



1998 Annual Report

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Tobacco Settlement

"The industry will pay all attorney fees - both state and private counsel - and reimburse states for their costs."

Attorney General Christine Gregoire led a team of other state attorneys general in negotiations to settle state lawsuits against tobacco companies. The settlement resulted in a fundamental reform of the industry's business practices and the largest financial recovery in the nation's history.

More than 40 states sued tobacco companies, alleging, among other things, that the industry violated antitrust and consumer protection laws. In addition, states alleged the companies conspired to withhold information about adverse health effects of tobacco, manipulated nicotine levels to keep smokers addicted and conspired to withhold less risk products from the market.

To settle the lawsuits, the industry has agreed to dozens of new restrictions and public health initiatives which are aimed at changing the way it does business.

Under the settlement, tobacco companies agreed to significant curbs on their advertising and marketing campaigns, fund a \$1.5 billion anti-smoking campaign, open previously secret industry documents, and disband industry trade groups which the states maintain conspired to conceal damaging research from the public.

The settlement has numerous provisions aimed at protecting kids. In filing their lawsuits, state Attorneys General contended the

industry was targeting children. Under the settlement, the tobacco industry will pay \$250 million for a foundation dedicated to reducing teen smoking. It will also contribute \$1.5 billion over the next five years for a national public education fund which would carry out a massive education and advertising campaign.

Other provisions in the settlement ban cartoon characters in tobacco advertising, prohibit the industry from targeting youth in ads and marketing, prohibit billboards and transit advertising, and ban the sale and distribution of apparel, backpacks and other merchandise which bear brand-name logos and become, in effect, walking billboards.

Tobacco companies will pay the states more than \$206 billion through the year 2025. As its share of the settlement, Washington State will receive \$4.02 billion.

Washington state spends approximately \$705 million a year on medical care for smoking-related illnesses and the industry payments, which will be made in perpetuity, will relieve taxpayers of the costs from future smoking-related illnesses.

Gregoire believes strong state cases against the tobacco industry led to the settlement proposal and that a national settlement will avoid a patchwork of reform which could result if each state individually pursued its lawsuit.

The industry will pay all attorney fees - both state and private counsel - and reimburse states for their costs.

To ensure the industry lives up to the agreement, the settlement is enforceable through consent decrees which will be entered in each state court. In addition, the industry will provide \$50 million for an enforcement fund which states could use to pursue violations of the settlement.

Office-Wide Initiatives

Alternative Dispute Resolution

The Office of the Attorney General views the use of Alternative Dispute Resolution (ADR) as an essential component of an efficient and fair justice system. Appropriate use of ADR is quicker and less expensive than a litigated solution. ADR often allows for a more comprehensive settlement of the issues which led to the filing of litigation. It may also assist litigants in developing better working relationships such that the next dispute may be resolved before going to court at all.

Efforts over the past year to encourage further appreciation and use within the AGO include development of guidelines for appropriate use of ADR by case type, establishment of ADR goals office-wide, specialized training to improve communication skills for staff, negotiation, mediation and arbitration training for attorneys, and development of ADR resources which make access to ADR information and processes more efficient.

The AGO, in cooperation with many state agencies, has also implemented an inter-agency mediation project for workplace disputes. Agencies have created a mediator pool which may be accessed by any participating agency employee who has a workplace dispute. This arrangement makes cost effective mediation services readily available to resolve workplace disputes before they escalate.

AGO employees are also working with the courts and bar associations to enhance the use of ADR for all cases. These efforts have resulted in ongoing ADR Weeks, creation of court rules and case processing systems, development of a consumer guide to ADR, and many training programs designed to educate lawyers on how to use ADR effectively. The result is better appreciation and ongoing development of skills to use ADR.

The use of ADR is not limited to the formal

justice system. The LASER (Lawyers and Students Engaged in Resolution) program invites lawyers into schools to teach students mediation skills. In turn, these students become peer mediators within the schools. These mediations keep disputes from escalating and teaches all participants how to collaboratively solve problems.

Elder Rights

The Elder Rights Project was formed in the spring of 1996. Its mission is 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 the older adults; provide education on issue that affect older adults; and advocate for changes in public policy that address the needs of older adults.

On November 18, 1998, the Project sponsored a conference entitled "Fleeing the Elderly: The Silent Scam". The conference was designed to give law enforcement, prosecutors and social workers the tools to detect and respond to financial exploitation of the elderly. The day-long event was well attended with lots of interest in a follow-up conference. The Department of Social and Health Services, the Department of Financial Institutions and the Washington Association of Prosecuting Attorneys were co-sponsors.

Legislative Agenda

The Office was successful in seeing two out of our three Attorney General request bills passed by the Legislature.

A bill that makes it a civil violation to transmit unsolicited commercial electronic mail messages was enacted. The bill also establishes the select task force on commercial electronic mail messages.

The Legislature also passed a bill that requires sex offenders who are residents of another state, but who are students or are employed

or carrying on a vocation in Washington, to register with the state as a sex offender. Sex offenders, upon release from custody, are also required to register with an official designated by the agency having jurisdiction over the offender. County sheriffs must forward all sex and kidnapping registration information to the Washington State Patrol within three days.

A bill which would have created a new crime of criminal mistreatment in the third degree for negligently withholding the basic necessi-

ties of life failed to make it out of the Senate in the last days of the session.

A joint memorial was introduced at the request of our office as an alternative to bills which sought to allocate recoveries in the state's lawsuit against the tobacco industry. The memorial would have asked Congress to ensure that federal agencies do not have a claim against the states' recoveries in any state litigation against the tobacco industry. The memorial was not enacted by the Legislature.

Solicitor General Team

"Fifteen formal opinions were issued on subjects as diverse as a county's obligation to honor old plats, the constitutional authority of the superintendent of public instruction, the issuance of presumed death certificates for persons presumed drowned near the international border, and the authority of public utility districts to engage in a variety of business enterprises."

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

- Coordinate cases at the appellate levels in both state and federal courts, and conduct appellate assistance and review programs for the Attorney General's Office;
- Coordinate the office's involvement with cases in the United States Supreme Court;
- Coordinate litigation not clearly relating to any single division;
- Be primarily responsible for the prepa-

ration 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 approximately 102 cases.

In 22 cases before the State Supreme Court, the team arranged for briefings of the Attorney General.

The team coordinated practice arguments in 98 appellate cases.

Between December 1, 1997, and December 1, 1998, the office received 70 opinion requests for processing. Fifty-two were accepted and 18 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 60 opinions. Fifteen formal opinions were issued on subjects as diverse as a county's obligation to honor old plats, the constitutional authority of the superintendent of public instruction, the issuance of presumed death certificates for persons presumed drowned near the international border, and the authority of public utility districts to engage in a variety of business enterprises.

Forty-two were issued as informal opinions on a wide variety of topics. One opinion request was withdrawn, and two were handled orally without a written opinion.

Between January 1 and December 31, 1998, the team reviewed 101 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 nine briefs.

In 1998 members of the team processed 20 initiative titles, consisting of nine initiatives to the people, and 11 initiatives to the Legislature. Four of these measures were certified for the 1998 general election; three were initiatives to the People and one was to the Legislature. The team provided explanatory statements for the voters pamphlet on these four measures. Two ballot titles were appealed to the superior court.

In addition, the Legislature referred one referendum bill to the people for the 1998 general election. The team provided the ballot title and the explanatory statement for the voters pamphlet.

Significant Cases and Issues

Oil Spill Prevention Laws: A member of the 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. With one exception, the Ninth Circuit recently affirmed the district court's ruling that Washington's laws did not intrude and were not preempted by federal law. The court did invalidate one rule that dealt with technology because it concluded that the state could not regulate in the area of tanker design and construction.

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 of that year, 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. On appeal, the Ninth Circuit affirmed the decision in favor of the Indians. On December 22, 1998, the state filed a petition for writ of certiorari in the U. S. Supreme Court seeking review of the decision. A member of the team helped draft the petition. The Supreme Court should decide whether to hear the case by the spring of 1999. If the Supreme Court accepts review, there should be a decision by July 2000.

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's Office advised and assisted the Gambling Commission in negotiations with Indian tribes. These negotiations resulted in an agreement which was approved by the Gambling Commission in October 1998 and by the governor shortly thereafter. The litigation and the negotiations were conducted by a team which included a member of the Solicitor General's Team, as well as the assistant attorney general assigned to represent the Gambling Commission.

Governor's Veto Authority: The Solicitor General Team is defending the Governor in an action by the Legislature, challenging the Governor's veto of certain items in the state budget. At issue is the scope of the Governor's constitutional authority to veto appropriation items. The case will be argued in the Washington Supreme Court in February of 1999.

Indigent Legal Services: Real estate closing officers receive funds from clients that are to

be used in closing property transactions. Under a rule of the Washington Supreme Court regulating the practice of law, if such funds cannot earn net interest for the client, they must be deposited into a pooled trust account. A similar rule applies to client trust funds received by lawyers. Interest generated by the pooled account is used to provide legal services to indigent persons. An action challenging the court's rule was brought in federal district court. The district court sustained the rule. An appeal is pending in the Ninth Circuit. The Solicitor General's Team is defending against this challenge to the court's rule.

Initiative Measure No. 200: Initiative 200 was enacted in the 1998 general election and became effective 30 days after the election. The Solicitor General Team and other assistant attorneys general formed a work group to address whether and how Initiative 200 affects administration of various laws and programs. An issue paper on Initiative 200 was published, representing the first step by identifying the major issues raised by the initiative and suggesting a framework for analyzing the issues. The Solicitor General Team continues to coordinate analysis of these issue by assistant attorneys general representing the various state agencies and educational institutions.

Protecting Consumers and Legitimate Businesses

Antitrust Section

"The section recovered approximately \$100,000 in cash, and \$75,000 in toys in settlement of litigation in 1998, exclusive of the tobacco settlement."

Summary of Responsibility

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

Legal Services Provided

The majority of the 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. The section also retains responsibility for oversight of certain health care matters including nonprofit hospital conversions and requests for antitrust immunity under health care statutes.

Numbers/Trends

The section recovered approximately \$100,000 in cash, and \$75,000 in toys in settlement of litigation in 1998, exclusive of the tobacco settlement. Additionally, injunctive, or structural relief, was achieved in a number of important industries, including dairies and gasoline. The tobacco case consumed most of the section's litigation resources during 1998.

Significant Cases and Their Impact

State v. American Tobacco, et al.: The Antitrust Section spearheaded the state's litigation efforts against the tobacco companies, teamed with the Consumer Protection Division. During pretrial proceedings, most of the court's rulings on the antitrust issues were favorable to the state. The litigation support staff's expertise using computerized document control and discovery systems was integral to trial preparation. More than 30 million pages of state records were produced to defendants. Section attorneys and paralegals worked with the three private firms appointed to assist the state's prosecution of the case and also played a lead role in developing a coordinated approach among the other states suing the tobacco industry. Trial began in September with Section Chief Jon Ferguson as one of the three principal trial attorneys. The case was dismissed November 24, after eight weeks of trial, in accordance with the comprehensive settlement reached between the suing states and the tobacco industry.

State v. USA Waste Management: Washington state joined a consent decree negotiated between several states, the Department of Justice and USA Waste Management. USA Waste is required to notify the state of any future acquisitions which could affect Cowlitz or Clark counties. Additionally, divestiture of Oregon businesses affecting those markets was required and \$20,000 in costs and fees was paid.

State v. Toys "R" Us: Washington state, along with 43 other states, the District of Columbia and Puerto Rico filed suit in 1997 against Toys "R" Us (TRU), the largest toy retailer, and four toy manufacturers, Mattel, Hasbro, LittleTikes and Tyco (which has been acquired by Mattel). The suit alleged that TRU exercised its market power to enter into illegal vertical agreements with the manufacturers and orchestrated horizontal agreements between otherwise competing manufacturers to restrict sales of popular toys to the warehouse clubs. In December, a national settlement was reached with Hasbro which resulted in a pay-

ment to Washington of \$48,941 in cash and \$73,409 in toys, valued at manufacturer's list price. The Attorney General arranged for distribution of the toys to needy children throughout the state, in cooperation with the Department of Social and Health Services and the Marine Corps' "Toys for Tots" program. The case continues against the remaining defendants.

State v. Darigold, Inc., et al.: On April 24, the office entered a consent decree against Darigold and Inland Northwest Dairies, concerning a joint venture combining their Spokane operations. The decree requires the venture to submit bids to supply milk to local school districts on terms that are comparable to the bids which have been submitted historically. The venture must also make 1/2 pints of milk available on reasonable terms to distributors who want to submit bids in competition with the joint venture. The terms of the decree apply to distribution in northern Idaho and northeast Oregon as well as to eastern Washington. The parties also paid \$25,000 in costs and fees.

State v. Texaco Inc., et al.: In December 1997, the section required Shell and Texaco to divest the Shell oil refinery located in Anacortes in order to satisfy concerns raised by the combination of Shell and Texaco's North American assets. Prior approval by the Attorney General's Office was required before a refin-

ery sale could be made. The office monitored the divestiture process closely and met frequently with Anacortes community members and other interested parties concerning the potential buyers. On May 1, 1998, Shell sold the refinery to Tesoro Petroleum Corporation.

Investigations

Many other matters were examined without formal action taken. We assisted the Federal Trade Commission in their review of mergers in the grocery and cement industries. We also reviewed two acquisitions in the legal publishing industry and investigated complaints concerning anticompetitive practices in the software industry. The section is currently participating in several investigations, including matters involving securities, pharmaceuticals, and car accessories. We anticipate that telecommunications issues will become more prominent in 1999, as well as issues involving competition in the energy industry.

Amicus

The section joined multistate amicus briefs in cases involving trade associations and telecommunications. We also joined comments submitted to the Department of Transportation concerning competition in the airline industry and joined comments submitted to Congress concerning legislation directed at anticompetitive practices in the meat packing industry.

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 Administration: One of the division's key responsibilities is the administration of Washington's motor vehicle warranty enforcement law known as the Lemon Law. The law is designed to help new vehicle owners who have substantial continuing problems with warranty repairs. The law allows the owner to request an arbitration hearing through the Attorney General's Office to resolve consumer and manufacturer warranty disputes. Other services provided include consumer and industry education, and enforcement of manufacturer and dealer obligations.

Legal Services Provided

Overall 1998 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 auto dealers, the insurance industry, travel sellers and financial institutions.

A special emphasis in 1998 was reaching out to one of our most vulnerable consumer groups, the elderly. Working in cooperation with AARP, senior volunteers across the state were trained to educate other seniors about telemarketing and direct mail fraud.

In addition, the division participated in "Fleeing the Elderly: the Silent Scam" which brought law enforcement, prosecuting attorneys and social workers together to learn how they can work together to fight financial fraud that targets seniors.

Mediation: Seven Consumer Resource Centers (CRCs) located throughout the state, staffed by division employees, volunteers, and students, handle consumer inquiries and com-

plaints. 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. Approximately 60 percent of the complaints handled are resolved successfully.

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

Numbers/Trends

Consumers received more than \$15.3 million dollars in restitution and savings as a result of legal action and complaints processed by the Consumer Protection Division and the Lemon Law Administration.

Of the total dollars collected, consumers received over \$2.3 million in direct restitution from businesses and saved almost \$5.4 million from complaints filed with the Consumer Protection Division. Consumers also received close to \$6.8 million in awards and settlements from vehicle manufacturers through the Lemon Law Administration.

A total of 24,280 written complaints were processed in 1998 by the CRCs, up from the 22,434 complaints filed last year. The centers also handled close to 230,000 telephone inquiries and over 2,000 e-mails.

In May 1998, the new state law protecting Washington e-mail addresses from junk e-mail became effective, generating a new category of complaints. As a result, 1,619 junk e-mail complaints were processed and more than 6,300 Washington residents registered their e-

mail address with the Washington Association of Internet Service Providers.

In the Lemon Law arena, of the 318 arbitration requests filed in 1998, 83 percent of eligible disputes were resolved in the consumer's favor. As a result of the law and direct assistance to consumers provided through 25,000 telephone inquiries and 270 e-mails, many disputes were resolved and did not go to arbitration.

Significant Cases and Their Impact

Tobacco Litigation: On November 23, 1998 King County Superior Court Judge George A. Finkle approved the \$4 billion settlement and consent decree, ending the state's two-month trial against the tobacco industry.

The lawsuit contained antitrust and consumer protection violations, including the claim that the industry targeted minors with deceptive and unfair advertising. The settlement, the most successful reform of an industry in this nation's history, has significant protections for the children of this state from advertising strategies that have the addiction of children to this dangerous product as their goal. Among the terms of the agreement, the tobacco industry is prohibited from targeting youth; banned from using cartoon characters or outdoor advertising and restricted from sponsorships by band names.

Packing: Three lawsuits against two credit insurance sales consulting companies for allegedly encouraging auto dealers to hide the costs of extra products in the payment quotes they made to customers were successfully settled in 1998. Associates Dealer Group of Bellevue and Resource Dealer Group of Illinois resolved the state and federal lawsuits by agreeing to pay more than \$1.4 million in costs, fees, insurance fines, civil penalties and restitution and claims. The companies were involved in a widespread deceptive practice in the automobile industry known as "packing" or "loading" payments. To help sell their products, the companies encouraged dealers to quote monthly vehicle payments higher than what was actually needed to purchase the vehicle. The extra money "packed" or "loaded" in the quoted payment allowed dealers to slip the optional credit insurance or ser-

vice contracts by the customer and into the sales contract.

Junk e-mail Law: A new law protecting Washington e-mail users against those who inundate their e-mail boxes with junk e-mail was implemented in 1998.

The law does not stop junk e-mail (also known as "spam") but it does make it illegal to falsify information about the sender, to use false or misleading information in the subject line and to use a third party's e-mail address without the party's permission. The law covers e-mail originating from a computer located in Washington or sent to a Washington e-mail address. In October, the state filed the nation's first "spamming" lawsuit against a Salem, Oregon business, Natural Instincts, and its owner for sending an unsolicited e-mail using misleading information. Several private lawsuits were also filed by individuals. Individuals breaking the law can be required to pay \$500 to individuals and \$1,000 to Information Service Providers (ISPs) for each violation.

Charities Fund-Raiser Crackdown: The state continued its crackdown against fund-raisers who mislead the public about donations they solicited on behalf of charitable causes by taking action against eight companies in 1998. In August, the state took its second action in eight months against a New Jersey fund-raiser for violating a court order the firm had agreed to in 1997. Civic Development Group, which made calls on behalf of the Washington Fraternal Order of Police and the Washington State Patrol Troopers Association, was ordered to pay \$109,290, which equaled the amount of money the firm had raised in Washington state this year. The fund-raiser allegedly violated the law when callers continued to claim they were "from" or "with" the Troopers' Association and failed to disclose they were really paid solicitors working for a fund-raising company. They also allegedly failed to tell consumers that none of the money collected would benefit any law enforcement agency.

Foreign Lotteries: In its continued effort to stop "cross-border" fraud, the Consumer Protection Division, working with the British Columbia Ministry of Attorney General,

closed down two Canadian telemarketers who were using illegal and deceptive practices to sell foreign lottery tickets to U.S. citizens. As part of the stipulated judgment against, Final Round Services Limited and Golden Packages Limited, our office distributed more than \$438,897 in restitution to some 2,700 U.S. consumers, including seven from Washington, who were solicited to buy individual tickets or group shares in the Australian or Spanish lotteries.

Travel Sellers: Complaints against travel sellers continued to be strong as we filed lawsuits against travel sellers engaged in deceptive practices. Lawsuits were filed against three travel sellers operating in Washington: Andina Travel and Tours of Bellevue; Nevada Winners of Yakima and Travel Opportunities of Ft. Lauderdale, Florida. In addition, several other investigations of travel-related businesses were initiated in 1998.

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 interests, which would not otherwise have an effective voice, regarding the rates, services and business practices of the investor-owned telephone, electric and natural gas utilities operating in the state. Most cases and issues are conducted in proceedings before Washington's Utilities and Transportation Commission (UTC).

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 busi-

ness 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. In 1998 Public Counsel assisted customers with written and oral testimony at public hearings held by the WUTC around the state on the issue of universal telecommunications service.

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

to provide advice and to learn about current utility issues.

Significant Cases and Their Impact Telecommunications

Universal Telecommunications Service Cost Adjudication and Rules Cases: In this two-track proceeding the commission began the process of reviewing ways to restructure existing support for high-cost areas in Washington, as a result of legislative direction and in response to the Telecommunications Act of 1996. The commission adopted policies and a program structure by rulemaking. In a separate proceeding the commission analyzed the cost of providing high-cost support to all telecommunications companies in the state, estimating the amount needed at \$125 million. Company maximum estimates for fund size exceeded \$300 million. Public Counsel participated in both tracks. The commission adopted our positions on a wide range of issues related to fund structure and cost determination. Commission statutory authority to implement the plan is dependent on state legislative action.

US West 1995 Rate Case Refunds: At the end of 1997, consumers won a victory when the Washington Supreme Court upheld the commission's 1995 rate case decision to reducing US West's rates by more than \$90 million and ordering refunds. On remand, the Superior Court issued its order in June of 1998, accepting virtually all of Public Counsel's positions on refund issues. In particular, it broke with commission precedent and set interest at the full judgment rate of 12 percent; this issue alone was worth more than \$10 million. Consumers received \$140 million in refunds; and long distance companies received \$70 million. The consumer advisory committee held a special meeting with long distance companies to urge them to pass through these refunds to consumers.

US West 1997 Rate Case: The WUTC issued its decision in US West's 1997 rate case in January 1998 - a \$58 million increase. Although the commission staff had agreed with US West to a rate increase of nearly \$70 million, the commission decreased the amount by \$10.5

million, due solely to Public Counsel's evidence at the hearing. The increase to residential customers was reduced by another \$1 million from that recommended by staff, and was another \$9 million less than the USWC position. The commission directed staff, Public Counsel and US West to jointly develop a method to track investment by US West in Washington. Service quality issues remain outstanding.

Telecommunications Access Charge Reform: Public Counsel participated jointly with AARP in this important rulemaking on how to lower long distance access charges. While such action can lower long distance rates, most telecommunications companies see it as an opportunity to raise basic local rates, effectively shifting millions of dollars of revenue recovery to local consumers. Public Counsel and AARP were successful in arguing that the rule language should prevent automatic local rate increases for companies that lowered access charges.

Consumer Education - Long Distance Telephone Service: Our office produced a study entitled "Long Distance - Compare Rates" designed to help consumers choose between long distance companies.

Energy

BPA Residential Exchange: Public Counsel filed formal comments on BPA's proposed subscription plan to allocate power generated by federal dams to residential and industrial consumers from 2000 to 2021. We coordinated our approach with the UTC, CTED, environmental groups, the investor owned utilities, and the Oregon consumer group. We supported providing access for all residential consumers to the low cost power produced by federal dams. BPA's final plan included many of the provisions we supported and customers will start signing contracts in February.

Electric Rate Unbundling: "Unbundling" means to determine the cost of each major component of service, such as generating the electricity, delivering it, billing and collection, environmental programs, etc. The commission completed a study in which utilities filed unbundled costs to provide service. Public

Counsel participated in a series of meetings and workshops with stakeholders during this process.

UTC Legislative Study of the Electricity Industry: Public Counsel was a participant in the study ordered by Senate Bill 6560 of the electricity industry in Washington. We commented on a variety of topics, particularly service quality and consumer protection.

Major Issues/Events

Telecommunications: The telephone industry continues to require major attention. The movement towards a competitive industry, especially at the local level, has a long way to go and has created much litigation. 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 is now examining universal service, access charges, prices for unbundled elements, and is adjudicating complaints regarding interconnection between incumbent monopolies and competitors. The development of DSL service is raising issues regarding jurisdiction, cross-subsidies, and fair competition. Service quality concerns

persist, particularly for large local phone companies.

In 1998 US West petitioned the commission to end the "imputation" of excess yellow pages profits to the benefit of ratepayers. This case will be litigated in 1999. This matter is worth about \$800 million to customers as a one-time value. If US West has its way, residential rates would probably go up by about \$4 per month, or \$90 million a year. Public Counsel is working closely with AARP and TRACER on this case.

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, e.g. (1) Is there any benefit to residential and small business consumers to a restructured industry? Any harm? (2) What mechanisms would be needed to protect consumers? (3) What should be done about potential stranded costs? (4) 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 1999 and beyond.

Agriculture and Health

"The increasing number of people in Department of Health 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 (and its associated boards, commissions and committees); the State Board of Health; the Health Care Authority; the Department of Agriculture; 24 Commodity Commissions; the Department of Community, Trade and Economic Development (CTED); 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 involves the oversight of health care practitioners and facilities; regulation of activities posing threats to human health such as food processing, the conveyance of public drinking water, the application of pesticides and the disposal of ra-

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

Numbers/Trends

State appeals under the GMA increased sharply in 1995, continued at a relatively high level in 1996, but declined somewhat in 1997 and 1998 as implementation became more routine 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 limited resources. 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

Dawn Mining: The Department of Health has licensed the Dawn Mining Company to fill an excavation pit near Spokane with uranium mill tailings. The department recently amended Dawn's license, conditionally approving the route by which the company would transport the fill materials. Dawn Watch, an environmental group, has filed an action in Stevens County Superior Court alleging inadequate SEPA review of this decision. The Spokane Indian Tribe has filed an action in Federal District Court contending the

action contravenes "environmental justice" provisions of the Federal Civil Rights Act.

Manufactured Housing Communities of Washington v. State: A state statute requires the owners of mobile home parks to provide tenants a right of first refusal in the event of a proposed park sale. A park owners association asserted that the statute effected a facial taking, impermissible under both the state and federal constitutions. The Court of Appeals affirmed the superior court decision rejecting these assertions. Park owners, supported by the Pacific Legal Foundation, have asked for review from the State Supreme Court.

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.

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 that case processing will be consistent with regulatory reform and responsive to public concerns, and will 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 activities such as agency personnel actions, criminal prosecutions and activities of the State Auditor's Office.

Preserving Washington's Environment

Ecology

“Water resources continues to be the division's largest single workload. This work consists of both litigation and advice.”

Summary of Responsibility

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

Legal Services Provided

The Ecology Division 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 45 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 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 remarkably successful in this area prevailing in a number of Supreme Court decisions over the last year.

Other major work areas include: Water quality issues, which comprised 19 percent of the workload; shoreline issues, which comprised 15 percent of the workload, and hazardous waste cleanup, which comprised 13 percent of the workload.

Water Resources (107 cases): Defending Ecology permit decisions and enforcement actions regarding water rights, and prosecuting general stream adjudications.

Hazardous Waste Cleanup (31 sites): Negotiating and enforcing consent decrees or orders requiring cleanup of hazardous waste sites. One of the focuses in this area has been negotiating "prospective-purchaser" agreements which allow a person to buy a parcel of contaminated property, and in exchange for completing cleanup actions at the site, settle the 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.

Water Quality (47 cases): Defending Ecology permit decisions and enforcement actions and superior court enforcement actions.

Shorelines (36 cases): Division attorneys defend Ecology permit decisions and enforcement actions, and appeal shoreline permits issued by local governments.

Air Quality (17 cases): Defending Ecology permit and enforcement actions.

Other (17 cases): Defending Ecology permit and enforcement actions relating to well drill-

ers, 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 1998. Several significant cases were resolved by the Washington State Supreme Court, one is still pending.

In Theodoratus v. Ecology, the State Supreme Court affirmed Ecology's authority to issue a water right certificate in the amount of water actually used pursuant to the permit. This is an important water rights case that defines the ability of developers to "grow" into open-ended water rights only to the extent it is done with diligence and within a reasonable period of time.

In Okanogan Wilderness League v. Twisp and Ecology, the State Supreme Court reversed Ecology's approval of a change in point of diversion for a water right held by Twisp. The court held that municipal water rights can be abandoned and that only the portion of a water right that has been "perfected" by actual use can be transferred.

Water Quality Litigation: Ecology is in the process of making or defending decisions on applications for § 401 certifications under the federal Clean Water Act for significant construction activities involving discharges to waters of the state.

Battle Mountain Gold filed for the development of a large gold mine, Crown Jewel Mine, in Okanogan County.

Port of Seattle is beginning to implement its "update" of Sea-Tac airport. The updates will total over \$1 billion in renovations to the airport including the construction of a third runway. At this time the division is addressing several issues for the § 401 certification in a declaratory judgment action filed in the PCHB.

Public Utility District No. 1 of Pend Oreille County v. Ecology (Sullivan Creek) involves

the issue of the state's authority to issue a § 401 certificate with a condition requiring a bypass flow that would limit the ability of the applicant to fully utilize its existing state based water right. This case is important following the U.S. Supreme Court ruling in P.U.D. No. 1 of Jefferson County v. Ecology (Elkhorn II), 511 U.S. 700 (1994).

In Northwest Environmental Advocates v. State, several environmental organizations have challenged the validity of most of the rules governing timber harvesting, alleging the rules do not sufficiently protect the environment. The Department of Ecology promulgates those rules related to protection of water quality. This division is defending Ecology in the case.

Tribal Issues: There are several issues involving tribal use and authority over water. These include the state's current negotiations with the Lummi Indian Tribe and nonmembers living on the reservation. These negotiations are being conducted through the Department of the Interior's formal federal negotiating process.

In Yakima Indian Nation v. Ecology, the Yakima Indian Nation appealed 43 water right decisions in the Yakima River Basin. There are also ongoing discussions related to implementation of the Clean Water Act by tribes in which non-tribal members will be affected. A recent agreement between the state, Environmental Protection Agency, and the Puyallup Tribe provides a framework for coordinating state and tribal efforts.

Air Quality Litigation

Longview Fibre v. Ecology: In the spring of this year, the Court of Appeals upheld an operation and maintenance regulation applicable to sources of air pollution. The Cowlitz County Superior Court had earlier concluded that the narrative requirement to maintain and operate pollution control equipment "in a manner consistent with good air pollution control practice" was unconstitutionally vague.

Other

Everett Smelter site: Asarco Incorporated

filed a lawsuit in Thurston County Superior Court challenging the constitutionality of the Model Toxics Control Act. This lawsuit arises out of a dispute regarding cleanup requirements that may be selected for a smelter site in Everett that ASARCO owned and operated in the early 1900's. The site is contaminated with arsenic and lead, and is now a residential area.

Yakima-Railroad Area, Toxic Cleanup Site/Cameron-Yakima, Inc.: Division attorneys recently negotiated another consent decree for the Yakima Railroad area-one of the state's largest cleanup sites. Several corporations agreed to pay the state \$750,000 as part of a multi-million dollar cleanup of contamination in a six-square mile area in downtown Yakima.

Hanford: In June 1998, the state gave notice of intent to sue the federal Department of Energy for its failure to pump radioactive liquid waste out of aging single-shell tanks at Hanford, as required under the Hanford Federal Facility Agreement and Consent Order. In October, the state and federal government announced that they had reached agreement on the legal provisions of a judicially-enforceable consent decree to resolve the threatened suit. The schedule for tank pumping, which would be incorporated into the consent decree, is currently being negotiated.

Intertanko v. Locke: In July of 1995, Intertanko, a worldwide consortium of ship-

ping companies, challenged the former Office of Marine Safety's oil spill prevention regulations on a number of constitutional grounds. These regulations require ships entering Washington waters to follow certain requirements 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. On appeal, the Court of Appeals for the Ninth Circuit upheld all regulations except for those that affected tanker design and construction. Intertanko and the United States, which intervened in the case on appeal, have until February 1999 to decide whether to ask the United States Supreme Court to hear the case.

Olympic Pipeline Case: Olympic Pipeline Company is proposing a 230-mile pipeline to carry petroleum products across the Cascade Mountains, from Woodinville to Pasco. The Energy Facility Site Evaluation Council (EFSEC) is a unique one-stop permitting agency for large energy facility projects. EFSEC is reviewing the pipeline proposal, and will be holding a hearing in the spring of 1999. EFSEC will then make a recommendation to the Governor on whether the project should be approved. This division is representing the Department of Ecology and is Counsel for the Environment, representing the public's interest in preserving the quality of the environment.

Fish and Wildlife

"The division is called upon to assist in the resolution of a wide variety of resource management and hunting related issues."

Summary of Responsibility

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

Legal Services Provided

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

Significant Cases and Their Impact

Indian Treaty Rights: The Ninth Circuit Court of Appeals issued a ruling in January, affirming the trial court's decision in United States v. Washington, that tribes may take half of the shellfish from most beaches (including shellfish farms and private lands) and half of all deep water shellfish fisheries (crab, shrimp, and geoduck). The state petitioned for review at the United States Supreme Court, focusing on: (1) whether the treaty creates rights in species and areas that were not "usual and accustomed;" (2) how the shellfish should be divided with non-Indians; and (3) the meaning of the treaty provision that Indians "shall not take shell fish from any beds staked or cultivated."

Various state courts 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, the definition of "open and unclaimed" land, and the extent of state authority to regulate treaty hunting based on a "conservation necessity."

The Columbia River treaty tribes, the Columbia River basin states, and the federal government are negotiating a new fish management plan under the umbrella of United States v. Oregon, a treaty fishing rights case filed in 1968. The existing plan, adopted in 1988, will expire in 1999.

Endangered Species Act: The division is advising the department regarding ESA listings in the Columbia and Snake River basins. Listings of previously harvested species require

coordination of resource protection actions, analysis, and adjustment with tribal uses and resource recovery actions. The proposed listings of the Puget Sound chinook salmon, bull trout, and Hood Canal summer chum salmon have generated multiple requests for advice and analysis.

Hydropower Issues: State and federal agencies, Indian tribes, and various environmental groups have been negotiating the removal of Condit dam on the White Salmon river. The engineering and environmental issues related to the removal have been resolved, the remaining issues are costs and funding sources. Once a final settlement agreement has been developed, it will be provided to the Federal Energy Regulatory Commission (FERC) for approval.

The division assisted the department and worked with counsel for other federal and tribal natural resource entities in negotiating fish and wildlife mitigation terms for long-term trespass flooding impacts caused by Pend Orielle PUD's operation of its Box Canyon Project in eastern Washington. The parties negotiated a license amendment settlement agreement which would authorize flooding for the four years remaining on the existing project license. In exchange, the PUD provided \$6 million for fish and wildlife mitigation, natural resource study, and cultural/historic projects.

In the mid-1970s, at the request of regional fish and wildlife entities, FERC reopened a number of hydropower licenses to address protection of juvenile salmon and steelhead as they pass through the five mid-Columbia hydropower projects (reservoirs and dams). Five years ago, the PUDs operating these projects requested a new negotiation to develop a prelisting Habitat Conservation Plan (HCP) under the ESA for aquatic species, including salmon and steelhead in the Columbia. Chelan PUD and Douglas PUD have nearly completed negotiations on an HCP/FERC Settlement Agreement.

Battle Mountain Gold Mine: The department is working with Battle Mountain Gold Company and Ecology to include fish and wildlife protection and mitigation terms in Ecology

permits for Battle Mountain Gold Mine's Crown Jewel Mine proposal in Okanogan area. Battle Mountain Gold Mine and the department have agreed on fish and wildlife mitigation consisting of purchases and protection of existing wildlife habitat, fish and wildlife mitigation actions on mine site, and management of wildlife enhancements in perpetuity.

Cedar River HCP: The city of Seattle has applied to the Fish and Wildlife Service and the National Marine Fisheries Service for an Incidental Take Permit pursuant to the ESA. The proposed permit would authorize the take of certain endangered or threatened fish and wildlife, including the chinook salmon and the Puget Sound distinct population segment of the bull trout which are proposed for listing under the ESA. Agreements with the department and Ecology provide for fishery mitigation, and funding for salmon habitat restoration in the lower Cedar River.

Olympic Pipeline's Cross-Cascades Pipeline Proposal: The Energy Facility Site Evaluation Council (EFSEC) provides a 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. EFSEC will hold a hearing on the proposal starting in late April, 1999.

Interjurisdictional Fisheries: The division advises Washington's representatives to the Pacific Salmon Commission, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and other fishery management bodies. In 1985, the U.S. and Canada executed the Pacific Salmon Treaty, which set up a framework for negotiating fishing regimes. However, the two countries have been unable to agree on the meaning of key terms in the treaty. The province of British Columbia sued the states of Washington and Alaska and the United States in the U.S. Dis-

trict Court in Seattle, alleging violations of the Pacific Salmon Treaty. The district court dismissed the case and an appeal is pending in the U.S. Court of Appeals for the Ninth Circuit.

Grandy Creek Hatchery: In 1991, The Legislature appropriated funding for the construction of a steelhead trout hatchery on Grandy Creek near the Skagit River. Skagit County issued a permit approving the hatchery and a number of environmental and sport organizations appealed the permit to the Shorelines Hearings Board (SHB). The SHB and the King County Superior Court found certain aspects of the project's environmental review inadequate. The department is writing a new environmental impact statement for the hatchery, whose funding must be reappropriated by the Legislature the during the 1999 session.

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

In 1996, voters passed Initiative 655, which bans some forms of bear and cougar hunting. The division successfully defended the initiative against a claim by Safari Club International that the initiative violated the state constitution, but the Thurston County Superior Court found it constitutional.

Division personnel have participated in negotiations with various timber companies related to the new landscape plan legislation, RCW 76.09.350. This law allows timberland owners to generate landscape plans that, once approved by the state, will substitute for normal state regulation of forest practices.

The division defended a department regulation requiring hunters to wear fluorescent orange while hunting. The Court of Appeals determined that this rule was reasonably consistent with department's statutory authority.

Enforcement Issues: The 1998 Legislature enacted a new enforcement code for fish and wildlife crimes. This legislation, drafted by division personnel in consultation with the department, recodifies and consolidates fish and wildlife crimes into a uniform and consistent format that will allow for fair and efficient law enforcement, prosecution, and processing by the judiciary.

Wild Salmonid Policy: The department, with

the Washington Treaty Tribes, has been developing a comprehensive set of policies to protect and restore declining runs of wild salmon and avert or minimize the effects of ESA listings of Washington salmon. Together, the collective harvest, hatchery, and habitat policies and programs are called the Wild Salmonid Policy. The division assisted in the preparation of environmental review documents and advises the department on this broad initiative.

Natural Resources

"Massive planning efforts, like the 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 proprietary, regulatory, 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 provides a variety of public services throughout the state.

Numbers/Trends

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

Major Planning Efforts: Massive planning efforts, like the 70-100 year, multi-species, 1.6 million acre Habitat Conservation Plan, raise complex issues involving trust asset management, and landscape and watershed planning. Two counties and a school district are challenging the plan in state superior courts alleging the plan does not maximize income to them as beneficiaries. On the other hand, 13 western Washington tribes have filed notices of intent to sue alleging the plan does not provide sufficient conservation measures for fish and wildlife.

DNR has also adopted an 80-year management plan for the Loomis State Forest. This plan led to five lawsuits and an innovative settlement that may result in millions of dol-

lars for the trust beneficiaries and conservation of significant roadless areas in the forest.

DNR is also doing landscape planning in several watersheds around the state to assure that its forest management activities are well planned and in compliance with state regulations.

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

Forest Practices: The Forest Practices Board is engaged in complex rule making to address increasingly contentious issues, including threatened and endangered species, small landowner planning efforts, and water body typing and protection. Industry groups and environmental organizations are presently challenging the validity of the majority of forest practice rules in two superior court actions.

DNR received 37 appeals of forest regulatory actions over the past year. Two of these appeals involve challenges to completed basin wide watershed analysis. These two cases are set for trial in February and April of 1999. Another appeal involves a challenge to the largest civil penalty ever issued by the DNR. This case is also set for trial in early 1999. An increasing number of the appeals involve complex SEPA issues, driven by the threat of mandatory county moratoriums on public development for harvesting without a forest practices application.

Hazardous Waste Sites: Significant progress is being made to address the state's liability and responsibility for clean up of hazardous waste sites in Puget Sound as DNR and EPA engage in complex negotiations.

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 not in the best interests of the trusts because other alternatives would yield significantly more revenue. A three week trial is scheduled in Port Townsend for October, 1999.

Loomis Endangered Species Act Litigation: This case, known as the Loomis II, involved a challenge by several environmental groups to DNR's Loomis State Forest harvest and road construction plans alleging such activities will result in the "take" of a grizzly bear under the ESA. This case, along with two other Loomis related cases described below, was settled in April, 1998.

Loomis Water Quality Litigation: This case, known as the Loomis III, was brought by the same environmental groups that brought the ESA suit, challenging the Loomis Plan on the grounds that the plan will degrade water quality in violation of state law. It was settled with two other Loomis suits in April, 1998.

Loomis Forest Practices Appeal: The Loomis IV case was a forest practices appeal brought in conjunction with the Loomis II and III. It was also settled in April, 1998.

Loomis Settlement Challenge: The Loomis V is an action brought by area cattlemen challenging the innovative settlement of the Loomis II, III, and IV. The settlement provides for the potential transfer of significant roadless areas in the forest from trust to non-trust status in exchange for millions of dollars for the trust beneficiaries. Plaintiffs contend that the DNR was without authority to enter the agreement, that area stakeholders were not consulted before the settlement was executed, and that the DNR should be enjoined from implementing the terms of the agreement. Settlement negotiations are ongoing.

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, 1996 a settlement between all parties was proposed and accepted. Since that time, the private parties and the Navy have entered into consent decrees. The consent decree between EPA and the state is currently awaiting a final judicial approval.

Alpine Lakes Protection Society v. DNR: The Court of Appeals is now reviewing a superior 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 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 complex condemnation litigation was complicated by issues concerning potential future railroad use of the corridor as well as the status and effect of a prior agreement between the parties in which the Army was to construct an alternate recreational trail upon condemnation of the property. The condemnation case was settled in January, of 1998, and the Army has committed to continue to operate the recreational trail across the condemned land.

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 entered 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. The council is conducting an adjudicative proceeding and will serve as the exclusive venue for issuance of regulatory permits. The draft environmental impact statement was released in September, 1998 and a formal hearing will begin in the spring of 1999.

Contaminated Sediments Disposal: DNR is under increasing pressure to make its aquatic lands available for disposal of contaminated sediments. Through the memorandum of understanding - framework agreement signed by EPA and DNR in the Eagle Harbor litigation, DNR hopes to coordinate and control deci-

sions allowing disposal of contaminated sediments in the context of CERCLA liability negotiations.

Coastal Erosion and Management of the Seashore Conservation Area: State Parks manages Washington's ocean beaches for recreational use and conservation. Increased coastal erosion poses a threat to public and

private property and facilities along the coast. State Parks is engaged in an ongoing policy debate on how to appropriately balance the economic and environmental implications of uncontrolled loss of coastal lands with the environmental and recreational implications of altering the public beach in attempt to hold back the ocean's progress.

Protecting Public Funds

Bankruptcy and Collections Unit

"A total of 5,398 bankruptcy and collections cases have been handled on behalf of the state since the BCU was created in 1993. Of those, 4,658 have been closed, producing more than \$32.4 million, including \$19.4 million in payments made, \$3.6 million in claims successfully defended, and \$9.4 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, Financial Institutions, 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 attorneys provide legal services at all stages throughout a bankruptcy case. A typical case would include appearing early on behalf of the agency, obtaining all financial information necessary to analyze the agency's claims, asserting secured or trust fund status, if appropriate, and defending any challenges to agencies' claims. The unit's attorneys also review proposed 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 5,398 bankruptcy and collections cases have been handled on behalf of the state since the BCU was created in 1993. Of those, 4,658 have been closed, producing more than \$32.4 million, including \$19.4 million in payments made, \$3.6 million in claims successfully defended, and \$9.4 million in future payments to be made to the state under court orders. The unit currently has 740 active cases with a total of \$67.6 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 100 cases in 1998 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 Indian tribes and railroad and airline utilities are handled by the division attorneys in federal courts. Utility property tax litigation, as a future part of the division's caseload, may be affected by the recent passage of legislation providing tax exemptions for businesses owning intangible assets.

Numbers/Trends

The division historically processes 45 to 70 new cases in litigation annually. The majority of approximately 100 cases currently in liti-

gation in 1998 represented excise tax refund claims. Many of the claims are of industry-wide significance.

Significant Cases And Their Impact

Interstate Manufacturers: Awaiting decision by the State Supreme Court are business and occupation tax refund claims brought by more than 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 refund.

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 1998, the State Supreme Court invalidated the valuation averaging provisions of Referendum 47, holding that the legislative attempt to mitigate significant annual valuation increases violated the Uniformity Provision of the Washington Constitution. In an unrelated case, but in one which also involved a uniformity challenge to state taxes, the Court of Appeals held that the state's hazardous substance and petroleum products taxes are excise, rather than property, taxes

and do not violate the constitutional provision.

Other Events: One element in the division's continuing litigation commitment was eliminated with the transfer of cigarette tax enforcement matters from the Department of Revenue to the Washington State Liquor Control

Board. The year has represented a period of transition in which the division's participation in enforcement litigation has been confined to cases preceding the transfer of these functions and indirect involvement and assistance to another division in the office with new cases in litigation.

Torts Division

"In the past six 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."

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 six years, new tort lawsuits have increased sharply despite attempts to settle more claims before litigation. In the five years prior, new lawsuits averaged approximately 200 per year. This increased to 244 in 1993, 328 in 1994, more than 350 in 1995 and 1996 and more than 400 in FY 1997. In 1998, approximately 350 new tort lawsuits were filed. The division has seen the largest increases in employment litigation, and litigation against DSHS social workers and social service programs, particularly those dealing with children. These are areas of relatively new state liability, as recognized by the courts, and it is expected that litigation in these areas will continue to grow in volume, complexity and potential dollar exposure to the state. In the past year, the Court of Appeals has issued four more decisions which sharply increase DSHS liability for child protective activities. How-

ever, a recent Court of Appeals decision has now effectively reconsidered the broad new liability and reduced it. This case will likely be appealed to the Supreme Court, so the ultimate effect on DSHS liability will remain uncertain for another one to two years.

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 \$25 million per year. However, this amount has increased significantly over the past two years and is likely to exceed \$30 million per year soon. 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), for injuries to children who, directly or indirectly, are involved with DSHS, and for crimes committed by parolees under state "supervision".

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 class action lawsuit in which the plaintiffs claim that the University of Washington School of Law impermissibly considers race in its admissions decisions. The plaintiff-class, which has been certified for declaratory purposes only, includes all rejected white applicants for 1994-present. Damages claims on behalf of the three individual plaintiffs are also included. As a result of the passage of I-200,

it appears likely that the case will be declared moot insofar as any injunctive relief is concerned. However, issues remain regarding whether the law school's admissions practices during 1994-98 were unconstitutional. The court has bifurcated the case into liability and relief phases, with the liability issues scheduled to be tried to the court in February, 1999.

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 1960's, 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 are something which 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: For three years, AGO, 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 sued the local prosecutor, local police and DSHS employees, claiming they were negligently investigated, falsely arrested, or maliciously prosecuted. DSHS was also being sued by several employees who were terminated for poor performance in connection with specific earlier complaints concerning some of the abused children or specific wrongdoing in connection with the "sex-ring" investigations. In a major trial victory, the state and local authorities received a defense verdict in the major lawsuit by individuals who had been acquitted of criminal charges. However, an appeal of this result is likely and other cases are pending. In one of the other cases, a different jury awarded a former Wenatchee Office employee more than \$1.5 million.

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

Major Issues/Events

Wrongful Adoption Cases: Two years ago there were approximately 15 "wrongful adoption" cases pending against DSHS and its caseworkers. The claim was that caseworkers were negligent in not fully disclosing psychological or emotional problems of children before adoption. The parents generally sought damages for their emotional distress in raising the children and large damages for care and treatment of adopted children. Many of the lawsuits alleged that the children had Fetal Alcohol Syndrome. These cases were factually difficult, and are potentially costly in terms of payout for settlements and verdicts. The state has settled some of these cases and some have been dismissed. The state won two others at trial, one of which was appealed to the State Supreme Court. The court affirmed the defense verdict in favor of the state. However, the court, unlike courts in most other states, did generally approve the legal basis for filing this kind of lawsuit against the state and adoption agencies. Thus, there will likely be more of these lawsuits filed in future years.

Dependency Cases: State law provides that DSHS can obtain a court order allowing temporary foster care for children who are suspected of being victims of abuse or neglect. DSHS, with legal assistance from this office, handles thousands of these dependency cases every year. In some cases, the courts ultimately

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

Juries have been awarding hundreds of thousands of dollars in these cases. This is a major legal development because there are hundreds of cases every year in which the state might now be sued for placing children in protective foster care. As noted above, a very recent Court of Appeals case has now indicated that parents cannot sue the state over court-ordered separations of parent and child, a reversal of the court's prior position. This issue will likely be appealed to the State Supreme Court for ultimate decision.

Early Resolution Program: The Torts Division has initiated an early resolution program. The goal of the program is to try to achieve savings by early negotiation of lawsuits and claims arising from incidents for which the state is likely to be held liable if the matter goes to court. If the program is successful some savings in legal defense costs should be possible and some cases might also have lower settlement costs because the plaintiff or claimant has incurred lower legal costs. This program has been established for almost three years and could be responsible for some of the small decline in new lawsuits filed in FY 98, which would occur if the program settled claims which would have otherwise become lawsuits.

Strengthening Washington's Education Systems

Education Division

"Educational issues closely follow societal issues. Division attorneys advise on matters as varied as constitutional rights; labor/management disputes; employee rights; student rights and responsibilities; discrimination and sexual harassment; public contracting; intellectual property, and general public sector business issues."

Summary of Responsibility

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

Legal Services Provided

Educational issues closely follow societal issues. Division attorneys advise on matters as

varied as constitutional rights; labor/management disputes; employee rights; student rights and responsibilities; discrimination and sexual harassment; public contracting; intellectual property, and general public sector business issues. Attorneys also represent their education clients at hearings on a variety of education-related matters, including prosecution of teacher misconduct, consumer complaints against private vocational schools, labor arbitrations, and employee and student misconduct hearings. 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.

Education of Incarcerated Inmates: The division is defending the Legislature's policy decision to offer a high school diploma program

to inmates incarcerated in adult correctional facilities up to age 18 but not to those age 18-21 who are instead offered a GED program.

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 121 active lawsuits against the university and its affiliated hospitals. Approximately one-fifth 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 FTE enrolled students. It is one of the largest employers in King County, with about 15,600 FTE staff and 6,700 FTE teaching and research faculty. The University operates two hospitals, University of Washington Medical Center and Harborview Medical Center.

Legal Services Provided

The University has all the legal issues of a large state agency, many of the legal issues of a large corporation, and many legal issues unique to higher education. Accordingly, the division must provide a broad spectrum of legal advice and representation, including employ-

ment 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 121 active lawsuits against the University and its affiliated hospitals. Approximately one-fifth of them are medical malpractice cases. Cases involving disputes on construction projects are the next most frequent type of litigation, comprising about 20 current cases. Claims involving employment issues, statutory violations, and personal injury round out the top five categories of litigation.

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

- The University of Washington is inviting and addressing public comments on its growing physical presence in the neighborhoods surrounding the Seattle campus, including matters such as the Seahawks' proposal to use Husky Stadium. The division aids the university in negotiations with community groups, and in drafting contracts with

other governments and businesses that accommodate the expressed concerns of the community;

- The medical centers are responding to their patients' increasing requests for alternative medicine therapies, which raise concerns regarding the appropriate standards of care and the potential for liability;
- The University requires increasingly sophisticated legal advice to address the complex laws governing employment;
- The University's leadership role in research, computing and communications, and high technology has significantly increased requests for advice on intellectual property issues. These include copyright, licensing of technology, and access to computer-based information.

Significant Cases and Their Impact

Initiative 200: The recent passage of I-200 presents numerous legal questions for the University, and thus for the division. The

University in numerous ways attempts to recruit qualified minorities and women as students and employees, and has many programs that address issues of concern to minorities and women. Each of these programs and outreach efforts must be reviewed and analyzed to determine if it complies with the intent of I-200.

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

Washington State University Division

"The Washington State University Division provides a full range of legal services to the state's land grant university. The matters are extremely varied and ever changing."

Summary of Responsibility

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

Legal Services Provided

Division attorneys provide advice on a host of legal issues, many of which are unique to an academic environment. Attorneys frequently provide advice on issues relating to: faculty research and ownership and use of intellectual property; the University's statewide Cooperative Extension program (including 4-H programs); athletics and NCAA compliance; various student rights and programs; faculty tenure and promotion; University Development; environmental health and safety; public contracting; constitutional rights; and veterinary services. Division attorneys also provide representation on non-tort related litigation in a variety of forums. This year attorneys appeared in superior court on matters relating to public records requests, and participated in a number of administrative hearings (primarily student conduct hearings).

Numbers/Trends

Division workload continues to grow as the University continues to grow and expand its branch campus programs. The number of students enrolled at each location is: Pullman ñ (including the Intercollegiate Center for Nursing Education in Spokane, the Extended Degree Program, and The Seattle Center for Hotel and Restaurant Administration) 17,912; Spokane ñ 401; Tri-Cities ñ 1,171; and Vancouver - 1,514. Approximately 21,000 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) - 1,205; exempt personnel - 766; and classified staff - 2,307.

Significant Cases and Their Impact

WSU Vancouver: The construction of a branch campus facility in Vancouver resulted in a contractor's claim of approximately \$6.5 million. With the assistance of special coun-

sel, the University settled this claim for \$1.7 million.

Major Issues/Events

University Expansion: The establishment and expansion of branch campuses has generated additional legal service requirements.

As a result of legislative action, the Joint Center for Higher Education (JCHE) in Spokane was abolished. Washington State University assumed the former JCHE's duties as owner and manager of the Riverpoint campus, which has resulted in an increased workload in the division.

Union-Management Relationships: The University's Staff Senate was abolished in settlement of a grievance and an unfair labor practice claim filed by the Washington Federation of State Employees.

Permanent Trust Lands: Washington State University continues to pursue resolution of its claims concerning the management of its permanent trust lands. Its claims concern the assessment of a fee against the trust revenue, both prospectively and retroactively. A special AAG has been retained to handle these claims.

Student Disciplinary Hearings: Division attorneys provided advice and representation to Washington State University personnel on more than 40 student disciplinary issues during the past year, largely as a result of the May 2-3, 1998, riot. Advice was provided to University administrators, administrative hearing officers, conduct boards, and the student conduct appeals board.

Initiative 200: This initiative prohibits state agencies from discriminating against or granting preferential treatment to individuals on a number of defined bases, including race, ethnicity, and gender. This initiative generated a host of questions concerning University programs.

Representing the Public

Criminal Justice Division

"In 1998 the HITS Unit received a grant to continue the Child Abduction Murder Study to further examine the characteristics of the killers of abducted children. The results of the first phase of the original research have been disseminated nationally."

Summary of Responsibility

In February of 1997 many of the office's criminal justice functions were consolidated into the Criminal Justice Division (CJD). The division's main function is to ensure the Attorney General's Office is responsive to and supportive of its partners in the criminal justice community. CJD staff are located in Olympia, Tacoma, Seattle, and Spokane.

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 investigate and prosecute Medicaid fraud and patient abuse cases, environmental and economic crime cases. Staff in the division also handle all federal habeas corpus matters, including capital cases. Upon request, the division assists prosecuting attorneys and the governor in investigating and prosecuting criminal cases throughout the state. The CJD also provides

investigative expertise and assistance state-wide 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 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. These units also represent the Indeterminate Sentence Review Board in challenges to discretionary decisions relating to release of offenders and their jurisdiction.

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.

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.

Homicide Investigation Tracking System Unit (HITS): HITS is a program within the 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 6,000 murder investigations and more than 7,100 sexual assaults has been collected through HITS, and has been used to assist local law enforcement in the investigation of these crimes. Typically HITS will respond to almost 800 requests for assistance or information each year.

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 (CLU): 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 where the local prosecuting attorney has a conflict of interest. The unit also prosecutes major violators of the state environmental protection statutes. These investigations are conducted by the U.S. En-

vironmental Protection Agency or the State Department of Ecology, with legal assistance from the unit.

As part of the CLU, the Economic Crime Unit (ECU) 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 [CJTC]: 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 1998, 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 1998, there were more than 853 cases on the Corrections Unit docket, including more than 348 new cases opened: 136 habeas corpus cases; 40 civil rights cases; 124 personal restraint petitions; 18 parole revocation hearings; and 8 post-sentence petitions. In 1998, 274 cases of a variety of types were closed.

Additionally, the division handles the federal court review of all state death penalty cases. Fourteen individuals are currently under sentence of death and an additional 20 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 partner with others in the criminal justice community.

Medicaid Fraud Control Unit: The MFCU concluded a number of patient abuse investigations with the filing of charges and referral of cases to county prosecutors for their review. A large criminal fraud prosecution is pending settlement. During the year the unit collected approximately \$215,000 in restitution and overpayments. Year to date the unit opened approximately 275 criminal fraud and patient abuse investigations and closed 290 investigations. At any given time during the year, the unit had approximately 45 fraud and patient abuse 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, on an annual basis, 30 to 40 cases are referred to this unit for assistance, at the trial or appellate court level, or on self-defense reimbursement claims.

In addition to its investigative and prosecutorial 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.

Sexually Violent Predator Unit: Washington was the first state to enact a sexually violent predator 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 assisting Kansas in the defense of the right of the state to civilly commit sexually violent predators.

On the average, approximately 33 cases are referred to the unit yearly with one-third being filed as civil commitment petitions. Since 1990, 90 cases have been filed to prevent the release of sexually violent offenders into the community.

Of those, 82 are housed at the Special Commitment Center on McNeil Island (38 have been committed [with one deceased] after hearing, and 45 are awaiting trial), 3 have been conditionally released to the community and 4 have been released following dismissal of their cases.

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 continued to increase in 1998. HITS investigators have been actively involved in two major multi-agency task force investigations in 1998. One investigation was successfully concluded with the arrest of the killer/rapist. The second is still ongoing. In addition, HITS Investigators have been directly involved with other major investigations throughout the state.

In 1998 the HITS Unit received a grant to continue the Child Abduction Murder Study to further examine the characteristics of the killers of abducted children. The results of the first phase of the original research have been disseminated nationally. As a result of the initial research, members of the HITS Unit are nationally recognized experts in child abduction murder investigation and have consulted with investigators from several states regarding ongoing investigations. Members of HITS conducted seven training sessions in Washington state during 1998 to share the results of the initial research with local law enforcement investigators. Training has also been conducted outside the state.

The HITS Unit also received a grant in 1998 to conduct nationwide training for local law enforcement investigators to further disseminate the results of the initial child abduction murder research. That training will commence in 1999.

In 1997, the Legislature provided funding for HITS to develop a Supervision Management and Recidivist Tracking (SMART) System.

Full development of the SMART System began in 1998. 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 make it more accessible to the local jurisdiction.

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. On May 15, 1998, pursuant to a stipulated agreement, Jeffries was resentenced in Clallam County Superior Court to a term of life imprisonment without the possibility of parole.

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. This case is now on appeal to the Ninth Circuit. It has been fully briefed and oral argument was held before the three-judge panel on November 19, 1998.

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. The office appealed that decision. However, on May 27, 1998, as part of a negotiated settlement involving this office, the King County

Prosecutor's Office and Rice, he pled guilty to all four counts of aggravated first degree murder. In exchange, the state agreed to dismiss the Ninth Circuit appeal and not to seek a new death sentence. Rice was sentenced to a term of life imprisonment without the possibility of parole.

State v. Sagastegui: Jeremy Sagastegui was convicted and sentenced to death in 1996 for three counts of aggravated first degree murder. The Washington Supreme Court unanimously affirmed the conviction and death sentence in April of 1998, and Sagastegui's execution was set for October 13, 1998. He did not take any action to challenge his execution and indicated he did not want any court or any person to interfere with the scheduled execution. Nevertheless, just three weeks before the scheduled execution, Katie Vargas (Sagastegui's mother) filed a "next friend" petition and motion for stay of execution with the Washington Supreme Court. Vargas alleged that her son was mentally incompetent to waive his rights to challenge his death sentence. The Washington Supreme Court denied the motions on October 1. She then proceeded to the U.S. District Court for the Eastern District of Washington and requested permission to litigate on her son's behalf as his "next friend", but the federal court denied that request. It agreed with the Washington Supreme Court that there was no evidence that Sagastegui was incompetent and concluded that Ms. Vargas had no standing to proceed on her son's behalf. A panel of the Ninth Circuit, however, disagreed and, by a 2 to 1 vote, stayed the execution and remanded the case to the district court for further proceedings. Our office filed an application to vacate the stay with the United States Supreme Court, which granted the application and lifted the Ninth Circuit's stay of execution on the evening of October 12. Sagastegui was executed on October 13, 1998.

In re Broer: the Court of Appeals affirmed the trial court's order holding a person detained as a sexually violent predator in contempt for refusal to participate in a court-ordered psychological evaluation by DSHS psychologists. This case will assist the state in pursuing commitment of sexually violent

predators by requiring detainees to participate in evaluations, thus ensuring a full and accurate assessment of their mental condition.

State v. Hutchinson: In a case where the AGO was lead counsel at trial and on appeal, the State Supreme Court overturned a Court of Appeals decision and reinstated convictions for two counts of aggravated first degree murder in the deaths of two Island County Sheriff's deputies. For the first time, the court upheld the exclusion of expert defense witnesses in a criminal case, under the extraordinary circumstances where defense counsel refused to comply with discovery orders. The court also found that the combination of self-defense instructions given overcame the defect found by a recent State Supreme Court decision. Additionally, the court clarified the limitations on the 5th Amendment privilege where a defendant relies upon a diminished capacity or related mental defense. This decision has a major impact on frequently occurring issues in criminal cases.

Tunstall, et al. v. Bergeson, et al.: The Client Services Corrections Unit is involved in litigating a major class action lawsuit by juvenile inmates who allege that they have a constitutional right to a high school education. The superior court ruled in their favor and the case currently is on appeal.

State v. Koopmans: (Skagit County Superior Court) This defendant was convicted of 4 counts of criminally violating the Washington Water Pollution Control Act by intentionally dumping thousands of gallons of cow manure into a tributary of Padilla Bay. Edward J. Koopmans owned and operated a large dairy farm and the criminal charges resulted from his repeated pumping of his manure collection lagoons into the tributary. He was sentenced to serve two years in jail, suspended on condition that he: (1) pay a \$20,000 criminal fine; (2) serve four days in jail; (3) pay \$610 in court costs and crime victim assessments; (4) violate no laws; and, (5) be on supervised probation for two years. At sentencing, the state also collected an additional \$20,000 civil penalty which had been assessed by Ecology. This prosecution received very wide publicity as one of the first in the country and was

regarded by Ecology and U.S. EPA as an important deterrent to a significant nationwide problem.

Thomas Stewart, et al.: On March 18, 1998, prominent Seattle businessman Thomas Stewart reached a settlement of criminal and civil charges resulting from a joint U.S.-State campaign finance investigation. Stewart and his company, Services Group of America, Inc. (SGA), along with Dennis Specht, SGA's Chief Financial Officer, pled guilty in U.S. District Court to 25 counts of federal campaign violations, and were fined a total of \$5 million. That fine was the third largest such fine to have ever been assessed in the United States for a campaign contribution case. Stewart also was sentenced to serve a 60-day term of home confinement and to perform 160 hours of community service at soup kitchens and homeless shelters. That same day, Stewart and SGA also signed a settlement with the Attorney General's Office, and agreed to pay a total of \$570,000 in civil fines for civil infractions occurring in the course of the laundering of contribution money in an election in the city of Seattle in 1995. The \$570,000 fine represents the largest fine for campaign contribution violations ever assessed by the State of Washington. The criminal investigation of the campaign contributions of Stewart and SGA was initiated by the Criminal Justice Division, which then referred evidence of federal election laws to the United States Attorney's Office in Seattle.

State v. Aleksandr N. Dzekunov: On May 8, 1998, a King County Superior Court judge sentenced Aleksandr N. Dzekunov to an exceptional sentence of nine months in custody and ordered him to pay \$172,852 in restitution to the Department of Revenue. Dzekunov had been found guilty by a jury on March 17, 1998, on one count of First Degree Theft and seven counts of filing False Tax Returns with the Department of Revenue.

State v. Charles W. Beavers: On December 10, 1997, a swimming pool contractor from Edmonds, Washington, pled guilty in Snohomish County Superior Court to one count of first degree theft, in connection with sales tax Charles Beavers collected from his

customers but failed to remit to the Department of Revenue, and one count of employers misrepresentation to the Department of Labor and Industries. That same day, Beavers was sentenced to 30 days confinement on each count, which was converted to 240 hours of community service. At the time of sentencing, Beavers had already made full restitution of \$35,409 to the Department of Revenue, and \$3,296 to the Department of Labor and Industries.

State v. Timothy L. Allen: On November 24, 1998, Timothy L. Allen pled guilty to two counts of forgery and two counts of first degree theft in Snohomish County Superior Court. As part of the plea bargain, Allen agreed to pay restitution in the amount of \$520,687 to his various victims. Sentencing was set for January 1999, at which time the AGO will ask for an exceptional sentence of 39 months in custody.

General Counsel Unit

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

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 admin-

istrative law, federal preemption of state laws and regulations, investments, contracts, finance, public records and ethics in government service. Attorneys in the unit are involved in drafting and reviewing proposed legislation.

The unit also handles litigation. During election periods, there is often litigation and the need for client advice relating to ballot eligibility questions and challenges. Attorneys for the auditor and insurance commissioner handle enforcement proceedings on behalf of their agency. Attorneys for the Insurance Commissioner handle rate hearings, insolvency proceedings, public disclosure requests and health care litigation. The unit also coordinates the use of special assistant attorneys general for legal support for certain agencies, such as bond counsel for the Finance Committee, investment review and litigation for the State Investment Board, and attorneys for companies being liquidated by the Insurance commissioner.

Numbers/Trends

There has been an increase in the number of legal issues related to referendums and initiatives. The Insurance Commissioner is affected by changing federal health care legislation, is increasing health insurance rate and form reviews, and is defending challenges to the "every category of provider" law, 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 attorneys continue to work with the Auditor's Office as it seeks to refine and improve its whistleblower program. The attorneys currently review the majority of the whistleblower reports prior to their release. As the Auditor's Office continues its "risk-based" auditing approach, the office provides increasing amounts of resources to legal compliance issues. As with many agencies, the attorneys are addressing many Initiative 200 and Y2K questions.

Major Issues/Events

Auditor: Legislation regarding the state whistleblower program likely will be considered this session. The assistant attorneys general assigned to the auditor will be involved in the drafting of such legislation as well as providing other supporting legal assistance. The office also will be providing assistance as the Auditor's Office reviews its approach to auditing state government.

State Investment Board: Unit attorneys have coped with a substantial increase in the number of large private equity and real estate investments by the board requiring complex document review. They have assisted the board to integrate several new programs assigned to it by the Legislature and continue to assist it in preparing legislation to update the laws under which it operates. They also have helped the board complete its implementation of new programs and policies in response to a performance audit, and have provided legal advice almost daily on a wide variety of issues and problems.

Secretary of State: The unit continues to see a heavy volume of election-related cases and requests for advice. The assigned attorney, often in cooperation with the Solicitor General Team, has defended an increasing volume

of litigation regarding ballot measures and candidate eligibility. In the past year this has included defending a voter-approved initiative establishing term limits for some elected officials and voter approval of a stadium for football and soccer, following similar litigation in previous years regarding a baseball stadium. A major effort has also been devoted to the defense of Washington's system for conducting a "blanket primary," in which voters can choose from among candidates of all political parties. The assigned attorney has also responded to litigation regarding the process for considering the formation of new counties, and regarding the contents of the Voters Pamphlet. For the immediate future, ongoing litigation regarding the voting rights of convicted felons is anticipated to present a major demand.

State Finance Activities: The Treasurer's Office continues to receive legal assistance on a number of projects it has worked on over the past year. The state has worked intensively to help prepare a plan of finance for the professional football and soccer stadium to be constructed in Seattle. The legislation authorizing the stadium construction provides for the State Finance Committee to issue bonds to help finance the project. The Treasurer's Office also is implementing legislation that expands the state lease-purchase finance program to include participation by local governments. The Washington State Convention and Trade Center Expansion Project is expected to proceed swiftly as the last remaining legal hurdles have been cleared. The Treasurer's Office will be working with WSCTC staff and various advisers to effect the transition from the current interim financing to a permanent financing mode. Finally, the planning and implementation of the \$1.9 billion transportation bond financing that the voters authorized through Referendum 49 is expected to generate a number of legal issues.

Insurance Commissioner: The attorneys assigned to represent the Office of the Insurance Commissioner (OIC) have responded to increasing litigation demands while attempting to engage in alternative dispute resolution. They placed Unified Physicians of Washington in liquidation, with the consent of its Board

of Directors and the state medical society. They successfully defended RCW 48.43.045 (the "all categories of provider" statute) before the U.S. Court of Appeals for the Ninth Circuit in Washington Physicians Service Association v. Gregoire, et al., persuading that court to reverse the district court's holding that the statute was preempted by ERISA. (Plaintiff health carriers are expected to file a Petition

for Writ of Certiorari to the U. S. Supreme Court.) They conducted OIC's first formal administrative rate hearing in many years, and then reached a favorable settlement of that rate filing.

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

"One new area of the law that has increased workload is the Year 2000 computer problem. The Department of Information Services, Department of General Administration, and Military Department clients are spearheading the state's efforts to avoid problems and liability which could be caused by computer and embedded chip failures due to the change in centuries."

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, Information Services, and Personnel, the Environmental Hearings Office, and the Growth Planning Hearings Boards.

Legal Services Provided

The division provides a wide range of legal services for its clients, including defense of multi-million dollar class-action retirement lawsuits, prosecution of campaign law violations, Indian Gaming Compact advice and litigation, liquor law and cigarette tax enforcement, and construction litigation. The division represents agencies both at the administrative hearing level 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 other issues for its clients, including contracts, computer hardware and software, real estate acquisition and disposal, casino gaming, public disclosure, 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 1998 continued to be a busy year for Public Disclosure Commission actions. There was a large increase in Retirement Systems litigation with the filing of three major class action lawsuits affecting more than 250,000 class members. In addition, enforcement of the cigarette tax laws by the Liquor Control Board added significantly to the workload. One new area of the law that has increased workload is the Year 2000 computer problem. The Department of Information Services, Department of General Administration, and Military Department clients are spearheading the state's efforts to avoid problems and liability which could be caused by computer and embedded chip failures due to the change in centuries.

Significant Cases and Their Impact

Campaign Laws

Public Disclosure Commission v. Washington Education Assn.: In this lawsuit, the division successfully settled a lawsuit with the WEA over alleged violation of the campaign laws. The result was the largest recovery ever obtained in a case referred to this office by the Public Disclosure Commission; \$100,000 in penalties and attorney fees and \$330,000 in returned dues to WEA members.

Washington Initiatives Now! v. Warheit: Plaintiff in this lawsuit has challenged the constitutionality of the law which requires paid signature gatherers for initiatives to list their name and addresses with the Public Disclosure Commission. The federal district court ruled the statute was constitutional. The case was appealed to the Ninth Circuit, where it awaits action pending a determination by the U.S. Supreme Court in a similar case involving Colorado. Our division authored an amicus brief on behalf of Washington and 14 other states.

State Republican Party v. Public Disclosure Commission: The Public Disclosure Commission charged the State Republican Party with violation of the campaign contribution limits of Initiative 134 in connection with ads it ran

during the 1996 gubernatorial campaign. The superior court ruled in favor of the Party. The case is on appeal to the State Supreme Court.

State ex rel. Public Disclosure Commission v. 119 Vote No! Committee: In this case brought on behalf of the Public Disclosure Commission, the Supreme Court ruled that the state law that prohibits deliberate lies in paid political advertisements is a violation of the First Amendment.

Labor Issues

Spokane District Court v. Public Employment Relations Commission: In this lawsuit, filed by the district court judges in Spokane, the division successfully defended the constitutionality of the law which gives district court employees the right to collectively bargain. The State Supreme Court held the law constitutional in a decision issued in October.

Tradeworkers v. Department of Personnel: In this class-action lawsuit, 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 1997 that slot machines and certain 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 subsequently assisted the Gambling Commission in successfully negotiating gaming compact amendments with the participating tribes.

Retirement

WFSE v. Department of Retirement Systems: Two class actions with this name were filed in Thurston County Superior Court against the state in 1998. One challenges the funding and

control of the PERS 2 pension system and other is a similar challenge to the PERS 1 pension system.

Retired Public Employees v. Department of Retirement Systems: This class-action was also filed in Thurston County Superior Court in 1998. Plaintiffs in this action seek retroactive cost of living increases in their pensions. Between the three of these cases, there are more than 250,000 class plaintiffs.

Contracts

In 1998, the division embarked upon a program to centralize and coordinate all contract advice to state agencies. This was done in the form of a Contracts Work Group, chaired by the division, which is made up of attorneys from divisions throughout the AGO that advise client agencies on contract issues. In connection with this function, division attorneys also assist other divisions with contracting issues and lawsuits.

Technology

Y2K: Three division attorneys are part of a six-attorney core group in the AGO which assists state government in addressing the legal issues that arise or may arise from the state's \$80 million effort to identify, remediate and test its mission critical computer systems and embedded chips for Y2K compliance.

Major Issues/Events

Growth Management: The number of appeals to the Growth Management Hearings Boards challenging local ordinances under the Growth Management Act has leveled off, but the number of cases being decided at the appellate court level is on the increase. One case in which the office represents a Growth Hearing Board is currently on appeal to the Ninth Circuit Court of Appeals. At issue is whether the federal district court correctly dismissed a damage claim by a property owner against the board members for a decision they had rendered in a King County Growth Management decision.

Cigarette Tax Enforcement: The 1997 Legislature transferred authority to enforce cigarette taxes from the Department of Revenue to the Liquor Control Board. The board was very active in 1998 seizing untaxed cigarettes and vehicles used to transport the cigarettes. Approximately, 430,000 packs have been seized, most destined for Indian Reservation smoke shops. The largest of the seizures was a cooperative effort of the Liquor Control Board, the State of Arizona, and the federal bureau of Alcohol, Tobacco and Firearms. Our division is handling the administrative hearings and lawsuits that have resulted from these seizures.

Labor and Industries Division

"There has been nearly a 78 percent increase over the last biennium in the number of specialty compliance cases appealed to the Office of Administrative Hearings. These mostly involve contractor registration issues and are a result of an increase in the fine levied against an unregistered contractor."

Summary of Responsibility

Industrial Insurance

The division provides legal services to the Department of Labor and Industries which serves 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 Program 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 78 percent increase over the last biennium in the number of specialty compliance cases appealed to the Office of Administrative Hearings. These mostly involve contractor registration issues and are a result of an increase in the fine levied against an unregistered contractor.

The number of cases appealed to the Board of Industrial Insurance Appeals has remained steady. However, those 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, 40 percent of the new workers' benefit cases received by the division are resolved short of litigation by paralegals working under the direction of division attorneys.

Current caseloads for the division include:

More than 50 major cases currently pending in state and federal courts;

Approximately 3,000 workers' benefit cases currently in litigation or pending settlement at the administrative level.

Significant Cases and Their Impact

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 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 plaintiffs to work with the department on a task force to continue studying this issue, but the plaintiffs 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. The case was argued before the Washington State Supreme Court in November, 1998.

Major Issues/Events

Hearing Loss Cases: The Department of Labor and Industries has been processing nearly 500 claims by injured workers for hearing loss. This has resulted in a number of new appeals and unique legal issues never faced before. Primarily the appeals have dealt with the schedule of benefits to be applied and the rate of compensation. Seven lead cases have been decided by the Board of Industrial Insurance Appeals and are currently on appeal to Superior Court.

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, ergonomics and utilizing complex information systems.

Labor and Personnel Division

"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."

Summary of Responsibility

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

Legal Services Provided

The division represents state agencies in unfair labor practice complaints and grievance arbitrations before the State Personnel Resources Board and Marine Employees Com-

mission. 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. The division also handles employment and wage-related tort cases in state and federal courts. Over the past year, the division has conducted training for state agencies on employee misconduct investigations, the handling of grievance arbitrations, the Public Records Act, and the Fair Labor Standards Act. 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 447 actions. This does not include 691 pending cases contemplated by state agencies for which the division provides consultation and advice. The caseload has continued to climb over the past year as state agencies continue to hold its employees accountable for adhering to agency/state policies. In 1998, the division, in addition to its current client base, assumed responsibility for all community and technical colleges in Eastern Washington, as well as The Evergreen State College and community colleges in Kitsap, Pierce, Thurston and Lewis counties.

Personnel Appeals Board: There are approxi-

mately 298 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 21 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 19 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 continues to litigate employment-related tort cases in state superior and appellate courts, as well as federal court. There are currently 45 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 33 cases pending on judicial review. Additionally, 12 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.

Miscellaneous: In addition to the case types enumerated above, the division handles 19 other miscellaneous cases, which include un-

employment compensation, wage, contracting out and public disclosure claims.

Major Issues/Events

Contracting Out: The continuing trend toward reducing costs by the contracting out of work traditionally done by state civil service employees has resulted in continued litigation by unions. Even where legislation is enacted to authorize contracting out, unions are vigorously challenging its constitutionality and scope. The division has several pending cases, including one case currently pending in the State Supreme Court relating to contracting out services.

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 the appropriate response 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 employment records continues to rise as employees and the public attempt to gain more information on the operations of state government. The rise has been dramatic in the area of state employee personnel records. It is no longer uncommon for litigants to request personnel files on agency enforcement staff in an attempt to personally attack the competency of the individual who made the agency decision. The division has also dealt with requests from criminal defendants in child abuse cases seeking information to discredit social worker staff.

Licensing and Employment Security Division

"The division handles more than 2,438 cases each year in a variety of administrative, state, and federal forums, with about 1,222 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 2,438 cases each year in a variety of administrative, state, and federal forums, with about 1,222 cases coming to closure. The division has expertise in the areas of administrative and appellate procedure, public records and open public meeting issues, ADA and employment discrimination issues, affirmative action issues, and professional licensing and health standard of care issues.

Legal Services Provided

The division's legal services include advice and counseling on rule-making, contracts, policy writing, 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 administra-

tive 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 (470 cases).

Financial Responsibility: These are license suspension administrative hearings for uninsured drivers involved in vehicle accidents where there is personal injury or property damage (142 hearings).

Unemployment Benefit Denial Appeals: These are appeals in Washington State courts seeking review of claims in which unemployment benefits were denied (508 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 (317 cases).

Vehicle Services/Department of Licensing: These are regulatory misconduct matters brought against vehicle dealers or tax assessment matters against motor vehicle fuel distributors (186 cases).

Professional Licensing/Department of Health: These are licensing misconduct matters initiated by the Department of Health for violations of the Uniform Disciplinary Act (688 cases).

Human Rights Commission: These are discrimination complaints filed with the commis-

sion and appeals from commission decisions (14 cases).

Office of Minority and Women's Business Enterprises: These are appeals from the denial of certification and decertification (10 cases).

Miscellaneous: This category includes other legal challenges brought by or against the division's clients (103 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 and created significant changes in the procedures for handling those cases. Throughout the process of implementing these changes, the division worked closely with the department to prepare for, and respond to, the legal, policy and practical challenges posed by the new law. Early on, the division became involved in reviewing and recommending changes to the legislation, and providing training to department hearing officers. The division also participates in cooperative efforts with police agencies and prosecuting attorneys' offices to make needed changes to law enforcement 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.

Last year the division 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 laws were 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. The division was not

only able to avoid, but to *reverse* that prediction: the pending caseload has been reduced to just over 300 cases and remains there.

The Legislature again enacted drunk driving legislation last year and a new lower breath and blood alcohol level of 0.08 goes into effect January 1, 1999. There are tougher penalties associated with this new law as well. The division has been working with the Department of Licensing and law enforcement to help them implement this newest set of mandates.

Department of Health-Prosecution of Professional Licensing Cases

The division prosecutes a variety of important consumer safety cases involving professional misconduct by licensed health professionals for the Department of Health's boards and commissions. This last year, one of its notable cases involved allegations against a Port Angeles doctor accused of suffocating a baby. The Medical Quality Assurance Commission took emergency action to restrict the medical license of this doctor. The baby had been brought to the hospital in an emergency situation and attempts to resuscitate the baby had not produced results.

Clousing v. State Department of Health: A number of the division's prosecutions are appealed to the superior courts and go up to the Court of Appeals and occasionally the State Supreme Court. This year the Supreme Court upheld the board's order and denied the licensee's petition to review the revocation by the board of Osteopathic Medicine. Dr. Clousing over-prescribed and provided drug-seeking patients with legend drugs when there was no legitimate medical need. This case raised a variety of Administrative Procedure Act, open public meeting, and due process fairness issues.

Office of Minority and Women Business Enterprises

This year the office provided advice and guidance on a variety of issues related to affirmative action. OMWBE conducted and finished a disparity study designed to identify areas in business where there are disparities or un-

der-representation by women and/or minority-owned businesses. In addition, the division was instrumental in providing advice and counseling to its clients and within the AGO

on Initiative 200, which passed this last election. I-200 eliminates preferences and quotas in employment and contracting.

Social and Health Services Division

"As of October 31, 1998, there were 5,970 child welfare cases pending in the Attorney General's Office. Approximately 3,776 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 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, 70percent of the legal services support juvenile dependency and parental rights termination cases, as well as the other child welfare services programs.

Legal Services Provided

Children's Services: Client advice, for both DSHS headquarters and regional offices, is provided to the Children's Administration, which administers child welfare programs. However, the majority of legal services are in litigation-related activities including: initiating dependency cases in which a child has been abused or neglected; filing for termination of parental rights when a child has been out of the home and the parents are unable to care for the child; and taking actions relating to the licensing of foster homes, group care, daycare facilities and child placing agencies.

Economic Services: The Economic Services Administration (ESA) administers public assistance programs, which include Temporary Assistance to Needy Families, Food Stamps, General Assistance, SSI, Telephone 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 interpret-

ing 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, ongoing advice on proposed and enacted legislation, and administrative regulations on both the state and federal levels. ESA also administers the child support program. Legal services provided to the Division of Child Support (DCS) include both legal advice and litigation support. Litigation primarily involves class action lawsuits challenging administration of the program, and representation of DCS in appeals to superior court under the Administrative Procedures Act and bankruptcy court. Litigation relating to individual child support orders is generally handled by prosecutors.

Medical Assistance: The Medical Assistance Administration (MAA) is responsible for administering federal (Medicaid) and state programs that provide medical services to indigent residents. MAA's program budget for the 1997-99 biennium is \$3.8 billion. Legal services to MAA include client advice and representation before federal and state tribunals on issues concerning compliance with the federal Medicaid laws; payment rates paid to hospital and other medical providers; services provided; contract disputes with medical providers, including contractual agreements with managed care plans and providers in the Healthy Options program; and Medicaid eligibility issues.

Aging and Adult Services: The DSHS Aging and Adult Services Administration administers a wide variety of programs that provide services to the elderly and vulnerable in the state. Those programs include residential care services (nursing homes, adult family homes, boarding 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, boarding home and assisted living rates and audit). Attorneys provide legal advice on the interpretation of state and federal (Medicaid)

laws that govern its programs. They also represent the agency in litigation including, but not limited to, provider licensing actions, provider contract termination actions and Medicaid rates paid to providers.

Mental Health: The DSHS Mental Health Division operates the two state mental hospitals and the Child Study and Treatment Center, and also contracts with Regional Support Networks to provide Medicaid and state-funded community mental health services. Legal advice and representation of state hospitals includes a wide variety of legal issues ranging from patient health care issues to contracts for educational services for minor patients at the children's facility. Advice to the Mental Health Division covers such issues as Medicaid financing, licensing and contracts. Legal advice and representation is provided in all civil commitment hearings and jury trials.

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

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

Numbers/Trends

Child Welfare Litigation: As of October 31, 1998, there were 5,970 child welfare cases pending in the Attorney General's Office. Approximately 3,776 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, 1998, there were more than 858 terminations of parental rights initiated, and 456 guardianships were established.

Appellate Litigation: Appellate litigation in state and federal courts totaled 142 cases as of September 30, 1998. The majority involve child welfare issues, but a variety of other programs and legal challenges to DSHS are involved. For example, Nursing home rate appeals may have 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: This lawsuit relates to the obligations that DSHS has under various statutes to provide housing assistance to families who are homeless or at risk of being homeless. The trial court ruled that the child welfare statute requires that DSHS 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. On December 24, 1997, the Washington State Supreme Court upheld the trial court's decision that DSHS must have a comprehensive, coordinated plan for homeless children. DSHS has drafted a plan which has been reviewed by the plaintiffs and will be reviewed by the trial court after the 1999 Legislative Session.

Keffeler 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' authority when serving as a foster child's representative payee to apply the foster child's social security monies toward the cost of the child's foster care. Millions of dollars currently used by the Department's foster care program are at stake. The Okanogan Superior Court has issued an oral ruling that DSHS may not apply the Social Security benefits to the cost of foster care.

Allenmore, et al. v. DSHS: This is a class action brought by approximately 2,000 pharmacies seeking additional Medicaid reimbursement due to the state's failure to comply with the Administrative Procedures Act (APA) rulemaking notice requirements when it changed its payment rate methodology for pharmacy services on July 1, 1984. Plaintiffs are seeking damages from March, 1989 until the Legislature exempted fee schedules from the rulemaking provisions of the APA, RCW 34.05.030(4), in June 1994. Trial is scheduled for January, 2000.

McGee Guest Home v. DSHS: This case in-

volves a claim that DSHS failed to follow rulemaking procedures when establishing rates for congregate care facilities that serve mentally ill persons. Three plaintiff facilities are seeking to recover approximately \$750,000. The case is presently on appeal following a superior court's decision to grant summary judgment for plaintiffs and deny summary judgment for DSHS.

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 14 reports evaluating the progress that SCC has made toward improving its treatment program. A hearing was held in October of 1998 in which the SCC was asking that it be released from the injunction. The court issued an order on November 25, 1998, continuing the injunction and setting another review in six months.

Wilson, et al. v. DSHS: This is a class action lawsuit involving the DSHS Medicaid Third-Party Liability Program. It challenges the state's authority to recover Medicaid reimbursement from Medicaid recipients who obtain tort judgments in actions brought against third parties who are liable for the injuries which gave rise to the Medicaid expenditures.

Ruffin v. DSHS: This is a class action lawsuit filed in federal court seeking a permanent injunction against DSHS from implementing RCW 74.08.025(2), which limits a public assistance grant for an interstate immigrant residing in Washington for less than 12 months to the amount paid by their former state of residence. After issuing a preliminary injunction earlier this year, the federal court has issued a permanent injunction. The U.S. Supreme Court has accepted review of the Ninth Circuit decision overturning the comparable California statute.

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. The state enacted its WorkFirst welfare reform legislation in 1997. The office continues to advise DSHS on implementing regulations.

Mentally Ill Offender Legislation: In 1998, the Legislature enacted significant changes to the state's Involuntary Treatment Act which are intended to make it easier to civilly commit persons with histories of violent behavior. Division attorneys have been advising DSHS with regard to implementation of these changes.

Western State Hospital HCFA Survey: The federal government's Health Care Financing Administration (HCFA) surveyed the hospital for compliance with Medicare conditions for participation. HCFA found deficiencies, which if not remedied by December 31, 1998, will cause the hospital to lose its Medicare Provider Agreement, resulting in a loss of substantial federal dollars.

JRA Community Protection Issues: Recent criminal acts committed by juvenile offenders under JRA supervision have raised issues regarding security classification and placement of offenders, the need for intensive monitoring and supervision of youth most likely to reoffend, contracting out for community care and supervision, and disclosure of information between state and local juvenile justice agencies. Based on legislative directives, JRA has implemented a program of intensive parole for youth most likely to reoffend. Budget cuts have eliminated parole supervision for other juvenile offenders released from JRA facilities, youth who previously would have been on parole status.

Long-Term Care: The Legislature transferred the Boarding Home Program (until December 31, 1999) from the Department of Licensing to DSHS in April 1998. The Aging and Adult Services Administration is therefore responsible for surveying over 400 boarding homes in the state for compliance with state licensing rules and regulations. In the 1998 Session, the Legislature enacted a new nursing facility payment system (RCW 74.46). DSHS has also experienced an increase in its Adult Protective Services (APS) caseload. APS

has authority under RCW 74.34 to provide protections to vulnerable adults who are the victims of abuse, neglect or financial exploitation. Accordingly, the number of cases referred to the Attorney General's Office has increased in the past few years, requiring the filing of more protective orders, guardianship petitions, and referrals of potential criminal violations to the Medicaid Fraud Control Unit of the Attorney General's Office and local prosecuting attorneys.

Department of Justice (DOJ) Investigation of State Residential Habilitation Centers: In May of 1998, DOJ initiated two new investigations of state DDD institutions in addition to its eight-year investigation of Fircrest School. The investigations, under the federal Civil Rights of Institutionalized Persons Act (CRIPA), allege program deficiencies which violate residents' civil rights under the constitution and the ADA. DOJ finally closed its prolonged investigation of Fircrest but is now

requesting entry under CRIPA into Frances Haddon Morgan Center and Rainier School. An agreement was negotiated with DOJ regarding an investigative process to be followed which will avoid the lengthy and time-consuming investigation experienced at Fircrest.

Implementing Legislation Required by the Federal Adoption and Safe Families Act and the Child Abuse Prevention and Treatment Act: The state legislation implementing the requirements of the above two federal laws was passed during the 1998 legislative session. It requires that DSHS offer to alleged perpetrators of child abuse or neglect an opportunity for an administrative hearing. Furthermore, DSHS is also required to amend several state plans to incorporate the primary planning mandates of federal law. Division attorneys are working closely with DSHS on the implementation of these new requirements.

Transportation and Public Construction Division

"With the passage of Referendum 49 and the federal Transportation Efficiency Act for the 21st Century (TEA21), it appears that the Department of Transportation will be embarking on a series of improvements to the highway system that are likely to impact the division's workload."

Summary of Responsibility

The Transportation and Public Construction Division represents the state's transportation agencies, most notably the Department of Transportation and its oversight body, the Transportation Commission. Other division client agencies include the Board of Pilotage Commissioners, the County Road Administration Board, the Transportation Improvement Board and the Washington Traffic Safety Commission. Because of their clients' activities, TPC attorneys are well versed in such issues as eminent domain, construction litigation and land use and environmental law, expertise which they also make available to other state agencies.

Legal Services Provided

TPC's workload is a mix of moderate to complex litigation and client advice on a wide range of issues. In addition to a steady condemnation caseload, TPC attorneys handle construction claims and environmental litigation, both regulatory compliance and defense of hazardous waste claims. Client advice topics range from land use planning and land management issues to advertising sign regulations to resolving jurisdictional disagreements between federal, state, local and tribal entities. In recent years, TPC attorneys have worked with agency staff, primarily at WSDOT, to create mechanisms to avoid disputes, and provide non-judicial means of resolving them when they do arise.

Numbers/Trends

The division's work load is largely influenced by the DOT budget. As DOT revenues declined in recent years, there was a corresponding decline in the number of new eminent domain cases being referred to the division. On the other hand, since the demand for a range of transportation services has not declined, the Department of Transportation has pursued a variety of approaches to managing the state's transportation system., sometimes raising new and complex legal issues.

With the passage of Referendum 49 and the federal Transportation Efficiency Act for the 21st Century (TEA21), it appears that the Department will be embarking on a series of improvements to the highway and ferry system that are likely once again to impact the division's workload.

Significant Cases and Their Impact

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

Ferry construction claims: One claim for \$50 million arises from the construction of three new super jumbo ferries, and two smaller claims (one for \$5 million and one for \$2.5 million) arising from contracts for rehabilitation of existing vessels. The division also pursuing a \$3 million claim against the designer of a ferry passenger loading ramp.

Hazardous Waste claims: Eagle Harbor (super fund site claim of \$30 million against DOT and DNR settled for \$2.5 million); Commencement Bay (DOT named as potentially responsible party, cost of cleanup and states liability, if any, not established).

Condemnations for Convention & Trade Center expansion: One jury verdict for \$4.2 million (\$300,000 less than demanded by property owners); major multi-parcel case to be tried in February, range is \$18-30 million; several other cases settled.

WSDOT condemnations: In 1998, resolved 37 cases with total payout of \$ 4.6 million

Talgo trains: Contract for acquisition of two trainsets for lease to and operation by AMTRAK in northwest corridor, and for three way maintenance agreement (cost of trains was \$20 million; maintenance agreement costs still being negotiated).

Second Narrows Bridge: Negotiating contract with private company for construction and operation of second narrows bridge; estimated cost of project is \$350 million

King Street Station: WSDOT is participating in multi-party, multi-million dollar project that involves renovation of King St. Station, reconfiguration of north half of north Kingdome parking lot, and creation of staging area for new exhibition hall.

Telecommunications on Right of Way: WSDOT evaluating responses to RFP for private developer to install and operate telecommunications systems on limited access right of way; cost of project not yet determined but involves complex financing and regulatory issues.

Major Issues/Events

Public/Private Initiatives: There is an increasing interest among the private sector to partner with DOT in developing transportation improvements tied to a particular activity. Examples include the privately funded and publicly constructed South Dupont interchange on I-5, a similar proposal to expand the Sunset interchange on I-90 east of Issaquah, and multi-agency projects such as the new Safeco Field and Seahawks stadium projects in downtown Seattle.

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

Telecommunications: There is an increasing interest in using DOT right of way, especially the limited access right of way, for telecommunications purposes. Such proposals presents complex regulatory, legal and technical issues.

Year 2000 Issues: In addition to operating a significant mainframe computing system providing accounting and management information systems, DOT owns and operates a wide range of equipment that depend to one degree or another on computer chips for their operations. The division has supported the Department's Y2K effort by providing advice to the internal work group addressing the issue and by participating in the AGO working group as well.

Utilities and Transportation Division

"The division is currently handling 33 contested cases in state and federal courts (up from 22 just two years ago), six 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 complex rate and pricing proceedings to small cases impacting only a few consumers."

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 (FCC). 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 33 contested cases in state and federal courts (up from 22 just two years ago), six 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 complex rate and pricing proceedings to small cases impacting only a few consumers. The number of formal filings with the commission has increased in recent years. In 1997, there were 1,852 filings, compared to 1,656 filings in 1996. The vast majority of filings are resolved without formal adjudications. They are either non-controversial or resolved through negotiation or other alternative 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.) The federal act has resulted in a substantial federal court caseload, primarily challenges to

UTC decisions arbitrating agreements between incumbent local exchange telecommunications companies and potential competitors who may, under the federal act and state law, interconnect with them. There are seven such cases pending in the Ninth Circuit Court of Appeals and two more pending in the United States District Court. (See below.) The commission (and thus the division) has also been more active in proceedings before the FCC, advocating pro-competitive positions.

Significant Cases and Their Impact Telecommunications Cases

Implementing the Interconnection Requirements of the Federal Telecommunications Act: The division currently is defending nine decisions of the commission implementing the requirements of the federal act that incumbent local exchange companies interconnect with their potential competitors. The commission arbitrated nine such agreements, all of which were challenged in federal court. Seven of those cases now are pending before the Ninth Circuit. Decisions in these cases likely will be the first appellate court decisions in the country on the role of state commissions in such arbitration proceedings. 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.

Implementing Access Charge Reform: The commission adopted a significant rule changing the way local exchange companies may charge other companies (e.g., long distance companies) access to their networks for originating or terminating calls. The rule is designed to implement the procompetitive policies of state law as well as those of the federal act. Most local exchange telecommunications companies in the state have challenged the rule in Thurston County Superior Court on the grounds that such access charge reform requires changes in rates and must, therefore, be done by adjudication.

Major Issues/Events

Implementing "Universal Service" in Telecommunications: As competition increases in local telecommunications service, cost differences in service of urban and rural areas may lead to differential rates. In order to insure comparable rates among all consumers, the commission, pursuant to legislative direction, recently prepared proposed rules to implement a universal service program. The program would establish a fund to support telecommunications companies serving high cost areas.

Opening Up the Household Goods Market to Further Competition: The commission recently adopted a rule making it easier for new competitors in the intrastate household goods movers market. Historically, the commission had strict controls on entry into the market as well as rates, routes, and services of those with permitted authority. The new rules will relax the requirements to enter the market and provide for more flexible pricing to allow 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. 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

"ISD has been reviewing and updating all existing computer systems to ensure uninterrupted service at the change of the millennium. This project required the review and/or testing of hundreds of existing pieces of hardware, and thousands of different software packages and programs."

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 and training administration, 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 37,000 employee travel and vendor payment vouchers, which include court costs.

The Payroll Office processes a semi-monthly payroll for about 1,200 employees (including work-study students and law clerks) totaling \$1.8 million, or an annual total of about \$42 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 \$6.4 million.

Although there was growth in personnel and programs, office space has remained fairly constant. Reduction in law library space through the use of new technology, along with the use of modern work station equipment and space planning, enabled us to handle most growth and improve standards with a minimum increase in overall office space throughout the state.

In 1998 the office provided improvements to more than 65 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 \$107,000.

Information Services

The AGO network has 63 file servers with the storage capacity to hold over 808 billion characters (808 gigabytes) of data.

ISD maintains 1,842 mailboxes containing over 2.1 million stored messages.

ISD processed over 14,000 help desk calls during 1998.

During 1998, ISD processed over 700 special project requests.

Law Library

The Law Library system consists of 20 branch

library locations and 42 divisional libraries totaling 72,906 volumes, valued at \$3.6 million.

Human Resources

The Human Resources Office received and processed approximately 1,600 applications for employment in 1998. Of those, 355 applications were received for professional staff and Washington Management Service positions, 450 applications were received and processed for attorney positions, and approximately 300 applications were received from third-year law students. Approximately 450 applications were received for law clerk positions. Approximately 50 appointments were made to attorney positions and more than 95 law clerk placements were made.

Training staff in the Human Resources Office coordinated 330 training sessions in 1998 (an increase of 72 sessions over last year), training approximately 6,000 participants. The average cost per attorney for training dropped from \$30.22 last year to \$24.30 in 1998, most likely due to less no shows and greater utilization of in-house trainers. 277 training surveys were distributed and returned, providing the foundation for the 1999 training plan for professional staff.

The Human Resources Office manages a highly successful peer-driven employee awards and recognition program which recognizes tenure and outstanding achievement. In 1998, more than 100 nominations were received. A significant change in tenure recognition has been implemented this year by recognizing total state service rather than service only in the AGO.

Public Affairs

The Public Affairs office gave AGO homepage major facelift to make it more eye appealing, easier to use, and less confusing. In addition, Public Affairs:

- Designed special homepage for tobacco trial giving public and media immediate access to key documents, important information on key witnesses, and daily reports on progress of trial proceedings.

- Prepared and distributed more than 50 news releases.
- Responded to an average of 15 media calls each day.
- Researched and wrote an average of four major AG speeches each month.
- Answered up to 100 constituent inquiries per month.

Major Issues/Events

Budget Development: The Budget Office completed and submitted the AGO's 1999-01 biennial budget. Completion of this project required working closely with office staff and the Office of Financial Management, as well as other stakeholders. Total request was \$162.9 million.

Time Keeping System: A new timekeeping system has been developed and is in the testing phase. This new system will be more efficient and flexible than the existing system. In addition, a new billing system is being considered by the Executive Team for use in the 1999-01 biennium.

Facility Plan: The office initiated a Facilities Strategic Plan (1997) which will help the office maximize space utilization and limit the amount of new space which will have to be leased through year 2005.

Y2K Preparedness Project: ISD has been reviewing and updating all existing computer systems to ensure uninterrupted service at the change of the millennium. This project required the review and/or testing of hundreds of existing pieces of hardware, and thousands of different software packages and programs. The AGO has a "green light" for both its computer systems and its embedded processor base for the year 2000.

Tobacco Litigation Support: The state's lawsuit against tobacco companies continued to produce unique administrative support demands. The office established a special, computerized court room display system to call out evidentiary documents. It also continued to maintain and enhance a huge document repository of 80 to 90 gigabytes of tobacco-related documents.

Server Consolidation Project: In order to re-

tire our aging Prime computing environment and prepare for new, more powerful computer applications, the AGO installed seven powerful servers replacing 13 of its existing servers. This consolidation reflects a shift towards fewer, more powerful computing boxes for large scale relational databases, e-mail, and Internet/Intranet activities. The remaining 56 server boxes have been upgraded to NT 4.0 and have had additional storage and memory capacity added to them. This has resulted in a five-fold increase in server storage capacity.

Case Management: Also related to getting off the Prime environment is the development and implementation of a new Legal Case Management System that will handle the Docketing, Client Advice, Workload, and Reporting needs of the AGO. ISD has completed a feasibility study for implementing a vendor supplied Case Management System. It has also produced and let to bid a request for proposal. ISD plans to select a solution and be well into agency-wide implementation in 1999.

Consulting and Software Education Unit Re-Established: Last year's conversion from WordPerfect to the Microsoft Office Suite left a lot of AGO employees struggling to understand the new technology. In order to support those employees and continue the aggressive deployment of new technologies, the AGO reestablished a technical training and consulting unit within ISD. This unit has developed and taught AGO-customized courses in Microsoft Word, helped employees with document conversion efforts, and is preparing the office for the next Microsoft Office Suite upgrade.

Desktop Access to Online Research: The office's library system is moving forward with desktop access to online research services, including the Internet and Westlaw, with a dedicated T-1 line and CD Law on the Internet. Eleven locations have access to LegLink. All legislative materials are electronically accessed eliminating the need for daily filing of paper copies. The Main Law Library has many reference and research support databases including Westlaw, Lexis-Nexis, LegLink, CD Law, Internet, Courtlink, Premise

and LaserCat.

Library Tactical Plan: The *Library Tactical Plan for Downsizing* has been written and is being implemented. Eight office locations have undergone downsizing of paper library materials making way for new, efficient uses for the square footage and increasing the reliance on electronic research services.

Diversity Grant: The AGO received a \$2,200 grant to supplement diversity related training with several nationally acclaimed video presentations.

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

Personnel Data systems: Human Resources staff worked closely with ISD in migrating the AGO Personnel Data Program and Applicant Tracking Program from Prime to a Windows environment and is in the process of revising attorney performance evaluation tracking and monitoring. The Human Resources Office was also selected by the Department of Personnel to be one of five state agencies to pilot its Data Warehouse with the goal of being able to run numerous personnel histories and reports internally.

Investigator Study: The Internal Investigator Review Committee developed class specifications and assigned pay ranges to office-wide investigator classes. This proposal was adopted by the AGO and is being processed through the Department of Personnel. It is anticipated that the Personnel Resources Board will act on the package this year.

Supported Employment: The Human Resources Office facilitated implementation of SSHB 5768 pertaining to supported employment for persons with developmental disabilities. Staff conducted informational sessions throughout the office and have made two placements. The AGO was the second agency in the state to create supported employment opportunities.

Public Affairs: In 1998, Public Affairs prepared, managed and implemented complex communications strategies for the state's lawsuit against the tobacco industry; negotiations and announcement of national tobacco settle-

ment; the state's notice of intent to sue the Department of Energy over failure to meet major milestones for cleaning up the Hanford Nuclear Reservation; and, the state's first execution by lethal injection.

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