing efforts by different creditors to reorganize the firm. Through legal work over a lengthy period of time, the BCU was able to recover \$997,842 in cash from the firm, and the three state agencies were awarded an additional \$43,944 in payments to be made in the future under a court order. These amounts represented nearly every dollar owed by the bankrupt firm to the state agencies.

Bugaboo Timber: In this case BCU counsel paved the way for the Department of Natural Resources

to recover \$1,100,000 after a company defaulted on timber cutting contracts with Natural Resources. The timber company, Bugaboo Timber, filed bankruptcy at a time when it was in default under five contracts with Natural Resources. The BCU initiated proceedings in the bankruptcy court to force the company to commit to either go forward under the contracts or reject them. A key issue was whether the debtor could remove previously-felled timber from the parcels subject to the contracts. The BCU negotiated an agreement giving the debtor access to the parcels to remove the timber. The court then entered an order determining that Bugaboo had rejected four of the contracts. Under Natural Resources bidding procedures, a company entering into a timber cutting contract was required to post a bond guaranteeing performance, and the court's order established that Bugaboo would not perform under the contracts. As a result, Natural Resources was paid \$1,100,000 by the bonding company.

Revenue Division

The division historically processes 45 to 70 new cases annually. The majority of approximately 110 cases in litigation in 1997 represented excise tax refund claims.

Summary of Responsibility

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

Legal Services Provided

The division's principal legal activity involves the defense of the Department of Revenue against excise tax refund claims in the state courts. Litigation of state tax issues relating to the state's In-

dian tribes and railroad and airline utilities are handled by the division attorneys in federal courts. Utility property tax litigation is expected to continue as a significant part of the division's caseload with the passage of legislation providing tax exemptions for businesses owing intangible assets.

Numbers/Trends

The division historically processes 45 to 70 new cases annually. The majority of approximately 110 cases in litigation in 1997 represented excise tax refund claims.

Significant Cases and Their Impact

Interstate Manufacturers: Pending before the Washington Supreme Court 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 be appealed to the U.S. Supreme Court, if the manufacturers are unsuccessful in their claims for refunds.

Oil Spill Response Tax: A challenge to the excise tax is currently before the Thurston County Superior Court. The plaintiff oil refinery seeks refund of per barrel taxes previously paid which provide funding for petroleum spill clean-up operations and administrative programs directed at improving marine safety on the state's navigable waters, contending that the tax law, as written and applied, is constitutionally invalid. A decision adverse to the state would significantly reduce revenues available for these programs.

Major Issues/Events

Court Rulings: In 1997, the U.S. Supreme Court refused to accept a taxpayer's appeal in the first of the Interstate Manufacturers' cases to reach that

court (see above). Further appeals to the U.S. Supreme Court in the related litigation will await the decision of the Washington Supreme Court, following oral arguments expected in 1998.

In 1997, a decision of the Thurston County Superior Court upheld the method employed by the Department of Revenue for the calculation of excise taxes on tobacco products, other than cigarettes. The court's opinion, now on appeal, rejected the claim of a major tobacco manufacturer that a lower pricing basis should be utilized in the determination of the tax. Refund claims placed in issue by the manufacturer and other taxpayers approximate \$50 million.

Torts Division

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

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 five years, new tort lawsuits have increased sharply despite attempts to settle more claims before litigation. In the five years prior, new lawsuits averaged approximately 200 per year. This increased to 244 in 1993, 328 in 1994, more than 350 in 1995 and 1996 and more than 400 in 1997. 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. In the past year, the Court of

Appeals has issued two more decisions which sharply increase DSHS liability for child protective activities.

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 10 percent are tried before juries or arbitrated. The Torts Division prevails at trial in more than three out of four cases tried.

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

Smith v. University of Washington: This is a lawsuit claiming that the law school, by virtue of its affirmative action program, discriminated against plaintiff, a caucasian female. Plaintiff was not admitted to the University of Washington Law School and ultimately attended and graduated from Seattle University Law School. The case raises the question of whether the law school's consideration of race in its admissions practices is consistent with current U.S. Supreme Court cases on the subject. This will likely be a case of national significance.

Radiation Cases: These are cases against the Department of Corrections and the University of Washington by former inmates of the Penitentiary in Walla Walla. In the early 1960s, plaintiffs volunteered to participate in experiments involving

exposure to low-level radiation. The claim is that these medical experiments violated their civil rights and some may claim health effects. The experiments appear to have conformed with all protocols at the time but would either not be allowed or would be done differently today. While the state believes that the lawsuits should be dismissed, they raise some novel questions and it is not entirely clear how the courts will analyze the issues.

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 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 more than \$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 damages for care and treatment of adopted children. Many of the lawsuits allege that the children have Fetal Alcohol Syndrome. 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 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. 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.

STRENGTHENING WASHINGTON'S EDUCATION SYSTEMS

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

Education Division

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.

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; workplace security; and the law and technology. The division has developed legal orientation handbooks for new college and university trustees, as well as for new community and technical college presidents.

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.

Special Education Funding Formula Challenge: Each biennium, the Legislature appropriates over \$833 million to the Superintendent of Public Instruction for special education programs for distribution to local school districts. The Peninsula School District challenged the state's funding formula, the formula's "safety net" features, and the adequacy of state funding for special needs students. After the initiation of substantial discovery, the Education Division was successful in obtaining a voluntary dismissal of the suit on all grounds.

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

There are approximately 106 active lawsuits against the university and its affiliated hospitals. Approximately one-quarter of them are medical malpractice cases.

Summary of Responsibility

The University of Washington Division provides legal services to the University of Washington in Seattle, with campuses in Bothell and Tacoma. The university currently has approximately 35,000 enrolled students. It is one of the largest employers in King County, with about 13,000 staff and 4,000 teaching and research faculty. The university operates two hospitals, University of Washington Medical Center and Harborview Medical Center.

Legal Services Provided

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

Numbers/Trends

There are approximately 106 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 about 17 current cases. Claims for statutory viola-

tions, personal injury, and construction and retainage claims round out the top five categories of litigation.

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

- 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;
- Federal agencies and investigators nationwide are increasing their scrutiny of universities and hospitals receiving federal funds.

Significant Cases and Their Impact

Reverse Discrimination: The University of Washington is defending a lawsuit by several applicants rejected from the university's law school. The plaintiffs, all of whom are white, claim that the law school illegally used race as a criterion in its admission policies. The law school vigorously disputes this claim, and asserts that its admissions policy follows the guidelines set out by Supreme Court Justice Powell in *Bakke*. The plaintiffs are supported in their lawsuit by the Center for Individual Rights, which has backed similar lawsuits in Texas and Michigan.

Public/Private Partnerships: The university is increasingly involved in public/private partnerships that work to the advantage of both the state and its citizens. Recent examples include private

development of the university-owned Commodore Duchess family housing, and the university's affiliation with UW Physicians, a network of primary care physicians who provide family practice training sites for university medical students. In the coming year, the university hopes to enter into a cooperative research and patient care consortium with Children's Hospital and the Fred Hutchinson Cancer Research Center. The Seattle Seahawks

football organization has also approached the university about using Husky Stadium for professional football games during demolition of the Kingdome and construction of a new football stadium. All these partnerships raise novel and complex issues of law for the assistant attorneys general assigned to the University of Washington division.

Washington State University Division

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

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 attorneys in other divisions in specialized areas such as employment and construction law, provide legal services to the main campus, the three branch campuses (in Spokane, the Tri-Cities, and Vancouver), agricultural research and extension operations statewide, and extension field offices in every county.

Legal Services Provided

Many of the legal services provided involve complex issues unique to an academic environment such as research and intellectual property; Cooperative Extension statewide (including 4-H programs); athletics and NCAA compliance; various student rights and programs; faculty tenure and promotion; fundraising and development; environmental health and safety; and veterinary services issues. The division handles a wide variety of tasks pertaining to employment, discrimination

and sexual harassment, public works, and business affairs.

Numbers/Trends

The university continues to expand its branch campus programs. The number of students enrolled at each location is: Pullman - (including the Intercollegiate Center for Nursing Education in Spokane, the Extended Degree Program, and The Seattle Center for Hotel and Restaurant Administration) 17,521; Spokane - 417; Tri-Cities - 1,268; and Vancouver - 1,331. More than 20,500 students are currently enrolled system wide.

The number of employees at all locations (including research stations, county extension offices, learning centers, etc.) is: faculty - 2,066; graduate assistants (which are also in the student count noted above) - 1,198; exempt personnel - 714; classified staff - 2,270.

The Washington State University Extended Degree Program was initiated in the fall of 1992 to provide access to upper division higher education for adult place-and time-bound learners in under-served rural areas of Washington. Utilizing a variety of telecommunications technologies, the program delivers courses leading to a Bachelor of Arts degree in social sciences. Students may select course concentration areas from a number of academic disciplines, including psychology, sociology, criminal justice, political science, history, human development, and anthropology. Opportunities for technology mediated interaction between faculty members and students, and among students, are built into each course.

Significant Cases and Their Impact

Construction Claims:

- **Veterinary Teaching Hospital.** Construction of the new Veterinary Teaching Hospital resulted in contractors' claims in excess of \$9 million. The claim was resolved as a result of a mediated settlement for \$3.5 million.
- **WSU Vancouver.** The construction of a branch campus facility in Vancouver has resulted in a contractor's claim of approximately \$6.5 million. The university has participated in Mediation and a Dispute Resolution Board proceeding. Outside counsel was appointed to assist the university on this claim.

Major Issues/Events

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

Managing Claims: The division continues to work closely with the university's Business Affairs Office to minimize and effectively manage claims resulting from construction projects.

Union-Management Relationships: The university has a combination of unionized and non-unionized work units, as well as a large number of

exempt employees. An appeal to the Personnel Appeals Board by the union regarding allegations of a management-dominated committee was satisfactorily resolved to allow the Staff Senate to continue to work within the university governance structure as a representative voice for all non-represented classified and exempt employees.

Employee Complaint Process: The university is nearing completion of a new employee complaint process that is intended to promote a positive workplace environment. Complaints alleging discrimination and sexual harassment will be reviewed under a separate procedure, which also is in the process of being updated.

Litigation: The university has satisfactorily resolved a number of tort cases. These include discrimination, personal injury, and property damage claims. The close liaison between the WSU Division and the Torts Division is instrumental in achieving these results. The College of Education recently settled three cases brought by female faculty alleging discrimination, violation/denial of equal rights, free speech, and due process.

Permanent Trust Lands: The university has been involved in a number of issues related to the management of permanent trust lands. These issues include the disposition of revenues from permanent trust lands and a review of the habitat conservation plan developed by the Department of Natural Resources.

REPRESENTING THE PUBLIC

- **Criminal Justice Division**
- **General Counsel Unit**
- **General Legal Division**
- **Labor & Industries**
- **Labor & Personnel**
- **Licensing & Employment Security**
- **Social & Health Services**
- **Transportation & Public Construction**
- **Utilities and Transportation Division**
- **Administration**

Criminal Justice Division

The MFCU concluded a number of major fraud investigations, prosecutions, and settlements with guilty findings this past year. These cases resulted in approximately \$2.2 million in civil recoveries and court-ordered restitution to the state of Washington.

Summary of Responsibility

In February 1997 many of the office's criminal justice functions were consolidated into the Criminal Justice Division (CJD) which was formed to ensure the Attorney General's Office is responsive to and supportive of the needs of the law enforcement and criminal justice community. CJD staff are located in Olympia, Tacoma and Seattle.

The CJD staff represent the Department of Corrections, Indeterminate Sentence Review Board, Governor's Clemency and Pardons Board, the Governor's Office on Extraditions and Detainers, and the Criminal Justice Training Commission. They also represent the state in Medicaid fraud and patient abuse investigations and prosecutions, environmental and economic crime investigations and prosecutions, and in all federal habeas corpus matters, including capital cases. Upon request, the division assists prosecuting attorneys and the Governor in investigating and prosecuting various criminal cases throughout the state. The CJD also provides investigative expertise and assistance statewide and nationwide through the office's Homicide Investigation Tracking System (HITS).

The CJD also serves several other criminal justice clients. Among these are the Jail Industries Board, State Toxicology Lab, and State Forensic Investigation Council. The CJD also represents the state in self-defense reimbursement claims, and the Washington State Patrol in personal and real property civil forfeitures.

Legal Services Provided

Corrections Units

These units of the division represent the Department of Corrections. Typically, the department's cases involve claims of violations of inmates' constitutional rights during their incarceration, or challenges to the fact or length of confinement. These units also provide client advice and training for the department. A key responsibility of these units is to handle the continued prosecution of death penalty cases and other convictions once the inmate challenges the judgment and sentence in federal court. These units also represent the department in parole revocation hearings, post-sentence petitions, which involve corrections to erroneous criminal judgments and sentences, and provide assistance on issues dealing with the siting and construction of new correctional facilities.

Medicaid Fraud Control Unit

The MFCU is a federally mandated law enforcement unit staffed by attorneys, investigators, auditors and support personnel. The unit operates pursuant to an annual federal grant which provides 75 percent of the operating expenses. The unit's mission is to investigate and prosecute crimes committed by health care providers who divert Medicaid moneys. Additionally, the unit investigates and prosecutes patient abuse and neglect in Medicaid funded long-term care facilities or refers such cases for prosecution to local authorities. The unit also works with the Department of Social and Health Services in identifying and addressing areas where the system is vulnerable to fraud or abuse.

The Sexually Violent Predator Unit

The unit was established in 1990 following enactment of the statute providing for civil commitment of convicted sex offenders who are likely to reoffend in a predatory, sexually violent manner. The majority of civil commitment proceedings against sexually violent predators have been handled by this unit, with county prosecutors also handling some cases as well. The SVP unit handles all aspects of cases referred--pre-filing investigations, trial, post-commitment proceedings, direct appeals, personal restraint petitions, and habeas corpus petitions in state and federal court.

The Homicide Investigation Tracking System Unit (HITS)

HITS is a program within the Attorney General's Office that tracks and investigates homicides and rapes. It is the only statewide central repository for information relating to violent crimes against persons. Data from more than 5,000 murder investigations and more than 6,200 sexual assaults has been collected through HITS, and has been used to assist local law enforcement in the investigation of these crimes. Typically every calendar year HITS will respond to almost 800 requests for assistance or information.

The investigators who work in HITS also provide expertise to the local and national jurisdictions on homicide and rape investigations. HITS is a national leader in developing and using computers in innovative ways to prevent and increase the solvability of crimes and has been the recipient of several grants to study "trends" or common characteristics in violent crime.

Criminal Litigation Unit

The unit assists county prosecutors and the governor in complex criminal cases, including multi-county crime, white-collar crime and governmental corruption or in cases that there is a conflict of interest present. The unit also prosecutes major violators of the state environmental protection statutes. These investigations are conducted by the U.S. Environmental Protection Agency or the State Department of Ecology, with legal assistance from the unit.

As part of the CLU, the Economic Crime Unit is jointly funded by the departments of Revenue and Labor and Industries. The ECU provides statewide investigation and prosecution of tax fraud as well as false statement and theft crimes committed against the state. The unit also assists state agencies in the areas of fraud detection and training.

Criminal Justice Training Commission

The division provides advice and training to the CJTC and prepares the monthly "Law Enforcement Digest" which chronicles recent cases of interest to law enforcement. It represents the commission in disciplinary actions against candidates attending the CJTC basic law enforcement academy.

Numbers And Trends

Corrections Units

In 1997 for the first time in history, the Department of Corrections' "in custody" population exceeded 13,000 inmates with the expectation of continued growth in the coming years. In addition, the department has a total of 82,000 offenders subject to its jurisdiction. The increase in the offender population will continue to drive an increased demand for legal services.

In 1997 there were more than 818 cases on the Corrections Unit docket, including more than 369 new cases opened: 157 habeas corpus cases; 65 civil rights cases; 87 personal restraint petitions; 39 parole revocation hearings; and 21 post-sentence petitions. In 1997, 381 cases of a variety of types were closed.

Additionally, the division handles the federal court review of all state death penalty cases. Twelve individuals are currently under sentence of death and an additional 12 cases are under prosecution at the trial court level. These cases will impact the future workload of the division. The division will have a growing responsibility in assisting local jurisdictions in defending capital sentences at the state direct appeal and personal restraint petition stages. This is consistent with the division's mission to be a resource to others in the criminal justice community.

Medicaid Fraud Control Unit

The MFCU concluded a number of major fraud investigations, prosecutions, and settlements with guilty findings this past year. These cases resulted in approximately \$2.2 million in civil recoveries and court-ordered restitution to the state of Washington. The unit took a lead role negotiating a multi-million dollar settlement on behalf of a number of states with SmithKline Beecham Clinical Laboratory. SmithKline had overcharged state and federal authorities in a variety of ways. In addition, the unit referred several matters back to DSHS for its collection efforts (approximate value \$50,000). During the year, the unit opened approximately 20 criminal investigations, while closing approximately the same number. At any given time during the year, the unit had approximately 20 fraud cases under active investigation.

Criminal Litigation Unit

From 10-15 cases are referred annually to the CLU for general assistance, investigation or prosecution. Most requests come from prosecuting attorneys,

with a few coming from the governor. Additionally, 30 to 40 cases annually are referred for assistance, at the trial or appellate court level, on self-defense reimbursement claims in criminal cases.

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.

During the past year, the Economic Crimes Unit filed two criminal cases and referred 20 cases back to L&I and DOR, where fraud was suspected but not found. In total almost \$100,000 was ordered in restitution. Currently there are 11 cases under investigation.

Sexually Violent Predator

Washington was the first state to enact an SVP statute and it was used as the model for many of those that followed. In 1997, after years of litigation over the legality of civil commitment schemes, the U.S. Supreme Court upheld the constitutionality of a nearly identical Kansas statute in the case of Kansas v. Hendricks. The Washington Attorney General's Office played a key role in defending the right of the state to civilly commit sexually violent predators in that case.

On the average, approximately 30 cases are referred to the unit yearly with one-third being filed as civil commitment petitions. Since 1990, 57 cases have been filed to prevent the release of sexually violent offenders into the community.

Currently there are 55 residents housed at the Special Commitment Center, 28 were committed after hearing and 27 are awaiting evaluation and hearing.

Homicide Investigative Tracking System Unit:

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 HITS and have access to its staff for assistance in their investigations.

The demands on HITS are likely to increase in 1998. In 1997 members of the HITS unit received a grant to conduct a Child Murder Study. The study ana-

lyzed factors and circumstances common to the abduction and murder of children and drew conclusions about how such crimes are committed and can best be solved. The study results will help local law enforcement increase the solvability of these crimes and identify methods to prevent them. Members of HITS will be conducting training in both Washington State and on a national basis.

The Legislature also provided funding to HITS for development of a Supervision Management and Recidivist Tracking (SMART) System. SMART will allow the Department of Corrections and local law enforcement to better communicate about offenders and their conditions of supervision. This will increase the number of individuals who are "monitoring" an offender's behavior in the community. HITS will continue to work on developing and building the SMART system and making it more accessible to the local jurisdiction.

HITS is also developing an Artificial Neural Network (ANN) to increase the solvability of murders and rapes. The ANN will allow investigators to narrow the focus of their investigations to the most likely suspects, thus allowing them to concentrate their limited investigative resources.

Significant Cases And Their Impact

Jeffries v. Wood: The U.S. Supreme Court denied the state's petition for certiorari, after both the U.S. District Court and the Ninth Circuit set aside Jeffries' death sentence because of juror misconduct.

Lord v. Wood: The U. S. District Court upheld this capital defendant's conviction of Aggravated First Degree Murder but vacated the death sentence. The court found that the state trial court violated Lord's right to "allocution" when it allowed prosecutorial cross examination of Lord at trial.

Rice v. Wood: In 1993, the federal court set aside Rice's death sentence for the 1985 murder of the Goldmark family, finding that his right to due process was violated when he was absent at the time the jury returned its sentencing decision.

Ultimately, the district court's decision was reversed but in a second review of other issues in the case, the district court again set aside both the conviction and the sentence. The court found that trial counsel was ineffective for not preventing Rice from confessing to the crime and for allowing him to speak to the press, and for not calling mitigating witnesses

during the penalty phase. This case is now on appeal to the Ninth Circuit.

Russell/Stearns v. Gregoire: In the Ninth Circuit's first decision of this issue, the court held that sex offender registration and community notification requirements of Washington law are constitutional. This decision will, in effect, sustain the constitutionality of the registration and notification laws in Washington, California, Oregon, Nevada, Alaska, Idaho, Arizona, Montana and Hawaii.

State ex rel Gregoire v. Benn, et al.: The State Supreme Court has accepted review of this case which will address the interpretation of the state's method of execution statute. Earlier the Walla Walla County Superior Court had ruled that if a death row inmate challenges one method of execution, the inmate has thereby inferentially chosen the alternate method, and that if one method of execution is struck down, the alternate method automatically results. This opinion should lessen the possibility that future executions will be delayed because of "method of execution" attacks.

Department of Corrections v. City of Kennewick: This case involves DOC's application for a conditional use permit to construct a work release facility in Kennewick. The State Court of Appeals held that the planning director properly granted the application for the permit. The court held that unsubstantiated public fears and prejudices about work release inmates could not justify a permit denial.

State v. Tacoma Yamaha: This defendant was convicted by a plea of guilty of criminally violating the Washington Water Pollution Control Act by dumping solvents and other pollutants into Commencement Bay, through an illegally-tapped sewer line. The defendant was given a two-year suspended sentence.

SmithKline Beecham Clinical Laboratory: On February 24 the Department of Justice and 41 other states reached a \$325 million settlement on the claim that SmithKline overcharged for laboratory tests performed, or charged for tests not performed, or charged for tests that didn't need to be performed. Of this sum, \$14.5 million was set aside for distribution to the states. A \$182 million settlement was also reached LabCorp (Roche/Allied/NHL-II), a companion case. Washington played a lead role in the negotiations for the states.

Wright v. Riveland: The court upheld the constitutionality of mandatory deductions from all funds received by inmates. The Legislature required such deductions to help cover costs of incarceration and reimburse victims.

Edwards v. Balisok: The U.S. Supreme Court accepted review of this Washington case and held that before an inmate can pursue a federal civil rights claim that may affect how long the inmate is in prison, the inmate must first seek relief in state court. The positive result for the state will allow state courts to quickly dispose of certain claims and avoid more costly and complex actions in the federal courts.

General Counsel Unit

The unit has seen an increasing number of election-related cases and requests for advice over the years.

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.

Legal Services Provided

The unit provides elected officials with a wide range of advice regarding issues which are uniquely within the scope of their constitutional and statutory responsibilities. The unit also provides legal advice on general issues affecting government agencies such as administrative law, investments, contracts, finance, public records and ethics in government service. Attorneys in the unit are involved in drafting and reviewing proposed legislation.

The unit also handles litigation. During election periods, there is 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 insurance commissioner has received federal approval to enforce the Health Insurance Portability Act, is increasing health insurance rate and form reviews, and is defending challenges to the "every category of provider" law, all of which have resulted in an increased workload. The State Investment Board has increased the scope of its investment program, due diligence procedures, and the demand for the service of the office.

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

The increase in numbers of whistleblower assertions received by the State Auditor's Office noted in last year's report persists. As the auditor continues to experience a growing workload in this area, the need for legal resources likewise will rise. Additionally, the auditor's focus in the past few years on "risk-based" auditing has resulted in greater emphasis on legal compliance issues. Assistant attorneys general play a substantial role in advising the auditor on these issues.

Major Issues/Events

Auditor: The Auditor's Office anticipates that the Legislature will again be considering legislation relating to the whistleblower statute. The assistant attorneys general assigned to the auditor likely will be involved in the drafting of such legislation as well as providing other supporting legal assistance.

State Investment Board: Unit attorneys are assisting the board to prepare and seek legislation to update the laws under which it operates and to prepare and implement programs and policies as recommended in a recent performance audit.

Secretary of State: The unit has seen an increasing number of election-related cases and requests for advice over the years. The assigned attorney, often in cooperation with the Solicitor General Team, has defended an increasing volume of litigation

regarding ballot measures and candidate eligibility. In the past year this has included defending in court a voter-approved initiative establishing term limits for some elected officials, a state law authorizing the construction of a new stadium for major league baseball, and voter approval of a similar stadium for football and soccer. The assigned attorney has also responded to litigation regarding the process for considering the formation of new counties, the voting rights of convicted felons, and the drawing of boundaries of legislative districts. The attorney assigned also has provided legal advice regarding a new state law that facilitates electronic commerce.

State Finance Activities: The State Finance Committee and Treasurer's Office have instituted an asset/liability management program. This includes the issuance of variable interest rate obligations. The Finance Committee continues as well to issue fixed rate bonds, and to oversee an ambitious lease purchase financing program for state facili-

ties. The Attorney General's Office will continue to provide more direct support on these varied financial transactions.

Insurance Commissioner: The attorneys assigned to represent the Office of the Insurance Commissioner secured a temporary restraining order taking control of Unified Physicians of Washington on grounds of hazardous financial condition, and then negotiated an agreement with state medical association representatives, on behalf of its board of directors and shareholders, whereby UPW was able to continue operating the new management under OIC supervision pursuant to an agreed preliminary injunction.

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

The number of appeals to the Growth Management Hearings Boards challenging local ordinances under the Growth Management Act have increased. Some of the boards' decisions in these appeals are in turn appealed to the superior courts and the appellate courts.

Summary of Responsibility

The General Legal Division serves 40 state agencies, including large, medium and small departments, boards and commissions. These include the Washington State Patrol, the Public Disclosure Commission, the Gambling Commission, the State Lottery, 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, ranging from multi-million dollar lawsuits to campaign law violations. The division represents agencies at administrative hearings and subsequent court appeals on issues such as liquor license revocations, gambling law violations, and eligibility for retirement. In addition, the division provides client advice and handles litigation on a myriad of issues for its clients, including contracts, computer hardware and software, real estate acquisition and disposal, Indian casino gaming, public disclosure, campaign practices, building construction and government procurement bid issues.

Numbers/Trends

Due to the wide variety of client agencies, it is difficult to quantify workload for the division as a whole. The year 1997 saw a large increase in the number of Public Disclosure Commission actions. The number of growth management appeals to court also has increased significantly. In addition, our workload was impacted when the 1997 Legislature transferred jurisdiction for enforcement of tobacco tax laws to the Liquor Control Board.

Significant Cases and Their Impact

Campaign Laws

Washington Education Association v. Public Disclosure Commission: In this lawsuit, the division successfully defended a challenge to the constitutionality of the part of Initiative 134 dealing with authorization of payroll deductions for political committees.

Washington Initiatives Now! v. Warheit: Plaintiff in this lawsuit is challenging the constitutionality of the law which requires paid signature gatherers for initiatives to list their name and addresses with the Public Disclosure Commission.

Senate Republican Campaign Committee v. Public Disclosure Commission: 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 state Supreme Court in a 5-4 decision reversed, holding that the law does not prohibit legislators from soliciting funds for unidentified candidates. The case was remanded for a determination of whether any of the funds solicited were for incumbents or other identified candidates.

State ex rel. Public Disclosure Commission v. Kendrick (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 or employees of the Seattle School District seeking significant monetary penalties. This matter was resolved in a settlement in which the defendants acknowledged violations. In addition, the district paid large penalties on behalf of the defendants, agreed to seek private reimbursement for funds spent on the campaign, and agreed to take preventive measures.

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 most of the law. Appeals were filed. The case was argued to the state Supreme Court in October.

Public Disclosure Commission v. Washington Education Association, et al.: The Public Disclosure Commission referred charges against the Washington Education Association and the Washington Education Association Political Action Committee to the AG's Office for enforcement. A lawsuit was filed in February alleging violations of campaign laws by the WEA and its political committees.

Labor

Spokane District Court v. Public Employment Relations Commission: In a lawsuit filed by the district court judges in Spokane, the division is defending the constitutionality of the law which gives district court employees the right to collectively bargain. 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 and will be argued in February of 1998.

Spokane County 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 and will be argued in February, 1998.

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, a class action involving hundreds of employees, is being defended by division attorneys.

Gambling

State v. Confederated Tribes, et al.: This declaratory judgment action was 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. The court ruled in September that slot machines and electronic gaming are prohibited in Washington and, therefore, are not properly the subject of a Tribal-State gaming compact. Division attorneys worked on this case and are advising the Gambling Commission on the scope of bargaining allowed under the court's decision.

Yakima Tribe v. State: In this case, the Yakima Tribe is seeking a share of the revenues generated by the state lottery. The trial court held against the tribe and it has appealed to the Ninth Circuit.

Retirement

Norris, et al. v. DRS: This action seeks to require DRS to include retirement incentives as compensation for purposes of ballooning pensions in the Teachers Retirement System, Plan I. Division attorneys successfully defended this action before DRS and before the superior court. Plaintiffs' appeal to the court of appeals was argued in October, 1997.

City of Kennewick v. Board of Volunteer Firefighters: In this case, the division successfully defended in superior court and in the Court of Appeals a decision of the board that, to be eligible for a pension, volunteer firefighters must perform services for a volunteer fire department.

Callecod v. Washington State Patrol: The court of appeals affirmed the decision of the Washington State Patrol that a trooper is not entitled to a disability retirement if he or she is capable of performing any work for the WSP. The court rejected the appellant's argument that the disability standard of the LEOFF I retirement system should be applied to the WSP retirement system.

Public Works and Contracts

Department of Corrections v. Kitchell: Division attorneys filed this suit on behalf of the departments of General Administration and Corrections to recover approximately \$6 million in damages for faulty construction and design of the Airway Heights prison in Spokane. The parties have agreed to attempt to resolve this matter through mediation.

GCSI v. Department of Information Services: The division is defending an action brought by a

bidder on a computer contract. The bidder alleges it would have been awarded the contract but for a minority-owned business preference given the winning bidder. The plaintiff alleges the preference violates its constitutional rights.

Technology

Carr v. Kolodney: In this federal district court case, the division is defending a class action brought against the Department of Information Services (DIS). The suit alleges that DIS has violated the Americans With Disabilities Act because government information computer terminals provided by DIS for public use at various public locations cannot be operated by some members of the disabled community without assistance.

Major Issues/Events

Growth Management: The number of appeals to the Growth Management Hearings Boards challenging local ordinances under the Growth Management Act have increased. Some of the boards' decisions in these appeals are in turn appealed to the superior courts and the appellate courts. Our representation of the Growth Management Hearings Boards in court has likewise experienced a large increase.

Project Labor Agreements: Pursuant to an executive order, state agencies are to consider using Project Labor Agreements, such as the one being used to construct the Mariners Stadium, on appropriate building construction projects. Division attorneys are advising the Department of General Administration on the implementation of that executive order.

Privatization: Division attorneys have taken an active role in advising the legislature and agencies on issues which arise from proposals to privatize state functions.

Labor and Industries Division

There has been nearly a 30 percent increase over the last biennium in the number of industrial insurance cases appealed to the Board of Industrial Insurance Appeals.

Summary of Responsibility

Industrial Insurance: A major component of the Department of Labor and Industries is serving as the trustee and administrator of the \$6 billion worker's 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. The Worker's Compensation Act is designed to provide sure and certain relief for injured workers while at the same time providing a cost effective system of paying benefits.

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

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

Regulatory Functions:

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

- The Employment Standards Division of L & I enforces wage and hour laws, regulates apprenticeship training, and monitors whether companies bidding on public works have followed prevailing wage laws.

- In its Specialty Compliance Division the department handles a variety of regulatory and enforcement functions including boiler inspection, electrical inspection, factory assembled housing, elevator inspections and contractor registration.

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

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

Of the remaining 40 percent of the legal work, a significant percentage consists of prosecuting employers who allegedly violate workplace safety rules. These WISHA claims are litigated before the Board of Industrial Insurance Appeals, as well as state and federal courts. Division attorneys also defend department orders regarding citations in wage and 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 nearly a 30 percent increase over the last biennium in the number of industrial insurance cases appealed to the Board of Industrial Insurance Appeals. Despite this increase, the actual number of cases resolved by litigation will probably decrease in large part because of an aggressive ADR program mounted by L&I, and the Board of Industrial Insurance Appeals in conjunction with the AG's Office. 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. At the end of the fiscal year in June of 1997 the AGO had participated in nearly 800 settlements.

Current caseloads for the division include:

- More than 50 major cases currently pending in state and federal courts;
- More than 2,900 new administrative appeals during the fiscal year 1997;
- Approximately 3,000 workers' benefit cases currently in litigation or pending settlement at the administrative level.

Significant Cases and Their Impact

Farmworker Litigation: On December 16, 1996 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 departments of Health and Labor & Industries have failed to enforce farm safety and health regulations as they pertain to farmworker housing.

Pesticide Exposure Monitoring: The Department of Labor & Industries was recently sued in a complaint for declaratory, injunctive and mandamus relief. The plaintiffs are farmworkers whose work involves spraying, mixing, loading and handling of pesticides. A class action is contemplated by the complaint.

Specifically, the plaintiffs are alleging that the department has failed to enact rules making medical monitoring mandatory for farmworkers exposed to toxic pesticides. Labor & Industries claims that the reliability of Cholinesterase testing is still in question and that further study is needed. Labor & Industries has invited the plaintiff's to work with the department on a task force to continue studying this issue, but the plaintiff's have declined. No other states that the office is aware of have instituted such mandatory testing.

Indoor Air Quality Cases: The Department of Labor & Industries is involved in two lawsuits challenging indoor air quality standards, or the lack thereof. In the *Aviation West* case the plaintiffs are seeking a judicial review of administrative rules which ban smoking in indoor offices.

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 has had the effect of reducing 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.

Labor and Personnel Division

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

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 certain rule violation and 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 518 actions. This does not include numer-

ous pending cases contemplated by state agencies for which the division provides consultation and advice. The caseload has remained steady 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 1997, including Central Washington University.

Personnel Appeals Board: There are approximately 370 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 13 actions involve either grievance arbitrations under collective bargaining agreements or litigation of unfair labor practice charges. This number has significantly decreased over the last few years as the division has trained agency personnel to successfully represent themselves before the board.

Marine Employees Commission: With 24 current cases, the division is involved in either grievance arbitrations under collective bargaining agreements or litigation of unfair labor practice charges.

Tort Cases: As part of its original mission, the division has substantially increased representation for employment related tort cases. There are currently 48 cases where employees have alleged discrimination on the basis of race, sex, age, disability, or retaliation.

Judicial Review Appeals: The division has seen a marked increase in the number of cases filed in Thurston County Superior Court, challenging Personnel Appeals Board decisions. The division currently has 30 cases pending on judicial review. Additionally, nine cases have been appealed from the superior courts to the Court of Appeals. This increase has led to the creation of an appellate specialist in the division.

Major Issues/Events

Contracting Out: The continuing trend toward reducing costs by the contracting out of work tra-

ditionally 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. The division has two cases currently pending in the state Court of Appeals relating to contracting out services.

Collective Bargaining Reform: The division has been notified that a collective bargaining/civil service reform bill for state employees will be introduced to the legislature in 1998 and is working on its review. Any reforms will require additional legal services for agencies.

Workplace Safety: This year has seen a rise in agency requests for advice regarding safe workplace issues. These issues concern violations issued by the Department of Labor & Industries, as

well as a growing number of questions regarding what the appropriate response is for threats made by volatile co-workers. The division has been involved in providing guidance to agencies in all aspects of workplace safety including the use of anti-harassment orders, domestic violence in the workplace and staffing levels at 24-hour state facilities.

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.

Licensing and Employment Security Division

The division handles more than 3,016 cases each year in a variety of administrative, state, and federal forums, with about 1,270 cases coming to closure.

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 3,016 cases each year in a variety of administrative, state, and federal forums, with about 1,270 cases coming to closure. We have developed expertise in the areas of administrative and appellate procedure, public records issues, ADA and employment discrimination issues, affirmative action issues, and professional licensing and health standard of care issues.

Legal Services Provided

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

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 (688 cases).

Financial Responsibility: These are license suspension administrative hearings for uninsured drivers involved in vehicle accidents where there is personal injury or property damage (365 hearings).

Unemployment Benefit Denial Appeals: These are appeals in Washington State courts seeking review of claims in which unemployment benefits were denied (436 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 (470 cases).

Vehicle Services/Department of Licensing: These are regulatory misconduct matters brought against vehicle dealers or tax assessment matters against motor vehicle fuel distributors (112 cases).

Professional Licensing/Department of Health: These are licensing misconduct matters initiated by the Department of Health for violations of the Uniform Disciplinary Act (747 cases).

Human Rights Commission: These are discrimination complaints filed with the commission and appeals from commission decisions (15 cases).

Office of Minority and Women's Business Enterprises: These are appeals from the denial of certification and decertification (17 cases).

Miscellaneous: This category includes other legal challenges brought by or against the division's clients (166 cases). For example, the division often defends the state in lawsuits challenging the constitutionality of recent amendments to or new laws.

Major Issues/Events

Department Of Licensing --Driver's Program:

In 1994 and 1995, the Legislature adopted sweeping changes to the laws concerning drinking-and-driving, which included greatly expanding the number of administrative license suspension hearings and appeals handled by the Department of Licensing and the Attorney General's Office, and making significant changes in the procedures for handling those cases. Throughout the process of implementing the changes, we worked closely with the Department to prepare for, and respond to, the legal, policy and practical challenges posed by the new law. Early on, we became involved in reviewing and recommending changes to the legislation, and providing training to Department hearing officers. We also participate in cooperative efforts with police agencies and prosecuting attorney's offices to make needed changes to law en-

forcement forms and reports, advise officers about how to enforce the new law, and advise the Department on the policies and procedures needed to handle the new cases.

This year we have aggressively defended the law in the appellate courts against a wide variety of legal and constitutional challenges, with a high rate of success. The results are that the law has been implemented efficiently and without significant disruption, and has had the intended effect of ensuring that sanctions against drunk drivers are now more swift and certain. The new law was originally predicted to increase the number of appeals handled by the division, which routinely had a pending caseload of over 800 cases, and to require the hiring of seven additional assistant attorneys general. We were not only able to avoid, but to *reverse* that prediction: the pending caseload now stands at just over 300 cases.

Employment Security - Welfare Reform:

Welfare Reform legislation, adopted in the 1997 session, has impacted our division in several client areas. All of the licensing programs are required to suspend professional and driver's licenses for nonpayment of child support when DSHS has certified to the licensing agency that an individual is at least six months in arrears in payment of child support and has not established a repayment plan with DSHS. Establishing the processes to implement the legislation for our various licensing clients raised a number of legal issues, which were best resolved by coordination with assistant attorneys general in other divisions advising licensing agencies.

The Employment Security Department (ESD) has a major role in welfare reform. ESD is identified as the agency responsible for obtaining employment for welfare recipients in order to reduce the number of individuals and families receiving welfare. This program is referred to as WorkFirst. Our division provides legal assistance to ESD in the implementation of WorkFirst. The assistance provided includes advising on contracts, labor and personnel issues, development of rules, and inter-agency relations involving ESD, DSHS and community colleges.

Department of Health--Prosecution of Professional Licensing Cases: In State v. Deatherage the State Supreme Court held that the civil witness immunity doctrine does not extend immunity in professional licensing actions, when a licensed

professional acts as an expert witness, because a professional discipline proceeding is fundamentally different than a private civil action brought for damages. Professional misconduct disciplinary

proceedings are intended to protect the public and the standing of the profession in the eyes of the community.

Social and Health Services Division

As of October 31, 1997, there were 5,547 total child welfare cases pending in the Attorney General's Office. Approximately 3,655 are dependency actions seeking court-ordered protection, placement or supervision of children alleged to be abused, neglected, or seriously endangered by their parents.

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, home and community care services, and other related community social services program activities.

Five divisions of the Attorney General's Office provide legal services to DSHS in addition to the specialized services of the Torts Division and Labor and Personnel Division. The majority of legal support to DSHS falls into two main areas: children's services litigation and advice and representation for DSHS headquarters in Olympia. Currently, 70 percent of the legal services support juvenile dependency and parental 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, daycare facilities and child placement agencies.

Economic Services: The Economic Services Administration (ESA) administers public assistance programs, which include Temporary Assistance to Needy Families, Food Stamps, General Assistance, SSI, Telephone Assistance, and Refugee Assistance. Litigation ranges from individual appeals of reductions to or 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 the welfare system, food stamp program, and SSI. Other significant issues include the confidentiality of client records under the ACES information system, the creation of state-funded programs to serve immigrants, electronic transfers for public assistance benefits, and ongoing advice on proposed and enacted legislation, and administrative regulations on both the state and federal levels. ESA also administers the child support program.

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 and litigation support. Programs include residential care services (nursing homes, adult family homes, and the Residential Protection Program); home and community services (Medicaid personal care, COPES, Chore, and adult protective services); and management services (nursing home, adult family home, and assisted living rates and audit).

Mental Health: The DSHS Mental Health Division operates the two state mental hospitals and the Child Study and Treatment Center, and also contracts with Regional Support Networks to provide Medicaid and state-funded community mental health services. We provide legal advice and representation in all civil commitment cases filed by the state hospitals. 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 of the facility.

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.

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 and day programs. Legal services involve ongoing advice to division staff on various issues including eligibility for services, federal reimbursement, program certification, contract issues, civil rights and right to treatment issues, public disclosure, and adoption of administrative rules and policies. Litigation issues include eligibility and access to services,

access to clients and client records by the Washington Protection and Advocacy System, standards of care in institutions and 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 six institutions, one basic training camp, and seven state-operated group homes. It also contracts out for additional community residential placements. Legal services to JRA include program advice on a variety of issues such as terms and conditions of confinement, right to treatment, conditions of parole, public disclosure, and community protection requirements. Cases currently in litigation include a class action civil rights lawsuit regarding conditions of confinement at Green Hill School, a challenge by JRA to a decision by the federal government to discontinue SSI coverage for juvenile offenders in JRA community programs, and a challenge to the closure of a privately operated boys ranch based on perceived program deficiencies.

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

Numbers/Trends

Child Welfare Litigation: As of October 31, 1997, there were 5,547 total child welfare cases pending in the Attorney General's Office. Approximately 3,655 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, 1997, there were more than 638 terminations of parental rights and 518 guardianships were established.

Appellate Litigation: Appellate litigation in state and federal courts totalled 166 cases as of September 30, 1997. 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 ruled that DSHS must have a statewide plan for coordinating services for homeless children and their families, but that DSHS is not required to provide specific services or expend significant funds without a more specific legislative directive and appropriation. The Supreme Court upheld the trial court's decision in December of 1997.

Keffler v. Department of Social and Health Services: This is a class action brought by foster children receiving financial benefits under Titles II and XVI of the Social Security Act. The lawsuit challenges DSHS's authority when serving as a foster child's representative payee to apply the foster child's social security moneys toward the cost of the child's foster care. Millions of dollars currently used by the Department's foster care program are at stake.

Monroe v. Soliz: This class action in federal court challenged 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 juve-

nile institution. On June 26, 1997 the State Supreme Court upheld the statute.

South Sound Radiologists, Inc., et al. v. DSHS:

In January of 1996, the federal court ruled that Washington State must reimburse providers of Medicare Part B services to qualified Medicare beneficiaries at the Medicare upper payment levels rather than the lower Medicaid levels. The state prospectively changed its reimbursement levels effective January 15, 1996. In June of 1997, the state settled its suit in state court when plaintiffs sought retroactive relief back to 1989.

Allenmore, et al. v. DSHS: This lawsuit is a class action brought by nearly 1,000 pharmacies and challenging DSHS's Medicaid reimbursement for pharmacy services from 1989 to present. Plaintiff 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. A legislative amendment in 1994 subsequently exempted fee schedules from the rule-making provisions of the state Administrative Procedures Act, RCW 34.05.

First Healthcare Corp., et al. v. DSHS: This case concerns whether the Department properly determined its rate of payment to nursing home facilities for services provided to Medicaid residents from July 1, 1989 through June 20, 1991. The amount at issue is approximately \$3 million. In 1991, the Department adjusted the Medicaid "cost reports" the facilities had submitted for their operations during the calendar years 1988 and 1989. A judicial review in Thurston County Superior Court will likely occur in early 1998.

Turay v. Weston: This civil rights action challenged the conditions of confinement at the Special Commitment Center (SCC) for sexually violent predators. All claims but one were eventually resolved in favor of SCC in 1994. On one claim, the jury found the treatment program was constitutionally inadequate. The federal court appointed a special master who has submitted twelve reports evaluating the progress that SCC has made toward improving its treatment program. A hearing reviewing the injunction is scheduled for September of 1998.

Sharp v. Weston: This is a civil rights action by persons detained in the Sexually Violent Predator

Program challenging conditions of confinement. The case was stayed pending United States Supreme Court review of Kansas's sexually violent predator law which is identical to Washington's sexually violent predator law. The case is now set for trial in June of 1998.

Major Events/Issues

Welfare Reform: In August 1996, 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 DSHS on implementing regulations and preparing for anticipated legal challenges.

JRA Community Protection Issues: Recent criminal acts committed by juvenile offenders while they were under Juvenile Rehabilitation Administration (JRA) supervision have raised issues involving security classification and placement of offenders, monitoring and supervision, contracting out for community care and supervision, and disclosure of information between state and local juvenile justice agencies.

Long-Term Care: DSHS continues to revise its long-term care and aging programs. The Aging and Adult Services Administration is proposing a new nursing reimbursement system in the 1998 legislative session. The agency's emphasis on providing care for the elderly in community and home settings rather than nursing homes continues. There is also an increased emphasis on identifying and providing protections to vulnerable adults who are being abused, neglected, and/or financially exploited. This division and the other

regional offices are seeing an increase in the number of adult family home civil fine cases due to recently increased enforcement authority for DSHS.

DOJ Investigation of Fircrest School: In September of 1995, the U.S. Department of Justice (DOJ), 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 agreed to bring in two consultants to evaluate remaining concerns of DOJ. Consultants were selected by DSHS and approved by DOJ. They visited Fircrest over a six-month period in 1997 and issued final evaluations of treatment programs at the facility. Both evaluations were quite positive. DOJ is now considering whether to close its investigation or seek U.S. District Court intervention.

Medicaid Reform: In August of 1997, the president signed the Balanced Budget Act of 1997 (BBA). The BBA amended various aspects of existing Medicaid provisions, including the elimination of the minimum reimbursement threshold (the "Boren Amendment") for Medicaid hospitals, nursing facilities, and intermediate care facilities for the mentally retarded (ICF/MRs). In its place, Congress required states to implement a public process to notify stakeholders (and allow for comment) of proposed rates, methodology changes, and final rates. The office is currently advising DSHS of its requirements under the BBA.

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

Transportation and Public Construction Division

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

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, 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 of Transportation to pursue new and different approaches to transportation planning. For example, in recent years the Legislature authorized the department to arrange improvements to the transportation system through public-private initia-

tives. This led to an increase in the division's workload and more creative staff assistance as the department attempts to implement these approaches.

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 stimulate the development of 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: With the Department of Transportation undertaking fewer highway improvement activities because of funding constraints, the number of condemnation actions being handled by the division has slowly declined in the last year. Much of the work has been in completing cases involving acquisitions relating to plans to improve SR 18 from Auburn to I-90, and the construction project for Spokane's "Division Street" which was completed last year. The major source for condemnation actions currently is the construction of the Sequim by-pass on SR 101. In general, condemnation cases handled by the division involve many high-value commercial properties and partial takings, as the department's projects mostly involve expanding existing facilities, often in developed areas, rather than brand new facilities in areas where substantial development has not occurred. If and when the department's revenue picture improves, and new projects are identified, it is expected that the condemnation workload will once again increase.

Hazardous Waste Cleanups: The division currently is involved in a federal action relating to 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, and much of the past year has been devoted to working out details, a process which is still ongoing. 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. Division attorneys devote considerable effort to advise department staff on issues that arise during the course of construction, and in preparation for arbitration or mediation hearings. Because there are relatively fewer contracts being put out to bid, it is possible that there will be an increase in the number of bid protest cases as contractors compete for the declining amount of state highway work available.

Ferry Acquisition and Construction: The division continues to support the Washington State Ferry System as it expands its fleet to meet an increasing demand for service. A challenge to the acquisition process for the new passenger-only ferry contract has been successfully resisted thus far, though the case is still pending. A major case now underway is a \$4 million cost overrun claim made in connection with the recent renovation of MV Klahowya. In the meantime, the company constructing the three new Super Jumbo ferries (the Tacoma, Wenatchee and Puyallup) has made public statements indicating an intent to file a claim for cost overruns once the three ferries have been completed.

Washington Convention and Trade Center Expansion: A good example of the division's use of its knowledge and experience gained in representing the Department of Transportation for the benefit of other state agencies is the ongoing assistance being provided to the effort to expand the Washington State Convention and Trade Center in downtown Seattle. One attorney from the division worked with the center as it went through the environmental review process, and successfully defended a court challenge to that process. Another attorney has been working almost full time on the effort to acquire, through condemnation, property necessary for the condemnation, and another attorney is advising the center staff on construction issues as they prepare to proceed to that step.

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 highway planning and construction procedures and raise complex legal issues on matters such as financing concepts, tolls and bonding concerns. Of those six, only two—development of park and ride lots in King County and Tacoma Narrows congestion relief on SR 16—are still under active consideration.

Environmental Issues: The Growth Management Act raises new legal issues including permits, regulations, SEPA and coordinating local land use plans (and funding) with the need to improve the state highway system to accommodate the state's growing population.

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. The department and the RTA recently signed a memorandum of understanding setting forth principles of cooperation between the two agencies as development of the RTA system (now called Sound Move) goes forward. Attorneys from the division will be working with department staff and RTA legal counsel to identify, and hopefully resolve, issues that may arise along the way.

Possibility of Revenue 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 continue to decrease, at least in the eminent domain arena. On the other hand, 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

The bulk of the workload for the past year has been in telecommunications. Much of this is a function of the federal Telecommunications Act of 1996 which defines for state public service commissions, like the UTC, a number of tasks to implement the federal pro-competitive policies.

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 1,800 formal filings considered by the commission annually.

Numbers/Trends

The division is currently handling 39 contested cases in state and federal courts (up from 22 at the same time last year), 12 formal federal administrative agency cases (not including participation in

rule proceedings before the FCC), and a number of administrative cases before the commission ranging from major rate proceedings involving tens or even hundreds of millions of dollars to modest cases of disputes involving consumers. The number of formal filings with the commission continues to increase, reaching more than 1,800 for the first 11 months of 1997. In all of 1996, there were 1,656 filings. The vast majority of filings are resolved without formal adjudications. They are either noncontroversial or resolved through negotiation or other alternate dispute resolution processes.

The bulk of the workload for the past year has been in telecommunications. Much of this is a function of the federal Telecommunications Act of 1996 which defines for state public service commissions, like the UTC, a number of tasks to implement the federal pro-competitive policies. (The State of Washington's pro-competitive policies, both legislative and by the commission predate the 1996 Act.) In 1997 alone, there were 15 cases filed in federal court challenging the commission's decisions pursuant to the 1996 Act.

Significant Cases and Their Impact

Telecommunications Cases: The division is handling numerous cases involving telecommunications companies (particularly US West). These cases are before the commission and before state and federal courts. 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 in history in this state (over \$300 million at issue on an annual basis), the King County Superior Court 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 argued in the state Supreme Court, and a decision is expected in the near future.

US West has challenged certain rate making practices of the commission in federal court arguing that the commission's treatment of revenues from yellow page operations violates the first amendment rights of the company and its affiliates. The

case was dismissed on jurisdictional grounds by the district court, and US West has appealed the case to the Ninth Circuit.

There are numerous pending cases in federal district court in which the commission's decisions on rates and charges for interconnection of competitors are being challenged. The court has heard oral argument on two cases, and we expect decisions in the near future. These may be among the first federal court decisions in the country interpreting the review provisions of the 1996 Act.

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. The superior court entered judgment for the state, and the Supreme Court has scheduled argument for February.

Major Issues/Events

Continued Restructuring of the Telecommunications Industry: In Electric Lightwave v. WUTC, the state Supreme 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 federal Telecommunications Act of 1996 implemented a similar policy at the federal level. 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. The commission issued a number of orders both arising solely out of state law and in conformance with the act to facilitate interconnection by competitors to local exchange carriers. Ongoing litigation about these orders will dictate the progress of competition.

Electric Industry Restructuring: The electric power industry also is in transition. Federal policies have opened up the wholesale market for electricity, and now the debate focuses on the retail market. The division is assisting the commission in reviewing state and federal legislation which would expedite opening of retail markets to more competition through direct access to power suppliers. The commission has approved various pilot proposals to experiment with direct retail access. Congress, the Legislature, and the commission are considering a number of issues including: Who should pay for stranded investment of utilities whose customers depart the system and the effect of that departure on residential ratepayers; What will be impacts on state and local tax revenues; Will there be a need for increased application of consumer protection and antitrust laws; and, to what extent should Congress set a national agenda and require states to conform to it.

Administration Division

Completed the Microsoft Office Rollout. This included installing 407 new computers and upgrading 628 existing machines.

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 \$1.8 million, or an annual total of about \$43 million.

Facilities

- The Attorney General's Office has 24 office locations throughout the state for its more than 1,245 employees. Annual lease costs are approximately \$5.5 million.
- The office in 1997 eliminated more than \$50,000 in GA management charges each year by establishing a facilities representative in each office to handle the on-site facilities management.
- In 1997 the office provided improvements to more than 75 percent of our offices in one or more of the following areas: construction, space design, safety and security features, ADA accessibility, emergency disaster equipment, and risk management.
- Managed the redistribution of "used" AGO furniture and equipment at an estimated cost savings of \$63,000.

Information Systems

- The AGO network has more than 70 file servers with the storage capacity to hold over 150 billion characters (150 gigabytes) of data.
- ISD maintains 1,607 mailboxes containing over 1.25 million stored messages.
- ISD processed almost 11,500 help desk calls during 1997.
- During 1997, over 2,200 site visits were made to repair phone and computer equipment and to install software as a result of help desk calls. In addition, ISD processed approximately 1,000 special project requests.
- ISD purchased and installed more than \$2.25 million worth of hardware and software components throughout the AGO.

Law Library

- The Law Library system consists of 20 branch library locations and 42 divisional libraries

totaling 73,006 volumes, valued at \$3.6 million.

Human Resources

- The Human Resources Office received and processed approximately 1,650 applications for employment in 1996. Of those, 350 applications were received for professional staff and Washington Management Service positions, 500 applications were received and processed for attorney positions, and approximately 300 applications were received from third-year law students. Approximately 500 applications were received for law clerk positions. Approximately 50 appointments were made to attorney positions and over 50 law clerk placements were made.
- Training staff in the Human Resources Office coordinated 252 training sessions in 1996 (an increase of 162 sessions over last year), training approximately 7,235 participants. The number of Continuing Legal Education and professional support staff training courses doubled this past year.

Public Affairs

- Prepared and distributed more than 50 news releases.
- Responded to an average of 10 media calls each day.
- Wrote four to five AG speeches each month.
- Answered up to 100 constituent inquiries each month.

Major Issues/Events

Budget And Fiscal Business Review: The Budget and Fiscal Office completed a business review to find more effective ways to do business. Among the recommendations was a restructuring of the Fiscal staff in an effort to provide better service to the legal divisions.

Facility Plan: The office completed a Facilities Strategic Plan which will help the office maximize space utilization and limit the amount of new space which will have to be leased through year 2005.

Microsoft Office Rollout: Completed the Microsoft Office Rollout. This included installing 407 new computers and upgrading 628 existing ma-

chines. It also included installing the Windows 95 operating system, System Management Service, Microsoft Office 95, Internet Explorer, McAfee VirusScan, and the Exchange E-mail System on more than 1,100 workstations. Individual customized workstation profiles were created for every AGO workstation. The rollout also included converting approximately 1,450 e-mail accounts from Microsoft Mail to Microsoft Exchange.

Tobacco Litigation Support: The state's lawsuit against tobacco companies has produced unique administrative support demands. The office established a special, high-speed local area network setup and a document management system that allowed for the capture and redaction of more than nine million documents. The document production in the case requires 82 gigabytes of network storage capacity.

Remote Access System: Established a Remote Access System that supports connecting up to 100 mobile and remote users to the AGO network.

Octopus/Backup System: Installed a comprehensive data recovery and business resumption system that completely backs up the AGO network and provides for near instantaneous systems recovery in the event of equipment failure.

Prime Migration: Began migrating applications from the Prime computer to the new LAN platform. Work included:

- Development of a system to track ISD workloads based on new project initiatives, overhead activities, and customer service requests.
- Continued development of the Consumer Affairs Tracking System (CATS). Partnered with private vendors to add Lemon Law components.
- Development of a new Personnel database maintenance system in the new client server environment.

Criminal Justice Division Imaging System: Implemented an imaging and document management system which will help the Criminal Justice Division in document-intensive death penalty cases.

Legal Research Enhanced: The office made Westlaw and CD Law available to all staff at their

desktops via Internet connections. The changes will enhance legal research capabilities.

Automated Library Functions: The Law Library implemented a new integrated computer system to automate library functions. When fully operational, the system will allow Law Library staff to provide an online library catalog of research and reference materials available within the office over the Intranet.

Library Study Completed: A library plan, based on findings of an office survey and trends in information technology, was completed and approved. It recommends that future management of the Attorney General's Law Library, "focus on the efficient and intelligent use of technology through a steady increase in electronic research services and desktop access, where feasible and appropriate."

Diversity Grant: The AGO received a \$5,000 grant to provide diversity related training to employees by a nationally known speaker. Approximately 95 percent of all AGO employees attended the diversity training.

Management Training Plan Approved: The AGO designed a Management Training curriculum comprised of eight supervisory and leadership modules which has been approved by the Washington State Department of Personnel as meeting the WAC requirements for mandatory supervisory training.

Electronic Registration System Developed: In an efficiency and cost savings move, Human Resources staff implemented electronic registration and confirmation procedures for all in-house training. AG Conference materials also will be provided "on-line", utilizing Public Folders which are available to all employees in the office.

Investigator Study: The AGO established an Internal Investigator Review Committee to review and make recommendations regarding classification and compensation revisions for investigators. Various equity and compensation issues prompted the study.

Affirmative Action Plan Completed: The Human Resources Office worked closely with the Department of Personnel and the Governor's Affirmative Action Policy Committee on development and implementation of a new three-year comprehensive affirmative action plan. The plan is designed to

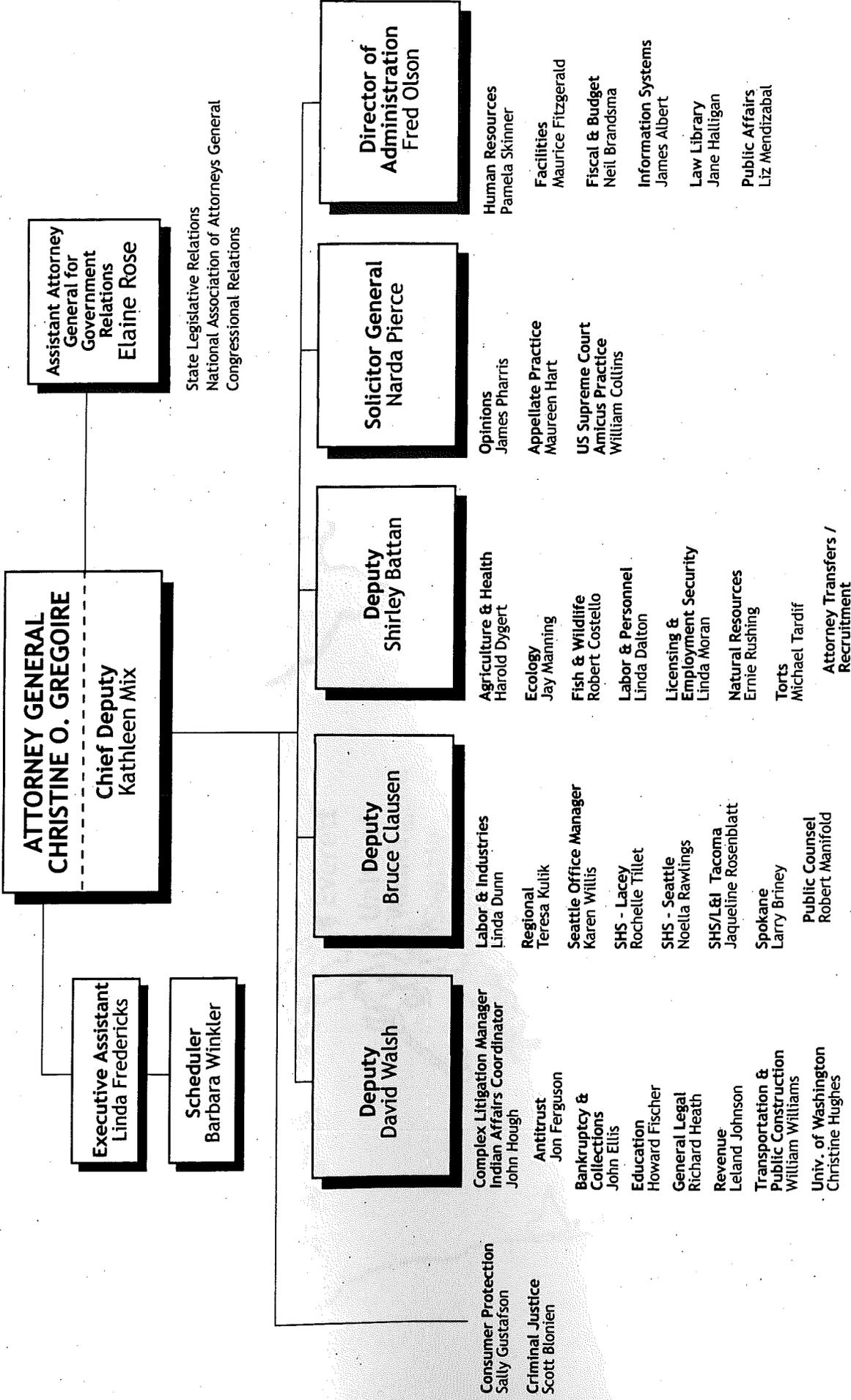
eliminate any barriers which may exist and improve employment opportunities available to under-utilized protected groups.

Public Affairs: In 1997, Public Affairs prepared, managed and implemented complex communications strategies for the national tobacco settlement

and other major issues including U.S. Supreme Court decisions on assisted suicide and constitutionality of commitment law for violent sex predators.

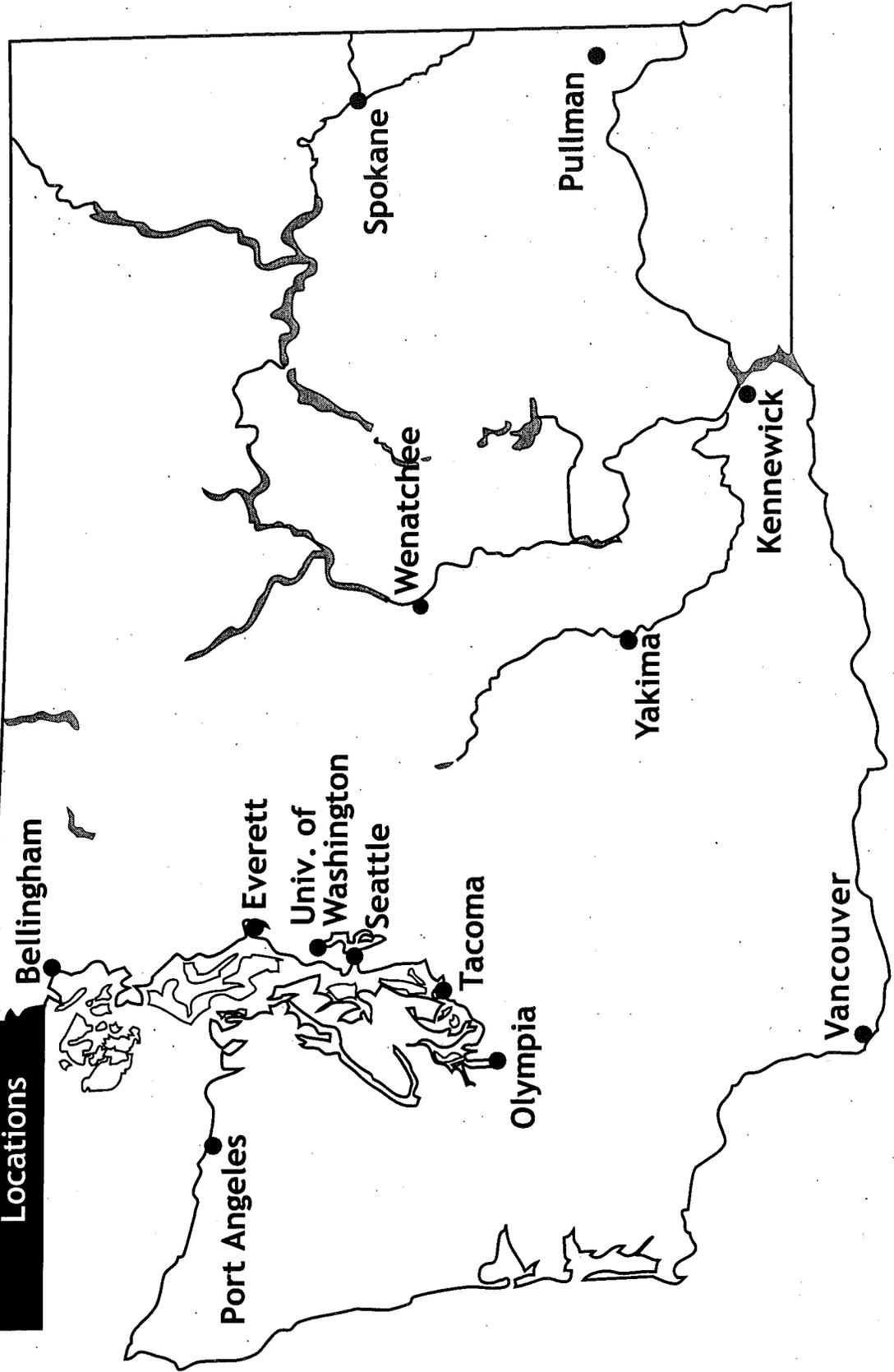


Office of the Attorney General



The Attorney General's Office

Locations





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