



The Commonwealth of Massachusetts

**Report of the
Attorney General
for Fiscal Year 1999
(Ending June 30, 1999)**



OF THIS DOCUMENT APPROVED BY PHILMORE ANDERSON III, STATE PURCHASING AGENT.





TOM REILLY
ATTORNEY GENERAL

The Commonwealth of Massachusetts

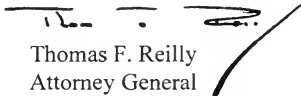
Office of the Attorney General

One Ashburton Place

Boston, MA 02108-1698

In accordance with the provisions of Section 11 of Chapter 12 of the Massachusetts General Laws, I hereby submit the Annual Report for the Office of the Attorney General. This Annual Report covers the period from July 1, 1998 to June 30, 1999.

Respectfully submitted,


Thomas F. Reilly
Attorney General

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FISCAL YEAR 1999 (07/01/98 - 06/30/99)

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL, TOM REILLY (14)

FIRST ASSISTANT ATTORNEY GENERAL, DEAN RICHLIN (14)

ASSISTANT ATTORNEYS GENERAL:

Ann Ackil	John Bigelow (91)	Lael Chester
Richard Allen (68)	Crispin Birnbaum	John Christin, Jr.
Dorothy Anderson	William Bloomer (17)	John Ciardi
David Andrews	Kristi Bodin (68)	Peter Clark
Barbara Anthony (88)	Edward Bohlen	Jeffrey Clements
Luz Arevalo	John Bowen	Edward Colbert (81)
Frederick Augenstein	John Bowman	Richard Cole
Lori Balboni (84)	David Breen	Joanna Connolly
Deborah Banda (74)	Kevin Brekka	Rosemary Connolly (23)
Thomas Barnico	Matthew Brock	Patricia Correa
Christopher Barry-Smith	George Brooks	Arlie Costine-Scott
Jason Barshak	Matthew Buehler	Pierce Cray
Mary Elizabeth Basile (7)	Margaret Bulger (59)	John Crimmins
Judith Beals (93)	Brian Burke	Maurice Cunningham (57)
R. David Beck (21)	Barrando Butler (52)	William Daggett
Annette Benedetto	Eric Carriker	Norman D'Amours (12)
Matthew Berge	James Caruso, Jr.	Pamela Dashiell
Anne Berlin	Pamela Castrucci (58)	Leslie Davies
Edward Berlin (69)	Eileen Cenci (91)	George Dean
William Berman (52)	Ranjana Chand (11)	Edward DeAngelo

APPOINTMENTS

Linda Del Castilho	Suzanne Glick Gilfix	Marcia Jackson
Gerald D'Avolio, Jr.	Gregory Gilman (83)	Patrick Johnston
Stephen Dick	Salvatore Giorlandino	Diane Juliar (72)
Michael Dingle	I. Andrew Goldberg	Michelle Kaczynski
Kristen Dionisi (24)	Richard Gordon	Judy Zeprun Kalman
Elisabeth Ditomassi (51)	Eliot Green (20)	Glenn Kaplan
William Duensing (52)	Leslie Greer (52)	Jamie Katz
William Dunnirvine (56)	Mary Griffin (65)	Sean Kealy (77)
Henry Eaton	John Grossman	Carolyn Keshian (80)
Deborah Ecker (80)	John Grugan	Rosa Kim (52)
David Edmonds (60)	Irene Guild	Mark Kmetz
Anne Edwards (15)	Daniel Hammond	Michael Kogut
Stanley Eichner (66)	Heidi Handler (50)	Pamela Kogut
F. Henry Ellis, III	Nancy (Betsy) Harper	Helen Koroniades
Barbara Fain	Sarah Hartry	Joshua Krell
Jennifer Ferreira (55)	Katherine Hatch	Stu Tip Lam
Daniel Field (3)	Christian Hatfield (63)	Andrew Latimer
Freda Fishman	Ladonna Hatton	Andrew Lawlor
Francis Flaherty, Jr.	Richard Hecht	Kelli Lawrence (25)
Elizabeth Ann Foley (5)	Michael Hering	Ellyn Lazar (53)
Mary Freeley	Lee Hettinger (77)	Angela Lee
Cynthia Gagne	R. Scott Hill-Whilton	William Lee (81)
Rosemary Gale (89)	John Hitt	Peter Leight
Rosalyn Garbose (82)	Audrey Huang (94)	Gerard Leone, Jr. (14)
Rafael Garcia	Pamela Hunt	Martin Levin
Dana Gershengorn (26)	Marsha Hunter	Susan Levsen-Reardon
Bonny Gilbert (5)	Carol Iancu	Leonard Lopes

Kara Lucciola	James Milkey	Susan Paulson (4)
Jacinta Ma (6)	Laura Miller (22)	Anthony Penski
Glenn MacKinlay	Daniel Mitchell	Rebecca Perez
Anita Maietta	Jonathan Mitchell (1)	Judith Phillips
M. Toni Maloney	Margaret Monsell (71)	Mary Phillips
Julie Marcus	Alice Moore (14)	Barbara Piselli
David Marks	T. Gregory Motta	William Porter
Laura Maslow-Armand	Mark Muldoon	Anne Powers (86)
Gregory Massing (70)	Mark Mulligan	Candies Pruitt
William Matlack	Mary Murphy-Hensley (92)	Christopher Quaye
William McAvoy	Verna Myers (78)	Jason Queenin (13)
Catherine McClure (8)		Robert Quinan
Thomas McCormick (54)	Kevin Nasca (62)	Elizabeth Reinhardt
Timothy McDonough	Cathryn Neaves	Juliana Rice
Philip McGovern	Mytrang Nguyen (87)	Shelley Richmond-Joseph
Karen McGuire (64)	James O'Brien (25)	Robert Ritchie
Frances McIntyre (73)	Jean O'Brien	Lena Robinson (10)
Rebecca McIntyre (73)	Michelle O'Brien	Beverly Roby
Beth McLaughlin	Thomas O'Brien	Anthony Rodriguez
Marianne Meacham	Erin Olson	Joseph Rogers
William Meade	James Paikos (9)	Deirdre Rosenberg
Elisabeth Medvedow	Donna Palermino	Stua.Ernest Sarason
Pamela Meister	Kathryn Palmer	Kurt Schwartz (14)
Ramon Melendez (84)	Emily Paradise (25)	Pasqua Scibelli
Beth Merachnik (18)	William Pardee	Sharon Scott (76)
Howard Meshnick	Margaret Parks	Jeffrey Shapiro (12)
Nicholas Messuri	Lori Parris	Amy Sharff

APPOINTMENTS

Matthew Shea (19)	Margaret Van Deusen (85)
Timothy Shea (23)	Gina Walcott
Neil Sherring	Lucy Wall (75)
Robert Sikellis (61)	George Weber (73)
Jeremy Silverfine	Peter Wechsler
Adam Simms	William Weinreb (25)
Ginny Sinkel	Karen Wells (14)
Mark Smith	Joseph Whalen, III (86)
Johanna Soris	James Whitcomb
Amy Spector	Douglas Wilkins (79)
Richard Spicer (67)	H. Gregory Williams
Susan Spurlock	Odette Williamson (94)
Carol Starkey	Jane Willoughby
Deborah Steenland	Howard Wise
Kenneth Steinfield	John Woodruff
James Stetson	Chi Chi Wu
Catherine Sullivan (16)	Charles Wyzanski
Mark Sutliff	Judith Yogman
James Sweeney	Karla Zarbo
Diane Szafarowicz	Catherine Ziehl
Pamela Talbot	Michael Zullas (90)
Rosemary Tarentino	
Neil Tassel	
Steven Thomas	
Hung Tran (2)	
Bruce Trager	
Thomas Ulfelder	

<u>APPOINTMENT DATE</u>		<u>TERMINATION DATE</u>	
1. 07/27/1998	50. 07/03/1998	76. 02/09/1999	
2. 09/01/1998	51. 07/24/1998	77. 02/12/1999	
3. 09/09/1998	52. 07/31/1998	78. 02/17/1999	
4. 09/14/1998	53. 08/14/1998	79. 02/22/1999	
5. 10/05/1998	54. 08/31/1998	80. 02/26/1999	
6. 10/21/1998	55. 09/02/1998	81. 03/05/1999	
7. 10/26/1998	56. 09/11/1998	82. 03/18/1999	
8. 11/04/1998	57. 09/18/1998	83. 03/19/1999	
9. 11/09/1998	58. 10/16/1998	84. 03/26/1999	
10. 11/23/1998	59. 10/19/1998	85. 04/07/99	
11. 11/30/1998	60. 10/30/1998	86. 04/30/1999	
12. 12/01/1998	61. 11/06/1998	87. 05/21/1999	
13. 01/07/1999	62. 11/13/1998	88. 05/31/1999	
14. 01/20/1999	63. 11/23/1998	89. 06/10/1999	
15. 01/23/1999	64. 11/30/1998	90. 06/11/1999	
16. 03/22/1999	65. 12/15/1998	91. 06/18/1999	
17. 04/02/1999	66. 12/18/1998	92. 06/24/1999	
18. 04/13/1999	67. 01/12/1999	93. 06/27/1999	
19. 04/14/1999	68. 01/15/1999	94. 06/30/1999	
20. 04/15/1999	69. 01/18/1999		
21. 04/29/1999	70. 01/19/1999		
22. 05/03/1999	71. 01/22/1999		
23. 05/17/1999	72. 01/29/1999		
24. 06/01/1999	73. 01/31/1999		
25. 06/14/1999	74. 02/05/1999		
26. 06/21/1999	75. 02/06/1999		

STATEMENT OF THE FINANCIAL POSITION

FISCAL YEAR 1999

Fiscal Year	Appropriation	Account Name	Obligation	Expenditures	Balance	Fund
1999	08100000	DEPARTMENT OF THE ATTORNEY GENERAL	\$17,830,528.00	\$17,795,759.75	\$34,768.25	010
1999	08100014	EXPENSES OF PUBLIC UTILITY PROCEEDINGS	\$1,591,371.00	\$1,531,932.72	\$59,438.28	010
1999	08100017	JUDICIAL PROCEEDINGS RELEVANT TO THE	\$75,000.00	\$75,000.00	\$0.00	010
1999	08100021	FOR ADMINISTERING THE MEDICAID FRAUD	\$1,464,801.00	\$1,424,546.59	\$40,254.41	010
1999	08100045	FOR THE WAGE ENFORCEMENT PROGRAM	\$2,990,823.00	\$2,970,274.79	\$20,548.21	010
1999	08100201	EXPENSES INCURRED IN ADMINISTRATIVE OR	\$1,382,454.00	\$1,289,183.80	\$93,270.20	010
1999	08100202	RESPIRATORY SYNCYTIAL VIRUS GLOBULIN	\$10,000.00	\$10,000.00	\$0.00	010
1999	08100310	HILLARD LITIGATION TRAVEL REIMBURSEMENT	\$40,000.00	\$37,254.85	\$2,745.15	010
1999	08100338	AUTOMOBILE INSURANCE FRAUD INVESTIGATION	\$270,871.00	\$269,438.18	\$1,432.82	010
1999	08100399	WORKERS' COMPENSATION INSURANCE FRAUD	\$463,159.00	\$415,235.79	\$47,923.21	010
1999	08100411	COVENANT NOT TO SUE	\$2,000,000.00	\$17,591.30	\$1,982,408.70	010
1999	08300100	COMMISSION ON UNIFORM STATE LAWS,	\$34,400.00	\$33,274.42	\$1,125.58	010
TOTAL:			\$28,153,407.00	\$25,869,492.19	\$2,283,914.81	

TRUST RECEIPTS AND DISBURSEMENTS

FISCAL YEAR 1999

Fiscal_Year	Appropriation	Account Name	Obligation	Expenditures	Balance	Fund
1999	08100033	LOCAL CONSUMER AID FUND, REIMBURSEMENT	\$906,839.36	\$610,922.68	\$295,916.68	300
1999	08100034	STUDENT CONFLICT RESOLUTION EXPERTS	\$905,300.00	\$668,406.04	\$236,893.96	300
1999	08100036	MERGER CENTRAL MASS HEALTH CARE, INC.	\$21.14	\$0.00	\$21.14	300
1999	08100039	BROCKTON SAFE NEIGHBORHOOD INITIATIVE	\$22.32	\$0.00	\$22.32	300
1999	08100040	GLASS TOP LOUNGE DORCHESTER SAFE NEIGH-	\$649.83	\$577.38	\$72.45	300
1999	08100041	CONFLICT INTERVENTION TEAM PROJECT ADMIN	\$24,300.00	\$21,100.00	\$3,200.00	300
1999	08100042	CONSUMER PROTECTION TRANSLATION INITIATV	\$6,500.00	\$2,506.06	\$3,993.94	300
1999	08100043	SEARS TRANSLATION INITIATIVE	\$30,000.00	\$0.00	\$30,000.00	300
1999	08100050	PRUDENTIAL INSURANCE SETTLEMENT ACCOUNT	\$383,265.59	\$117,352.74	\$265,912.85	300
1999	08100301	BLUECROSS BLUESHIELD TOBACCO LITIGATION	\$583,833.33	\$30,150.26	\$553,683.07	300
1999	08100409	W.K. KELLOGG FOUNDATION GRANT	\$288,541.74	\$231,460.21	\$57,081.53	300
1999	08100414	FORFEITED FUNDS G.L. 94C S47-ATTORNEY	\$198,516.92	\$101,443.35	\$97,073.57	300
1999	08100415	EXPENDABLE TRUST (G.L. C.4 S.4A)	\$79,191.59	\$0.00	\$79,191.59	300
1999	08100416	CONFERENCE AND TRAINING	\$150,709.06	\$82,444.26	\$68,264.80	300
1999	08100444	FORFEITED FUNDS-FEDERAL EQUITABLE	\$1,182,233.54	\$827,170.80	\$355,062.74	300
1999	08106614	ATTORNEY GENERAL TRUST FUND (680014)	\$80,732.18	\$0.00	\$80,732.18	300
1999	08106630	WATER POLLUTION CONTROL PROGRAM	\$6,759.88	\$0.00	\$6,759.88	300
1999	08106631	AIR POLLUTION CONTROL PROGRAM	\$2,339.14	\$0.00	\$2,339.14	300
1999	08106656	STUDENT CONFLICT RESOLUTION EXPERTS	\$580.85	\$0.00	\$580.85	300
1999	08106659	JOHN HANCOCK MUTUAL SETTLEMENT ACCOUNT	\$496,528.28	\$70,164.63	\$426,363.65	300
1999	08106661	COASTAL ZONE MANAGEMENT PROGRAM	\$2,693.47	\$0.00	\$2,693.47	300
1999	08107027	ST VINCENT LLC EXPERT ANALYSIS	\$74,060.82	\$27,881.52	\$46,179.30	300
TOTAL:			\$5,403,619.04	\$2,791,579.93	\$2,612,039.11	

INTERDEPARTMENTAL FUNDS AND FEDERAL GRANTS

FISCAL YEAR 1999

Fiscal_Year	Appropriation	Account Name	Obligation	Expenditures	Balance	Fund
1999	08100020	CRIMINAL TAX UNIT, C. 164, ACTS	\$165,000.00	\$148,782.10	\$16,217.90	010
1999	08100022	STOP VIOLENCE AGAINST WOMEN ACT	\$170,297.00	\$48,700.33	\$0.00	100
1999	08100096	DORCHESTER COMMUNITY HEALTH INITIATIVE	\$250,000.00	\$249,999.99	\$0.00	100
1999	08100316	EMINENT DOMAIN CASE DEFENSE - LANDSTAMP	\$18,000.00	\$0.00	\$18,000.00	114
1999	08100500	ENVIRONMENTAL STRIKE FORCE ATTORNEY	\$3,775.83	\$0.00	\$0.00	200
1999	08100800	ASSISTANT ATTORNEY GENERAL COMPENSATION	\$1,375.00	\$1,375.00	\$0.00	102
1999	08101969	AGO CATHY OVERSIGHT COORD. COMMISSION	\$222,041.07	\$156,095.49	\$0.00	210
1999	08106654	SAFE NEIGHBORHOOD INITIATIVE-COMMUNITIES	\$0.00	\$0.00	\$0.00	100
1999	08106657	GROVE HALL SAFE NEIGHBORHOOD INITIATIVE	\$20,000.00	\$19,616.82	\$0.00	100
1999	08106658	WEED AND SEED	\$161,230.00	\$146,273.42	\$0.00	100
1999	08106666	VICTIM COMPENSATION ADMINISTRATION	\$41,533.50	\$29,422.75	\$0.00	100
1999	08107843	ASBESTOS PROPERTY/LITIGATION	\$17,066.99	\$0.00	\$0.00	200
1999	08108190	MHD EXPENSES INCURRED BY AGO/NON FED-AID	\$150,000.00	\$124,264.13	\$0.00	210
1999	08108208	EMINENT DOMAIN ACQUISITIONS LITIGATION	\$450,000.00	\$304,629.90	\$0.00	290
1999	08108872	WORCESTER SH LITIGATION EXPENSES	\$45,503.70	\$38,278.70	\$0.00	200
1999	08108878	SYSTEMS MIGRATION PROJECT	\$114,062.60	\$111,646.00	\$0.00	200
1999	08108890	SUFFOLK CITY COURTHOUSE EXTERIOR PROJECT	\$66,793.47	\$24,162.70	\$0.00	271
1999	08108936	LEGAL SERVICES PARKS AND WATERSHED	\$534,675.04	\$499,856.18	\$0.00	200
1999	08108960	DEFENSE OF EMINENT DOMAIN TAKINGS	\$167,583.00	\$80,581.75	\$0.00	200
1999	08108961	ATTORNEY GENERAL LEGAL SERVICES - PARKS	\$485,216.31	\$472,408.81	\$0.00	200
1999	08108962	DEM EMINENT DOMAIN CASE EXPENSES	\$8,122.30	\$3,174.13	\$0.00	200
1999	08108978	PUBLIC CHARITIES INFORMATION MGT/IMAGING	\$3,107.00	\$0.00	\$0.00	200
1999	08109081	AGO REIMBURSEMENT FOR LEGAL SRV TO DET	\$18,421.07	\$16,728.17	\$0.00	100
1999	08109614	CATV EXPENSES INCURRED	\$700,000.00	\$662,871.00	\$0.00	290
1999	08109711	AGO AIR POLLUTION CONTROL ENFORCEMENT	\$11,000.00	\$1,901.58	\$0.00	100

BUDGET OVERVIEW

1999	08109712	HAZARDOUS WASTE CONTROL LAWS ENFORCEMENT	\$12,000.00	\$4,693.79	\$0.00	100
1999	08109965	ENVIRONMENTAL STRIKE FORCE	\$1,870.22	\$0.00	\$0.00	200
TOTAL:			\$3,838,674.10	\$3,145,462.74	\$34,217.90	

SUSPENSE FUNDS
RECEIPTS AND DISBURSEMENTS
FISCAL YEAR 1999

Fiscal Year	Appropriation	Account Name	Obligation	Expenditures	Balance	Fund
1999	08100400	CHARLES GEORGE LANDFILL	\$151,989.73	\$0.00	\$151,989.73	610
1999	08100401	TOWN OF METHUEN LANDFILL	\$99,950.82	\$0.00	\$99,950.82	610
1999	08100402	MLA/MCFT CIVIL ACTION 90-2274	\$307,047.65	\$0.00	\$307,047.65	610
1999	08100403	94-1645	\$11,326.93	\$0.00	\$11,326.93	610
1999	08100407	94-6371	\$270.96	\$0.00	\$270.96	610
1999	08100408	PROCEEDS OF ACCOUNT DOCKET #99-06SW026	\$5,518.95	\$0.00	\$5,518.95	610
1999	08100526	ATTORNEY GENERAL UNCLAIMED MINIMUM WAGE	\$1,310,659.90	\$1,080,285.28	\$230,374.62	610
1999	08106862	COMM. OF MASS. VS CENTURY AUTO APPRAIS	\$6,800.00	\$0.00	\$0.00	610
1999	08106885	COMM. OF MASS. VS ERIC BARTLETT D/B/A	\$2,000.00	\$0.00	\$0.00	610
1999	08106887	COMM. OF MASS. VS BRUCE LEDBURY D B A	\$11,286.60	\$0.00	\$0.00	610
1999	08106915	COMM. OF MASS. VS BARRY CUSHNER D/B/A	\$1,088.39	\$0.00	\$0.00	610
1999	08106917	COMM. OF MASS. VS DIAMOND CHEVROLET	\$7,396.00	\$0.00	\$0.00	610
1999	08106919	COMM. OF MASS. VS RUSTY JONES INC.	\$2,263.00	\$0.00	\$0.00	610
1999	08106925	COMM. OF MASS. VS A. J. LONG'S INC.	\$7,136.60	\$0.00	\$0.00	610
1999	08106934	COMM. OF MASS. VS VILLAGE TRUCK SALES	\$68.82	\$0.00	\$68.82	610
1999	08106941	COMM. V. MARIO CHIEREGHIO D/B/A LEE AUTO	\$3,302.00	\$0.00	\$3,302.00	610
1999	08106943	COMMONWEALTH VS WILLIAM WOLF	\$517.55	\$0.00	\$517.55	610
1999	08106944	COMMONWEALTH VS ALAN S. MILLER/	\$466.24	\$0.00	\$466.24	610
1999	08106946	COMMONWEALTH VS TIJUANA GOLDSTEIN	\$2,032.21	\$0.00	\$2,032.21	610
1999	08106950	ABRAMS ET AL VS HERTZ CORP.	\$4,584.02	\$0.00	\$4,584.02	610
1999	08106952	COMMONWEALTH VS MISSIONS OF MERCY, INC.	\$1,865.00	\$0.00	\$1,865.00	610
1999	08106953	COMMONWEALTH OF MA VS OUTDOOR WORLD, INC	\$16,474.31	\$0.00	\$16,474.31	610
1999	08106954	COMMONWEALTH VS EUROPEAN HEALTH SPA	\$1,322.78	\$0.00	\$1,322.78	610

SUSPENSE FUNDS
RECEIPTS AND DISBURSEMENTS
FISCAL YEAR 1999

1999	08106957	COMMONWEALTH VS MICHAEL COLLINS	\$1,397.49	\$0.00	\$1,397.49	610
1999	08106959	COMM OF MA V. STEPHEN J. FAVORITO	\$52.38	\$0.00	\$52.38	610
1999	08106962	COMM OF MASS VS TROTIER	\$353.75	\$0.00	\$353.75	610
1999	08106965	HOME REPAIR, INC. ET AL VS COMM OF MASS	\$0.92	\$0.00	\$0.92	610
1999	08106966	COMM OF MASS VS RAYMOND A. NOYES	\$2,500.00	\$0.00	\$2,500.00	610
1999	08106967	GETTY PETROLEUM VS. COMM OF MASS	\$75,000.00	\$0.00	\$75,000.00	610
1999	08106970	COMMONWEALTH OF MASS VS. PAMPALONE	\$349.00	\$0.00	\$349.00	610
1999	08106979	COMM OF MASS VS NATIONAL FINANCIAL CORP	\$15,000.00	\$0.00	\$15,000.00	610
1999	08106980	COMM OF MASS V. ROY PARKES D/B/A	\$2,200.00	\$0.00	\$2,200.00	610
1999	08106982	COMM VS CAREFREE BUILDING PRODUCTS, INC.	\$6,250.00	\$0.00	\$6,250.00	610
1999	08106985	COMM VS DIRECTORY PUBLISHING SERVICES	\$1.00	\$0.00	\$1.00	610
1999	08106991	COMM OF MASS VS LIFETIME NUTRITION, INC.	\$9,968.30	\$0.00	\$9,968.30	610
1999	08106994	COMM OF MASS VS NNLC D/B/A LECTRA CITY	\$4,206.86	\$0.00	\$4,206.86	610
1999	08106996	COMMONWEALTH VS GEORGE MUIR D/B/A	\$8,831.40	\$8,331.35	\$500.05	610
1999	08106997	COMMONWEALTH VS JORGE MANUEL DIAS	\$0.52	\$0.00	\$0.52	610
1999	08107000	COMM OF MASS VS PAUL E. MORRISON	\$800.00	\$0.00	\$800.00	610
1999	08107002	COMM OF MASS VS EMPLOYMENT NETWORK INC.	\$3.00	\$0.00	\$3.00	610
1999	08107005	COMM VS SUZANNE BANNISTER & DIRECT LINK	\$1,695.00	\$0.00	\$1,695.00	610
1999	08107006	COMM VS HENRY ENGEL, MARGARET ENGEL, AND	\$310.69	\$0.00	\$310.69	610
1999	08107007	COMM VS CAREN ABREU D/B/A/ HAMPDEN	\$420.00	\$0.00	\$420.00	610
1999	08107009	MERRILL LYNCH FEDERAL FORFEITURE	\$656,553.44	\$500,000.00	\$156,553.44	610
1999	08107010	COMM VS ROBERT PORE, D/B/A NATIONAL CITI-	\$575.86	\$0.00	\$575.86	610
1999	08107011	COMM VS RUSS MOVERS & ELM ST., STORAGE &	\$6,666.66	\$6,666.66	\$0.00	610
1999	08107013	COMM VS RESORT PROPERTIES	\$16,503.91	\$0.00	\$16,503.91	610

SUSPENSE FUNDS
RECEIPTS AND DISBURSEMENTS
FISCAL YEAR 1999

1999	08107014	COMM OF MA VS NICKERSON ENTERPRISES, INC	\$2,187.00	\$0.00	\$2,187.00	610
1999	08107016	COMM VS JOHN F. KENNEDY, D/B/A JFK TV	\$159.00	\$0.00	\$159.00	610
1999	08107017	COMM VS MASSDENT BUSINESS MANAGEMENT INC	\$223,501.97	\$188,554.92	\$34,947.05	610
1999	08107018	COMM OF MASS VS SEARS ROEBUCK & COMPANY	\$8,907,734.80	\$186,091.31	\$8,721,643.49	610
1999	08107019	COMM OF MASS VS SEARS ROEBUCK & COMPANY	\$7,000,000.00	\$7,000,000.00	\$0.00	610
1999	08107021	COMM OF MASS VS FRANCIS A. LEAHY, D/B/A	\$250.00	\$0.00	\$250.00	610
1999	08107022	COMM OF MASS VS NORTH SHORE ATHLETIC	\$2,075.00	\$0.00	\$2,075.00	610
1999	08107023	COMM OF MASS VS DANIEL BUCK, D/B/A CLEAR-	\$6,717.40	\$0.00	\$6,717.40	610
1999	08107024	COMM OF MASS VS PAUL E. JONDLE, ET AL	\$10,000.00	\$0.00	\$10,000.00	610
1999	08107025	COMM OF MASS VS UNITED COMPANIES LENDING	\$11,670.33	\$11,667.05	\$3.28	610
1999	08107029	COMMONWEALTH VS CAPITAL FUNDING CORP	\$4,750.00	\$0.00	\$4,750.00	610
1999	08107030	COMMONWEALTH VS KING OF BAY STREET, INC.	\$328.00	\$0.00	\$328.00	610
1999	08107032	COMMONWEALTH VS HIDE-A-WAY HEALTH CLUB	\$3,550.49	\$355.19	\$3,195.30	610
1999	08107034	COMMONWEALTH VS BOSTON ROAD MOTORS CORP,	\$8,000.00	\$3,599.89	\$4,400.11	610
1999	08107035	COMMONWEALTH VS PAUL J. PEREIRA, & D/B/A	\$2,000.00	\$0.00	\$2,000.00	610
1999	08107036	COMMONWEALTH VS RAYMOND J. CALUORI, AND	\$5,000.00	\$5,000.00	\$0.00	610
1999	08107037	COMMONWEALTH VS BETTY ANN ZEDIKER, AND	\$35,706.65	\$35,686.40	\$20.25	610
1999	08107038	COMMONWEALTH VS SECOND FEDERAL CREDIT	\$1,000.00	\$0.00	\$1,000.00	610
1999	08107039	COMMONWEALTH VS HENRY J FRATTAROLI, JR.,	\$16,000.00	\$11,565.00	\$4,435.00	610
1999	08107040	COMMONWEALTH VS PHILLIPS HALL INC. CORP.	\$1,500.00	\$0.00	\$1,500.00	610
1999	08107041	COMMONWEALTH VS UNIVERSITY STUDENT SRVCE	\$2,625.00	\$2,625.00	\$0.00	610
1999	08107042	FORFEITURE PENDENCY PROCEEDS 58-954-3	\$7,387.45	\$0.00	\$7,387.45	610
1999	08107044	COMM VS FINAL ROUND SERVICE LIMITED	\$11,452.98	\$11,130.93	\$322.05	610
1999	08107045	COMM VS TOWER CLEANING SYSTEMS	\$100,000.00	\$94,990.00	\$5,010.00	610

SUSPENSE FUNDS
RECEIPTS AND DISBURSEMENTS
FISCAL YEAR 1999

1999	08107046	PEOPLE OF THE STATE OF CALIFORNIA VS	\$3,700,000.00	\$3,699,632.11	\$367.89	610
1999	08107047	COMM VS JACQUES LAPOINT JAN-PRO CLEANING	\$27,000.00	\$27,000.00	\$0.00	610
1999	08107048	COMM VS PAUL ELLIOT GIBBONS SPECIALTY	\$10,000.00	\$0.00	\$10,000.00	610
1999	08107049	COMM VS ANDREW RUDNICK & MEDICAL WEIGHT	\$9,000.00	\$6,095.00	\$2,905.00	610
1999	08107050	NANCY RIZZO VS THE ATTORNEY GENERAL	\$42.54	\$0.00	\$42.54	600
1999	08107051	COMM VS TRAVEL OPPORTUNITIES, INC.	\$25,000.00	\$0.00	\$25,000.00	610
1999	08107052	COMM VS 1ST NETWORK INC, & RANDY DOMINGS	\$2,400.00	\$1,680.00	\$720.00	610
1999	08107053	COMM VS CARLYLE IND; SPORTS WORLD TOURS;	\$71,250.00	\$50,484.00	\$20,766.00	610
TOTAL: \$22,973,297.25			\$12,931,440.09	\$10,003,886.57		

EXECUTIVE BUREAU

EXECUTIVE BUREAU OVERVIEW
CHILDREN'S PROTECTION PROJECT
EXTERNAL AFFAIRS
INFORMATION TECHNOLOGY DIVISION
COMMUNICATIONS
HUMAN RESOURCE MANAGEMENT
OPERATIONS

EXECUTIVE BUREAU

EXECUTIVE BUREAU OVERVIEW¹

The Executive Bureau provides the overall administration, policy-setting, supervision, and training of staff for the Office of the Attorney General. The Bureau also handles a number of specialized functions, including the coordination of legislative affairs, community outreach, constituent relations, administrative and technical support, and all internal and external communications activities.

The Executive Bureau is designed to develop and maintain the agency's infrastructure, enabling all Bureaus to function productively and effectively for the benefit of the citizens of the Commonwealth. The Bureau consists of the Office of the First Assistant, Human Resource Management Office, Budget Office, Information Technology Division, Operations Division, External Affairs Office, and the Communications Office. The Regional Office Division, the Office of the Attorney General's Legal Counsel, the Bellotti Law Library, and Support Services also are housed within the Executive Bureau.

CHILDREN'S PROTECTION PROJECT

One of Attorney General Reilly's first initiatives upon taking office in January of 1999 was the creation of the Children's Protection Project. Operating within the agency's Family and Community Crimes Bureau, it was established as a cross-bureau initiative to draw upon the multi-jurisdictional expertise and talents of staff members throughout the office regarding all the issues that affect children. The Project aims to promote the health, safety and welfare of children in homes, schools and neighborhoods across the state. It focuses on all areas of child welfare, including labor, consumer protection and criminal law enforcement, as well as education, training, prevention and early intervention strategies.

EXTERNAL RELATIONS

Another integral component of the Executive Bureau is the External Relations Office, which coordinates office contacts with interest groups, constituents, and elected and appointed officials at all levels of government. Housed within External Relations are the Offices of Community Partnerships, Community Relations, Community Liaisons and Intergovernmental Relations, all of which deal with the vast constituencies that are involved with and impacted by the Attorney General's Office.

¹ January 1999 - July 1999

OFFICE OF COMMUNITY PARTNERSHIPS

Attorney General Reilly created the Office of Community Partnerships to work with Massachusetts mayors and other urban leaders to address issues that relate to our cities, particularly as they affect the health and safety of children. The office acts as a direct liaison between the Attorney General's Office and the state's cities and towns.

In FY99, the Office of Community Partnerships canvassed the state's mayors, school superintendents and other urban leaders in more than 30 cities in an effort to develop an urban agenda that was grounded in the needs and concerns of those on the front lines of the foremost issues affecting the Commonwealth's cities.

In this same vein, in March of 1999 during a statewide summit of urban leaders, the Attorney General assembled a team of mayors, urban school superintendents and District Attorneys, as well as representatives of the Executive Office of Health and Human Services and the University of Massachusetts. The goals of the Urban Alliance is to generate ongoing discussion and opportunities for collaboration around the unique challenges affecting Massachusetts' cities. The Alliance meets regularly to advise the Attorney General on issues affecting children, schools and cities.

INTERGOVERNMENTAL AFFAIRS

The Intergovernmental Affairs Office acts as the Legislative liaison to the state and federal government. This Office introduces and tracks legislation and monitors budget issues relevant to the Office of the Attorney General. In FY99, in conjunction with Intergovernmental Affairs, Attorney General Tom Reilly briefed the House of Representatives and Senate regarding the tobacco settlement, and testified before the Health Care Committee. He strongly encouraged them to use the funds for tobacco control and public health programs. A decision on the settlement is expected in FY00.

In March of 1999, the Intergovernmental and Attorney General Reilly testified before the Senate Committee on Ways and Means to secure a FY00 operating budget. Priorities included the Children's Protection Project, Central and Southeastern Massachusetts Regional Office expansions, and a High Tech Crime Unit.

An early legislative priority for the Attorney General was the passage of the April 1999 "Information Sharing" Bill which would enable a multi-jurisdictional approach in handling cases involving at risk youth.

The law would enable all those involved with youth - social services, educators, law enforcement - to establish lines of communication and coordinate early intervention programs to identify those with the greatest chance of falling into the criminal justice system. Throughout his career, Reilly has seen the value in a coordinated approach in dealing with high risk youth. As Attorney General, Reilly has pledged to bring the benefits of information sharing to the statewide level.

The Attorney General testified before the Joint Committee on the Judiciary with District Attorneys Kevin Burke and Ralph Martin and Secretary of Health and Human Services, William O'Leary, in support of the bill. The bill is currently pending before the House Committee on Ways and Means.

INFORMATION TECHNOLOGY DIVISION

COMPUTER UPGRADES

As the largest public law office in the Commonwealth, the Attorney General's Office has an obligation to provide the most up-to-date and professional services to the people of the state. In large part, that includes keeping apace with changes in technology from an internal operations perspective. To that end, the Information Technology Division has made enormous strides in equipping the agency with upgraded computer resources, enabling the agency to stay on the cutting edge of law enforcement in the information age.

Computer upgrades began in the early months of 1999. By fiscal year's end, about one-third of the agency's computers were upgraded and the internal electronic mail system migration to Lotus Notes was completed. Also, the Information Technology Division ensured that all computers and systems throughout the agency were Y2K compliant. All agency computers were also outfitted with high-speed desktop Internet access, which enabled staff to conduct research from their desktop computers. This provided both convenient and timely dissemination of current statutes and case law.

COMMUNICATIONS

The Communications Office spearheads and coordinates all press related matters for the Attorney General's Office. The chief responsibility of the Communications Office is to operate as a centralized public voice for the agency. To that end, the Communications Officers work with executive staff and bureau chiefs to ensure the Attorney General's priorities are reflected in all public materials, including press releases, advisories, public statements, interviews, and other public appearances and events.

Addressing that need to improve communication within the agency, the Communications Office

established protocols for dealing with the media in a consistent and unified manner. The inter-agency communication system between and among bureaus establishes how best to publicize cases and initiatives.

WEB SITE

Realizing the value in the broad range and scope of the Internet's audience, work began in FY99 to develop the official web site for the Attorney General's Office. The website will include bureau by bureau profiles of issues and initiatives. Plans are also in place to provide on-line access to publications, legal materials, and career opportunities within the Agency. The site is expected to launch in FY00.

HUMAN RESOURCE MANAGEMENT

The need for a full-service Human Resource Management Office [HRM] was recognized as a top internal priority in January of 1999 in order to improve service to existing staff, new hires and applicants. To that end, HRM brought services to both legal and non-legal staff in a consolidated system that addressed their needs in a unified and consistent manner. The scope of HRM was also broadened and now includes new staff orientations, benefits administration, and time and attendance oversight.

Improved new-hire processing began in Fiscal Year 1999, which established a consistent forum for the dissemination of information, policies and procedures for all new staff. Streamlined employee processing on the first day of employment includes new hire orientation, where office representatives from HRM, Budget and Payroll, Information Technology, Operations and other pertinent divisions share useful information regarding office program and policies.

REVISED PERSONNEL MANUAL

Work began immediately in 1999 to revise the Attorney General's Personnel Manual and create a comprehensive policy guide for employees. This reference book aims to provide staff with an easy reference tool, to help them better understand policies, procedures, and practices. A final "Human Resource Manual" will be completed and issued by Fiscal Year 2000. The new manual will address issues such as the administration's part-time status policy, the new cancer screening leave allowance, and the improved personal leave policy.

PROFESSIONAL DEVELOPMENT

The Attorney General's Office demonstrated its commitment to meeting the needs of attorneys' professional development by offering membership to all Assistant Attorneys General in both the Massachusetts and Boston Bar Associations at no cost to employees. In this way, attorneys are encouraged to pursue other endeavors that will give them the benefit of diverse professional experience both inside and outside the office.

ANTI-DISCRIMINATION AND SEXUAL HARASSMENT POLICY

In FY99, the Attorney General revised the Office's Anti-Discrimination and Sexual Harassment Policy. The Office is committed to maintaining a workplace free of discriminatory behavior. To that end, the Attorney General's Office has established mandatory training sessions that educate and familiarize staff with the Office's anti-discrimination and sexual harassment policy. Trainings are designed for both supervisory and non-supervisory personnel and legal and non-legal staff. They further underscore the Administration's pledge to ensure a safe and productive work environment, while also meeting an inherent obligation of the Attorney General's Office to take the lead on such important policy matters.

DIVERSITY COMMITTEE

In addition to this new, proactive policy, the Attorney General has whole heartedly supported and expanded the efforts of the Diversity Committee, a cross-bureau initiative aimed at raising awareness of diversity, tolerance, and cultural sensitivity. The Committee's efforts foster a welcoming work environment, where people of diverse backgrounds are valued and respected.

MINORITY RECRUITMENT

Attorney General Reilly and the Diversity Committee have introduced initiatives and sponsored events in order to attract and retain employees of diverse backgrounds and experiences. In June of 1999, the Committee hosted the first annual Minority Recruitment Reception for minority lawyers in an effort to attract talent and legal expertise from a wide range of backgrounds and walks of life. The reception, attended by over 80 prospective employees, resulted in the direct hiring of five new staff attorneys.

OPERATIONS

REGIONAL OFFICES

One of the Attorney General's stated missions upon taking office in January of 1999 was to bring the services of the Attorney General's Office to every region of the Commonwealth. Recognizing that local residents are in the best position to identify and provide valuable input as to solutions to local problems, work began early in Attorney General Reilly's term to secure legislative approval for such expansion. This legislative support was designed to support the Office's expansion to Southeastern and Central Massachusetts.

SURVEILLANCE EQUIPMENT FOR MAILROOM

As a precautionary step that unfortunately was necessitated by modern security threats, Attorney General Reilly instituted a system to centralize mail delivery and x-ray packages prior to distribution to staff. Equipment was installed in the McCormack Building, the Portland Street Building, and the Western Massachusetts Office, meeting the need for intensified precautionary measures in public office buildings.

TREASURY INVESTIGATION

In January of 1999, the Attorney General's Office requested and was granted by the Legislature supplemental funding to meet the demands of an intensified Treasury investigation related to the theft of funds from the Unclaimed Check Fund. A matter of weeks into Attorney General Tom Reilly's administration, nearly \$10 million was discovered missing from the State Treasury's Unclaimed Check Fund. The investigation was complex and thus necessitated substantial internal attention, in addition to the need for the outside services of an accounting firm and a legal team of forensic investigation experts, both of which were secured in an extremely timely and efficient manner. The prompt internal response to these fiscal needs enabled the Attorney General's Criminal Bureau to focus on bringing those responsible to justice and on recovering as much of the missing funds as possible.

NEW SUPPORT SERVICES PROCEDURES MANUAL

The Attorney General's Office Support Services released a revised Procedures Manual outlining their role within the agency, from mail processing and distribution, to supply operation and inventory control, to bulk copying and binding. The guide delineates every service and also delineates the processes that have been put in to place to ensure that services are provided in a timely, efficient and cost effective manner.

NEW BUDGET POLICY

Realizing the need for increased controls in the area of budget and finance as a matter of example for other state agencies and offices throughout the Commonwealth, the Budget Office, under the administration of the Operations Division, instituted a number of new policies and procedures. This included the redesignation of specific duties as they relate to the management of the Budget Office.

THE WESTERN MASSACHUSETTS DIVISION

The Western Massachusetts Division of the Office of the Attorney General, located in the State Office Building at 436 Dwight Street, Springfield, is a part of the Executive Bureau. The Division is responsible for all legal matters arising in the four western counties, Hampden, Hampshire, Franklin, and Berkshire. The Division is staffed by 10 assistant attorneys general, three civilian investigators, four paralegals, three Massachusetts State Police Officers, and additional support staff. In addition, two assistant attorneys general assigned to the Municipal Law Unit of the Administrative Law Division, one assistant attorney general assigned to the Insurance Fraud Division, one assistant attorney general assigned to the Safe Neighborhood Initiative (SNI) Program and two investigators assigned to the Medicaid Fraud Unit, are part of the staff.

The Western Massachusetts Division has defensive and affirmative litigation responsibilities and, additionally, handles a large number of consumer-related complaints for area residents. The Western Massachusetts Division also takes part in a variety of community-oriented public safety, consumer, and violence prevention programs such as Springfield College's Consumer Education Forums, AARP Consumer Programs, Baystate Medical Center Senior Education Classes, TRIAD Training Programs and the Springfield City-Wide Violence Prevention Task Force. Last year the Office of the Attorney General extended the Safe Neighborhood Initiative (SNI) Program to Western Massachusetts through a collaboration with the Northwestern District Attorney's Office, which established an SNI Program in Franklin County. In addition, efforts are being made towards the establishment of a Department of Justice Weed and Seed Program in Springfield. This program is being operated in partnership with the United States Attorney's Office, the District Attorney's Office, and the Hampden County Sheriff's Office.

Additionally, the Attorney General's Municipal Law Unit (MLU) was moved to Western Massachusetts during the last fiscal year and the centralization of its functions and personnel was completed this year. The MLU's primary responsibility is to perform the Attorney General's statutory review of municipal by-laws and charter amendments to ensure that these laws are consistent with the constitution and laws of the Commonwealth.

SUMMARY OF DEFENSIVE LITIGATION

In the area of defensive litigation, the Western Massachusetts Division defends the Commonwealth in administrative law, contract, eminent domain, civil rights, and torts cases.

In FY'99, 66 new cases were assigned. In addition, 33 new cases were assigned to special assistant

attorneys general and WMAS assistant attorney general were assigned to supervise the litigation and handling of those cases. The 60 cases assigned fall into the following categories:

Administrative Law	21 (31.8%)
Torts	13 (19.7%)
Civil Rights/Employment Discrimination	15 (22.7%)
Declaratory Judgment	9 (13.6%)
Eminent Domain	2 (3.0%)
<u>Miscellaneous</u>	<u>6 (9.1%)</u>
Total New Cases	66 (100%)

As of June 30, 1999, there were a total of 122 cases open in WMAS.

During FY'99, fifty-seven (57) cases were closed in WMAS. A total of \$339,398.00 was paid through settlements, with a total of \$171,050.00 paid to claimants in defensive cases and \$228,348.00 paid in eminent domain cases.

DEFENSIVE HIGHLIGHTS

The following cases represent the nature and scope of the cases being handled by the WMAS Division:

- **Judy E. Morris, M.D. v. UNUM Insurance Company of America [and 60 named defendants, including the Department of Insurance and four of its employees; the Division of Consumer Protection; [former] Attorney General Scott Harshbarger; a state senator and the Commonwealth].** U.S. District Court for the District of Massachusetts (Western Division), Civ. Ac. No. 9-30204-FHF. In a 300-plus-page complaint, the pro se plaintiff alleged a far-ranging conspiracy of private and governmental defendants, the goal of which was to permit the insurance company defendant to unfairly deprive the plaintiff of disability insurance benefits allegedly owed to her as a result of chronic fatigue and immune dysfunction syndrome and fibromyalgia. On behalf of all Commonwealth defendants, this Office moved to dismiss the complaint on several grounds: lack of federal jurisdiction by operation of the Eleventh Amendment, failure to plead RICO (Racketeer Influenced Criminal Organizations) allegations with the requisite particularity, the immunity of the Commonwealth from intentional tort claims, and the failure to have presented any negligence-based tort claims to the Commonwealth in accordance with the Tort Claims Act. The Court dismissed the claims

against all defendants, but allowed the plaintiff to file an amended complaint with a more narrow focus which did not involve the Commonwealth, which the Court indicated was likely immune from the claims. The amended complaint set out no claims against any Commonwealth defendant.

- **Riverplace, Inc. v. Commonwealth of Massachusetts By and Through Its Department of Public Works** (Hampden Superior Court, Civ.Ac.No. 96-368). The settlement of this eminent domain case concerning the temporary use by the Commonwealth of three acres located on the Connecticut River in Springfield resulted in significant savings to the Commonwealth. The Commonwealth used the land for three years (plus a three-month holdover period) as a staging area for the reconstruction of Memorial Bridge. The owner had been awarded \$55,000 for the temporary taking but asserted that the loss was much higher. The plaintiff's appraiser valued the property at \$775,000 and concluded that the fair market rental totaled \$265,000. An earlier bank appraisal which valued the property at \$1.1 million was produced and utilized to increase the alleged fair market rental to \$375,000. Despite these evaluations, the Commonwealth was able to negotiate a settlement of \$45,000 in "new money" (beyond the original award), which figure included the Commonwealth's exposure to 5.9 years of pre-judgment interest.
- **Nicole Thayer v. Commonwealth of Massachusetts, Massachusetts Highway Department, and Joseph Superneau, as former Director of District Two Massachusetts Highway Department (Hampden Superior Court, Civ.Ac.No. 97-396) and Jason M. Rimbold v. Daniel O'Connell's Sons, Inc.; The Commonwealth of Massachusetts, City of Holyoke, and Town of South Hadley** (Hampden Superior Court, Civ.Ac.No. 97-365). These companion cases arose from serious injuries sustained by two teenagers who fell 30-45' when a section of sidewalk of the "Old County Bridge" collapsed. The bridge, which carried state highway Route 116 over the Connecticut River, was slated for demolition after the nearby "New County Bridge" was completed. The sidewalk had been barricaded, but barriers and warning signs had been removed by vandals, perhaps as long before the incident as a few months. The plaintiffs sought to avoid the application of the "defective-way" statute, which immunized the Commonwealth from liability for injuries sustained upon the sidewalk of a state highway, but the Court allowed the Commonwealth's motions for summary judgment on that ground.

SUMMARY OF AFFIRMATIVE CIVIL CASES

In the area of affirmative litigation, the Western Massachusetts Division prosecutes pro-active civil rights, consumer protection, and criminal cases.

CONSUMER PROTECTION MATTERS

The Western Massachusetts Division fields thousands of consumer inquiries and complaints. By law, the Attorney General can only bring an affirmative action against a business for violations of the Consumer Protection law when it is “in the public interest” to do so and cannot litigate on behalf of individual consumers. By effectively using a weekly case intake process in which attorneys, investigators, and a coordinator participate, potential “public interest” consumer protection cases are identified, reviewed, investigated, and screened-in for further development and litigation. Individual consumer cases are referred to Local Consumer Programs for mediation and resolution. An assistant attorney general acts as the coordinator between the Attorney General’s Office and the Local Consumer Protection Offices in the four western counties in order to provide oversight in the handling and resolution of consumer cases. During FY’99, the Division referred at least 85 complaints to the local consumer programs. This figure does not include “walk-ins” who are also sent to the local consumer program. The local consumer programs referred at least four cases to the Division involving a pattern of unfair or deceptive trade practices for evaluation by our office.

As a result of the intake of matters from various sources, between June 1, 1998 and June 30, 1999, 33 consumer protection investigations were opened. In FY’99, an average of nine actual court cases were open at any given time, two of which were Superior Court 93A Consumer Protection Act cases. In FY’99, one consumer civil litigation case was closed.

The Western Massachusetts Division estimates that the staff assisted 10,000 callers and 350 people who had made written requests for assistance or information. Approximately 29% of the callers sought written information and over 2,000 brochures or information sheets were distributed to members of the public who had requested consumer information and/or assistance. In addition, through consumer education efforts in the community, investigators assigned to the unit participated in numerous consumer-oriented programs, training sessions and seminars, and distributed over 14,000 consumer-protection pamphlets.

AFFIRMATIVE CIVIL CASE HIGHLIGHTS

- **Commonwealth v. Echo Hill Townhouse Condominium Trust, et. al.** Hampshire Superior Court, C.A. 98-073. This was a housing discrimination case in which an Hispanic mother of two young children was told that she could not rent a condominium apartment in Amherst because the condominium association bylaw prohibited young children from the complex. After the Massachusetts Commission Against Discrimination found probable cause that the mother was discriminated against, the Commonwealth sued the Trust, the Trustees in their fiduciary capacities, and the management company, Congate Enterprises. The trustees thereafter sued their counsel, who in turn, countersued Congate. The mother subsequently brought an action against several of the defendants in United States District Court. The Commonwealth and the mother had settled with Congate for \$20,000 in damages (which included \$5,000 paid by the property owners while the case was still under the jurisdiction of MCAD). Following numerous depositions arising from the counter-claims and cross-claims, the Commonwealth reached a global settlement of both the state and federal actions in which the mother received \$20,000 in additional damages.

SUMMARY OF CRIMINAL LITIGATION

In the area of criminal litigation, the Western Massachusetts Division investigates and prosecutes a variety of cases, ranging from bank fraud, public integrity, credit card fraud, and attorney defalcation to narcotics and illegal weapons cases. Many of these cases involve complex and labor-intensive investigations. In some cases, appropriate dispositions that did not involve prosecution were reached. Nine cases for which process had ensued (seven indictments, two District Court complaints) were resolved. Numerous additional cases were investigated but closed without prosecution.

CRIMINAL CASES

- **Commonwealth v. Louis Dukette**, Hampden County Superior Court No. 98-1697-98. This insurance fraud case arose out of an accident that took place at Brightside, Inc., Holyoke, in April 1996. The defendant claimed to have fallen down a flight of stairs and to have been paralyzed from the waist down as a result. He was hospitalized and then underwent rehabilitation at the Weldon Center. He claimed that he was confined to a wheelchair and that he was totally disabled. Brightside paid workers' compensation benefits to him and contacted a private investigator, who placed the defendant under surveillance. His claims of paraplegia were found to be fraudulent and his benefits were terminated.

He appealed to the Division of Industrial Accidents. At a subsequent conference, he and his attorney were shown videotapes which had been taken by the private investigator. He withdrew his claim for benefits. The Commonwealth thereafter indicted the defendant on charges of larceny and filing a false claim. The defendant pled guilty to a term of six months to be served in the Hampden County House of Correction, which term was suspended for two years on condition of payment of \$7500 in restitution.

- **Commonwealth v. Pino, Santiago & Rivera**, District Court, Springfield Division, Nos. 9817CR 003927, 3926, 3924. In this insurance fraud case, the defendants claimed to have been involved in an automobile accident. Investigation revealed that the accident never took place. The defendants entered into a submission on the criminal charges. Each defendant was ordered to pay restitution in the amount of \$6,000.00. Defendant Rivera's case was continued without a finding, and defendants Santiago and Pina were placed on probation for a period of four years.
- **Commonwealth v. Hernandez**, Hampshire County Superior Court, Nos. 96-2487, 2488. On October 23, 1998, the defendant pled guilty to trafficking in cocaine, 14 to 28 grams, and was sentenced to a three years to three years and one day term, to be served at MCI Cedar Junction.
- **Commonwealth v. Wickham**, Franklin County Superior Court Nos. 98-027-028. In this case, a landlord was charged with presentation of false claims to the Commonwealth and larceny over \$250 as a result of scheme in which he co-habitated with a Section 8 tenant and fraudulently collected \$24,000 from the Franklin County Regional Housing Authority. The defendant pled guilty and the Court sentenced him to serve a term of probation, with a special condition that he make \$24,000 restitution.

BUSINESS AND LABOR PROTECTION BUREAU

UNEMPLOYMENT FRAUD DIVISION

FAIR LABOR AND BUSINESS PRACTICES DIVISION

INSURANCE FRAUD DIVISION

MEDICAID FRAUD CONTROL UNIT

BUSINESS AND LABOR PROTECTION BUREAU

The Business and Labor Protection Bureau, which was created in April of 1995, consists of the Fair Labor and Business Practices Division, the Insurance Fraud Division, the Medicaid Fraud Control Unit and the Unemployment Fraud Division. The common goal of the four divisions is to eliminate fraudulent activities in the marketplace with an eye toward leveling the playing field in the economic sector for businesses and individuals alike.

The combining of these four divisions as part of a coordinated Bureau allows for the sharing of investigative and legal resources. This coordination results in greater efficiency and productivity and, thus, provides the Office with increased opportunities to detect fraud by businesses which in the past have shown a propensity to disregard multiple statutory obligations.

The Bureau maintains its own in-house educational and training programs to supplement office wide efforts with sessions and materials specifically geared to the types of cases assigned to its four divisions. A Deputy Bureau Chief and a Chief Prosecutor assist the Bureau Chief in adopting and implementing consistent legal policies and procedures throughout the Bureau.

The Bureau's primary offices are located at 200 Portland Street, Boston and 165 Liberty Street, Springfield.

UNEMPLOYMENT FRAUD DIVISION

INTRODUCTION

When operating at full capacity, the Unemployment Fraud Division ("UFD") is comprised of 11, full-time staff members: a division chief, managing attorney, four assistant attorneys general, two investigators, a paralegal, an office manager, and an administrative assistant. The UFD enforces the provisions of the Massachusetts Employment Security Law pursuant to its authority under Massachusetts General Laws Chapter 151A, Section 42A. The UFD primarily receives its referrals from the Division of Employment and Training ("DET") for actions involving employer tax fraud and larceny of unemployment benefits.

The UFD also generates its own independent actions. Through cross references from other divisions in the Business and Labor Protection Bureau, the UFD targets complex and sophisticated schemes involving various combinations of employment security fraud, prevailing wage, and workers' compensation violations. This interdisciplinary effort has been instrumental in the UFD's investigation and successful prosecution of egregious violators. Strong interagency communication and collaboration between the

UFD and the DET, and between the UFD and other federal and state agencies has been a key ingredient to the UFD's success.

During Fiscal Year 1999, the UFD was especially active. In addition to significantly increasing the number of cases addressed in court and of cases closed and returned to DET from Fiscal Year 1998, the UFD's staff recovered and returned an impressive amount of restitution to the coffers of the Commonwealth's Unemployment Trust Fund. Specifically, the UFD addressed 415 cases in District and Superior Courts throughout the Commonwealth, closed and returned 185 cases to the DET, and recovered \$1,028,869.71 in restitution owed to the Commonwealth.

HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES

EMPLOYMENT SECURITY FRAUD

- **Commonwealth v. Weylu's Palace, Weylu's Too, Weylu's Wharf, and Weylu's Woburn, Boston Municipal Court** - Rick Chang of Lynnfield, president and owner of Weylu's Palace, Weylu's Too, Weylu's Wharf and Weylu's Woburn, pled guilty to nineteen counts of knowingly failing or refusing to pay employer tax contributions totaling nearly \$160,000.

Chang, who has declared bankruptcy and whose Chinese restaurant chain is now defunct, failed to pay unemployment taxes for 19 quarters between January 1993 and March 1999. Chang was ordered to serve 20 days of a one-year sentence in jail, with the balance of his sentence suspended for a three year probationary period. In addition to his commitment, Chang must pay \$36,000 in restitution to the Division of Employment and Training.

- **Resolution of three Lincoln Elementary School Construction Cases:** During fiscal year 1999, the Unemployment Fraud Division resolved three cases of fraudulent employment practices by corporate officers and companies involved in the construction of the Lincoln Elementary School in Brookline between 1992 and 1994. Five companies were originally indicted by a Suffolk County Grand Jury in a number of violation areas, including unemployment tax, worker's compensation, and prevailing wage. The three cases resolved this fiscal year were:

- **Commonwealth v. Lawrence Craffey & Quinn Construction Co., Suffolk Superior Court** - Lawrence Craffey, Sr. of Brockton pled guilty to three counts of Failure to

Provide True and Accurate Payment Records, one count of Failure to pay the Prevailing Wage and one count of Workers' Compensation Fraud.

Craffey worked as an "unofficial" subcontractor to Jeffrey Construction, which was an official subcontractor on the Lincoln Elementary School project in Brookline. Craffey paid his carpenters between \$10 and \$12.50 per hour for prevailing wage jobs that were designated at a rate of \$30.79 per hour. Craffey also failed to keep payroll records or to provide workers' compensation insurance for any of his employees.

In addition to a 90-day commitment in the House of Correction, Craffey's sentence included a period of debarment from public works projects and three years of probation.

- **Commonwealth v. David A. Horton & H. M. Horton Co., Suffolk Superior Court** - Walpole contractor H. M. Horton Company and its sole corporate officer David A. Horton of Norwell pled guilty to four counts of fraudulent employment practices, including: Worker's Compensation Fraud, Failing to Produce True and Accurate Records and Making False Statements to Avoid or Reduce Unemployment Contributions.

Horton under reported the number of employees working for Horton Company during the construction of the Lincoln Elementary School in Brookline. He also failed to report the accurate amount of payroll to his insurance carrier and therein avoided the payment of premiums and proper coverage for employees working on the construction site.

Horton was sentenced to three years probation, ordered to pay a total of \$8,397.97 in restitution and a \$5,000 fine. Both he and Horton Company were debarred from public works projects for a term of three years.

- **Commonwealth v. Peter S. Davidson, Wayne A. Kimball, and Davidson Form Construction, Suffolk Superior Court** - Rowley Contractor Davidson Form Construction, president Peter S. Davidson of Ipswich, and vice president Wayne A. Kimball of Wakefield, pled guilty to five counts of fraudulent employment practices, including: Failure to Pay the Prevailing Wage to Employees and Failure to Keep True and Accurate Payroll Records.

The violations occurred between 1992 and 1993 while Davidson Form Construction was a subcontractor on the Lincoln Elementary School in Brookline. Davidson paid

workers \$7.89/hour less than the prevailing wage. Davidson Construction kept payroll records that did not accurately reflect employees' hours, pay and job classifications.

Davidson and Kimball were each sentenced to six months probation, ordered to pay \$22,000 in restitution, a \$500 fine, and were debarred from public works projects for the probationary period.

- **Christine Dalton v. DET, Massachusetts Appeals Court** - Petitioner Christine Dalton of South Boston appealed a determination by the Division of Employment and Training that she was ineligible to receive extended retraining benefits for her failure to file an application timely with the provisions of General Laws c. 151A, sec. 30. After full briefing and oral argument, the Massachusetts Appeals Court affirmed the decision of the lower court (South Boston District Court) to uphold the DET determination.
- **National School Bus Service, Inc. v. DET, Massachusetts Appeals Court** - Petitioner National School Bus Service ("National") appealed the decision of the Boston Municipal Court to affirm the Division of Employment and Training Review Examiner's and Board of Review's determination that National was not entitled to "successor" status within the meaning of General Laws c. 151A, sec. 14(n)(1). National argued in its brief that it should have been entitled to "successor" status when it was awarded a contract with Boston Public Schools to provide transportation service for its students. This matter has been briefed by both parties and awaits a hearing date.
- **Commonwealth v. Bridget Hickson, Suffolk Superior Court** - Bridget Hickson of Dorchester pled guilty to larceny over \$250 and uttering counterfeit checks. Hickson had intentionally cashed stolen Division of Employment and Training checks. Hickson was sentenced to three months in the House of Correction, suspended for one year, and was ordered to continue her drug treatment program.
- **Commonwealth v. Alvin Snow, Roxbury District Court** - Alvin Snow of Newton pled guilty to a larceny charge. He was sentenced to eighteen months in the House of Correction, eight months to be served concurrent with his then-current sentence, with the remaining 10 months suspended for two years and full restitution of \$2,986. Snow served eight months, subsequently violated his probation, and was committed for the remaining 10 months. The restitution order was remitted upon his being re-committed.

- **Commonwealth v. Albert Gallo, Boston Municipal Court** - Albert Gallo of Swampscott admitted to sufficient facts on 22 felony counts of unemployment fraud. Gallo failed to pay employer taxes for 22 quarters between 1992 and 1997. The case was continued without a finding for three years, with an order to pay restitution to the Division of Employment and Training in the sum of \$99,700.17, at a rate of \$700 per month.
- **Commonwealth v. Douglas Lyman, Boston Municipal Court** - Douglas Lyman, President, Treasurer, Clerk and Director of Pediatric Care of America, pled guilty to six counts of failure to pay unemployment tax between 1995 and 1996 after a bench trial began in this matter. The case was continued without a finding for 22 months, with an order to pay restitution to the Division of Employment and Training in the sum of \$19,800, at a rate of \$900 per month, with a Duquette alternative sentence of six years committed in the House of Correction, full restitution and interest.
- **Commonwealth v. Rosier Herode, Roxbury District Court** - Rosier Herode of Dorchester admitted to sufficient facts on 17 felony counts of unemployment fraud. Herode failed to correctly report his earnings for a period of nine months while receiving unemployment benefits. The case was continued without a finding for six months with an order to pay restitution in the sum of \$3,000 to the Division of Employment and Training. Two days following the issuance of the Court Order, Herode paid the full restitution amount.
- **Commonwealth v. Air Balance, Inc., Boston Municipal Court** - Charles A. Corlin, Jr. of Burlington admitted to sufficient facts on 12 counts of failure to pay employer tax contributions. Corlin, as president of Air Balance, Inc., failed to pay employer taxes for 12 quarters between 1992 and 1998. The case was continued without a finding for two years with an order to pay restitution in the amount of \$21,716 at a rate of \$500 per month.
- **Commonwealth v. Jeffrey T. Derby, Lowell District Court** - Jeffrey Derby of Dracut admitted to sufficient facts on eight counts of larceny of unemployment benefits. Derby admitted to working in self-employment at Derby's Auto from October 1996 to January 1997 while collecting unemployment benefits. The case was continued without a finding for one year with an order to pay restitution in the sum of \$5,558 to the Division of Employment and Training.

- **Commonwealth v. Michael Calore and Joseph Calore, Boston Municipal Court** - Michael Calore of Exeter, R.I., and Joseph Calore of Wakefield, R.I., each admitted to sufficient facts on five counts of failure to pay employer tax contributions. Michael Calore, president, and Joseph Calore, treasurer, of both C.F.S. Air Cargo, Inc. and Calore Express, Inc., failed to pay unemployment tax for 5 quarters between 1994 and 1995. The case was continued without a finding for three years with an order to pay restitution to the Division of Employment and Training, joint and several, in the sum of \$41,463 for C.F.S. Air Cargo and \$7,595 for Calore Express.

PRISONER CROSS MATCH INITIATIVE

The Unemployment Fraud Division, in collaboration with the Division of Employment and Training and the Department of Corrections, has continued its successful identification, investigation and prosecution of state prisoners who fraudulently collect unemployment benefits while incarcerated. The UFD initiated this interagency effort in fiscal year 1998, by facilitating the creation of a computer CROSS MATCH program between the DET and the DOC. Since the inception of this program, over 20 present or former prisoners have been caught and prosecuted. Among those prosecuted in fiscal year 1999 were:

- **Commonwealth v. Stanley Duval, Brockton District Court** - Stanley Duval of North Easton admitted to sufficient facts on eight counts of unemployment fraud. With the assistance of a girlfriend, Duval fraudulently collected \$1,104 in unemployment benefits between March and May 1997 while incarcerated at the Plymouth County House of Correction. The case was continued without a finding for one year with an order to pay restitution to the Division of Employment and Training in the sum of \$1,104. A Duquette alternative of a guilty finding with a six month commitment at the House of Correction and full restitution was also imposed.
- **Commonwealth v. Raymond Soraghan, Haverhill District Court** - Raymond Soraghan of Groveland pled guilty to 12 counts of unemployment fraud. With the assistance of his father, Soraghan fraudulently collected \$1,182 between December 1996 and March 1997 while incarcerated at the Essex County House of Correction. Upon his guilty plea, Soraghan was sentenced to six months in the House of Correction, suspended for six months, with an order to pay restitution to the Division of Employment and Training in the sum of \$1,182. Six months following the issuance of the Order, Soraghan paid the full restitution amount and his probation was terminated by the Court.

- **Commonwealth v. Joseph Papaleo, Worcester District Court** - Joseph Papaleo of Clinton pled guilty to nine counts of unemployment fraud. With the assistance of a girlfriend, Papaleo fraudulently collected \$900 between May and June 1997, while incarcerated at the Worcester County House of Correction. Upon his guilty plea, Papaleo was sentenced to one year in the House of Correction, suspended for one year, with an order to pay restitution to the Division of Employment and Training in the sum of \$900.

SPECIAL PROJECTS

CASE EVALUATIONS

Each of the Unemployment Fraud Division's open cases and investigations in inventory was reviewed and evaluated by the staff. Cases are either moving forward in the criminal process, or are being returned to the Division of Employment and Training pursuant to the Memorandum of Understanding between the UFD and the DET. In the last year alone, the UFD has closed and returned to the DET 185 cases.

LARCENY DEFAULT EVALUATIONS

Each of the Unemployment Fraud Division's larceny cases that have been on default for five or more years was reviewed and evaluated by staff investigators. Additional attempts to investigate and locate the whereabouts of missing defendants, to determine whether default warrants were still outstanding, and to correspond with any counsel of record were made. Pursuant to the Memorandum of Understanding between the UFD and the DET, larceny cases that have been on default five or more years must be closed and returned to the DET.

TRAINING AND EDUCATION

DET TRAINING OF UFD STAFF

During fiscal year 1999, Unemployment Fraud Division staff attended a comprehensive training given by the Division of Employment and Training. This training was organized at the request of the UFD to ensure continued successful investigation and prosecution of the Division's cases. This hands-on training covered: (1) the Unemployment Insurance Program, Policies and Procedures; (2) the Unemployment Benefit Payment Control Process; (3) the Tax Audit Process; and, (4) the Employer Tax Process.

UFD TRAINING MANUAL

Unemployment Fraud Division staff drafted and compiled a comprehensive UFD Policy and Training Manual. In addition to providing a general overview of the UFD and its statutory authority for the prosecution of unemployment fraud matters, this Manual includes detailed information on: the roles and responsibilities of the UFD staff; the DET's laws and procedures; the prosecution of employer tax and larceny cases; sample pleadings, court forms and internal division forms; courtroom protocol; legal research; OAG personnel information; and the special grand jury process.

DIVISION STATISTICAL SUMMARYMONIES COLLECTED BY UFD

July 1998	\$ 188,766.33
August	42,567.33
September	66,462.75
October	57,632.64
November	66,336.44
December	68,832.21
January 1999	42,224.66
February	100,774.55
March	62,528.47
April	28,831.60
May	57,347.67
June	<u>46,565.06</u>
Total Monies:	\$1,028,869.71

DET CASE REFERRALS RECEIVED BY UFD

	<u>Larceny Referrals</u>	<u>Tax Referrals</u>
July 1998	3	5
August	0	0
September	8	0
October	5	0
November	4	0

BUSINESS AND LABOR PROTECTION BUREAU

December	3	6
January 1999	5	0
February	3	6
March	4	4
April	1	1
May	3	1
June	<u>0</u>	<u>0</u>
Total Referrals:	39	23

CASES PENDING AS OF JUNE 30, 1999

Criminal Employee Claims	330
Criminal Employer Claims	369 (505 Defendants)
Other*	<u>57</u>
Total Pending Cases	756

CASES ON DEFAULT AS OF JUNE 30, 1999

Criminal Employee Claims	166
Criminal Employer Claims	97
Other*	<u>3</u>
Total Defaults	266

CASES CLOSED AND RETURNED TO DET

Criminal Employee Claims	76
Criminal Employer Claims	95
Other*	<u>14</u>
Total Closed Cases	185

COMPLAINTS ISSUED

Criminal Employee Claims	12	(130 counts)
Criminal Employer Claims	43	(341 counts)
Other*	<u>1</u>	(12 counts)
Total Complaints Issued	56	(483 counts)

* Includes employer tax and/or employee fraudulent claims cases independently developed and/or specially referred.

FAIR LABOR & BUSINESS PRACTICES DIVISION

INTRODUCTION

The Fair Labor and Business Practices Division ("FLBP") is comprised of the Division Chief, Managing Attorney, Western Massachusetts Deputy Managing Attorney, Director of Safety, 10 additional assistant attorneys general, 24 inspectors, one financial investigator, seven hotline/intake members, two paralegals, an outreach coordinator and six support personnel. FLBP staffs full-time offices in Boston and Springfield as well as satellite offices in Fall River, Worcester and Pittsfield.

FLBP is responsible for enforcing the Massachusetts wage and hour laws, including the prevailing wage, minimum wage, overtime and nonpayment laws as well as the child labor and workplace safety laws. In addition to investigating and prosecuting or civilly citing offenders for these violations, FLBP investigates and prosecutes offenders for workers' compensation and unemployment fraud violations in instances where violation of these laws are combined with violation of the wage and hour laws. Often times employers who do not pay their employees also fail to contribute to the Unemployment Compensation Trust Fund and/or fail to provide workers' compensation. Such potential violations are checked in every FLBP investigation and, to the extent instances of these types of fraud are discovered, they are included in any prosecutions FLBP subsequently pursues. FLBP also staffs a Bid Protest Unit that arbitrates public construction bid disputes through office hearings.

FLBP investigated 5,955 complaints during fiscal year 1999. Prosecutions and debarments increased significantly over last year's efforts. The majority of cases that were not prosecuted were resolved successfully with full restitution paid to the complainants. During the fiscal year, a total of \$3,607,579 in owed wages was collected for employees as a direct result of FLBP's efforts.

Since the Spring of 1998, FLBP's Inspectional and Legal Staffs have been assigned to specific geographical areas determined by court jurisdictions. The Inspectors work proactively in their districts at least one day a week. The AAGs prosecute cases in the same courts on a regular basis. This allows the respective courts and surrounding communities to become more familiar with the FLBP staff who serve their districts and also enables the FLBP to create a better public awareness of the work it does, the assistance it can offer, and the laws it enforces.

HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES

CIVIL ENFORCEMENT IMPLEMENTATION TEAM

On November 5, 1998 significant new amendments to the wage and hour laws took effect enhancing criminal penalties for violations of certain of the wage and hour laws and at the same time gave the Attorney General the alternative authority to issue civil citations for such violations.

Pursuant to this new legislation, FLBP can now issue a citation to an employer who does not pay its employee wages, overtime or the minimum wage, fails to pay the prevailing wage or fails to provide true and accurate certified payroll records. This citation can require the employer to comply with the law, pay restitution to the employees, and/or pay a civil penalty.

FLBP created a team responsible for developing policies and protocols to achieve effective and efficient implementation of the new law. To provide guidance to employers and employees, the team also issued an advisory summarizing the new legislation and advising employers and employees of their rights and responsibilities thereunder.

CENTRAL ARTERY/TUNNEL ENFORCEMENT TEAM

The Division's Central Artery/Tunnel ("CA/T") Enforcement Team continues to focus on monitoring wage compliance at the country's largest public construction project. The team is responsible for investigating and prosecuting or civilly citing employers for violations of the wage and hour laws, primarily those involving failure to pay the prevailing wage, as well as other criminal offenses. The team continues to work with other divisions within the Office of the Attorney General, as well as with the Massachusetts Highway Department in their education and enforcement efforts. Members of the team directed by the Division Chief, include two assistant attorneys general, four inspectors and one paralegal.

PREVAILING WAGE ENFORCEMENT TEAM

FLBP created a Prevailing Wage Enforcement Team in June of 1998. The team is comprised of eight Inspectors whose primary responsibilities are the proactive enforcement of the Massachusetts prevailing wage law. The Prevailing Wage Enforcement Team investigates referrals, anonymous tips and employee complaints received by FLBP. The Prevailing Wage Enforcement Team also conducts unannounced site inspections at numerous public construction projects throughout the Commonwealth. During this fiscal year, the team conducted over 350 site inspections throughout the Commonwealth.

BID UNIT

The Attorney General's Office serves to provide a fair and accessible forum for the resolution of public construction bidding disputes. The Attorney General's main enforcement efforts in this area are undertaken by the Bid Unit, a unit within the Fair Labor and Business Practices Division. Efforts undertaken in Fiscal Year 1999 included: (i) the receipt and resolution of filed bid protests, (ii) the receipt of telephone calls from the public contracting community seeking assistance concerning the public bidding laws, (iii) the receipt and resolution of appeals from the Commonwealth's contractor pre-qualification process, and (iv) the education of public contract participants (e.g. architects, contractors, municipal and public agency officials). During Fiscal Year 1999, the Attorney General resolved bid protests for public construction contracts ranging in cost from \$11 thousand to \$90 million.

The Division's bid enforcement efforts also include an educational component that provides public contracting participants with necessary information regarding the public bidding laws. The Bid Unit's educational approach is multifaceted, so that the effect of the educational initiative may be maximized. An example may be found in the availability of the written bid protest decisions which continue to be compiled and made available at the Francis X. Bellotti Library of the Attorney General's Office, located at One Ashburton Place in Boston. Also, the bidding seminars which the Division sponsors or participates in provide the substantive and procedural information necessary to properly solicit or submit public construction bids. Such proactive efforts serve many useful purposes, not the least of which is to decrease the number of filed bid protests.

The receipt of, and response to, telephone inquiries and correspondence also serves an educational function. During Fiscal Year 1999, over 3,000 telephone calls concerning public bidding questions were received and answered by the Bid Unit. The Bid Unit's telephone support has become an established and important resource for contractors, as well as awarding authorities. Telephone support and assistance also provides a significant prevention tool, often delivering the information necessary to prevent (or quickly

remedy) a violation of the public bidding laws.

SAFETY

FLBP investigates reports of fatalities and serious injuries that occur at the workplace. FLBP inspectors work in cooperation with representatives from the United States Occupational Safety and Health Administration (OSHA), the Massachusetts Department of Public Health's Fatality Assessment and Control Evaluation Program, the State Police Crime Prevention and Control Unit, local police and fire departments, and other federal, state and local agencies.

In addition, the Division investigates all reports of serious injuries and safety complaints that occur in the public sector. The Division retains statutory authority to enforce safety standards in municipal and county workplaces.

The following investigations were conducted during FY99:

Service Industries	9
Construction	17
Manufacturing	15
Public Employees	9
<u>Fatalities</u>	<u>11</u>
TOTAL	61

CHILD LABOR

The Massachusetts Child Labor Laws protect workers under the age of 18. No other workplace safety laws acknowledge the special vulnerabilities of young workers. The laws allow young workers to optimize their educational opportunities by restricting the number of hours minors of certain ages may work. Hazardous tasks and equipment are prohibited in recognition of the increased rate of workplace injury among teenaged workers. In addition, the permitting process creates a structure for school superintendents who issue permits to review the intended employment to ensure that it is safe, is consistent with the child labor laws, and serves the general welfare of the minor.

FLBP investigates reports of child labor violations, conducts site inspections and educates employers about their legal obligations, confirming their compliance. During FY99, Inspectors visited 171 businesses where minors were employed, noting some 155 violations that were subsequently rectified by the employers.

INDUSTRIAL HOMEWORK

FLBP enforces the industrial homework laws (work performed for a company in the employee's home) by issuing permits to the employers and certificates for each employee. FLBP also monitors these companies to ensure compliance with the minimum wage and overtime laws. During FY99, FLBP issued 21 permits and 202 certificates.

WAIVERS

The Fair Labor and Business Practices Division is charged with the authority to waive certain requirements of the labor laws under conditions specified within the statutes. Each request for a waiver is carefully reviewed before a determination is made to either grant or deny the request. Three areas of waiver focus are worthy of note:

Following a review of the criteria for issuing exemptions for the requirement that employers allow employees a day of rest in seven, the number of such exemptions granted decreased from 76 in FY98 to 3 in FY99.

The Division has rewritten the standards for employment in summer camps based upon changes in the minimum wage regulations. The written standards are distributed each spring to all camps requesting to pay subminimum wage. Because of significant changes in the Department of Public Health's camping regulations, FLBP no longer includes the DPH regulations in the materials it distributes.

The Division no longer grants exemptions to the three-hour minimum daily hours requirement. This change resulted from an amendment to the minimum wage regulations.

WAIVER STATISTICAL REPORT

<u>TYPE OF WAIVER</u>	<u>FEE FOR WAIVER</u>	<u>AMOUNT GRANTED</u>	<u>FEE COLLECTED</u>
Meal	\$100.00	\$57.00	\$5,749.52
7-Day	100.00	3.00	300.00
Theatrical	100.00	23.00	2,300.00
Employer	50.00	123.00	6,150.00
Seasonal	100.00	28.00	2,800.00

3 hr. Minimum	50.00	5.00	250.00
<u>Sheltered Workshop</u>	<u>50.00</u>	<u>22.00</u>	<u>1,100</u>
TOTAL FIGURES	\$550.00	\$261.00	\$18,649.52

SIGNIFICANT CASES

The following list provides an overview of 63 prosecution efforts undertaken by FLBP during Fiscal Year 1999:

- **Commonwealth v. Matthew Connolly, Commonwealth Trucking, Inc.** (Suffolk Superior Court) - Matthew Connolly, president of Commonwealth Trucking, Inc., was convicted by a jury of workers' compensation fraud, failure to provide workers' compensation insurance, failure to pay the prevailing wage, and submitting false certified payroll records in connection with work on the Central Artery/Tunnel Project. He was sentenced to two years probation, ordered to pay \$17,189.44 in restitution to a former employee, \$2,500 in fines, and debarred from bidding or participating on government contracts for three years.
- **Commonwealth v. Edlin Almeida, Jr.** (Suffolk Superior Court) - Edlin Almeida, the owner of a trucking company, pled guilty to failure to pay the prevailing wage rate, failure to submit certified payroll records and filing false certified payroll records for work performed by his truck drivers on the Central Artery/Tunnel Project. He was placed on probation for seven months and ordered to pay \$20,919.99 in restitution to four employees. Almeida was also debarred from participating or bidding on public works construction projects for six months.
- **Commonwealth v. Daniel Amaral/Amaral Excavating, Inc.** (Suffolk Superior Court) -Amaral Excavating and its president, Daniel Amaral, pled guilty to seven counts of violating the state's prevailing wage law, one count of failure to keep true and accurate records of employees working at the Central Artery/Tunnel Project, seven counts of failure to pay overtime, one count of failure to file with the Division of Employment and Training and pay contributions to the Unemployment Compensation Trust Fund, and one count of failure to provide worker's compensation coverage. Amaral was sentenced to nine months in the House of Correction and was ordered to serve 14 days of that sentence with the balance suspended for three years. He was also ordered to pay a total of \$107,120.69 in restitution to his employees and \$7,700 in fines. Amaral will be debarred from public works construction for three years. The defendant corporation also pled guilty to the same

charges and was debarred from public works construction in Massachusetts for three years.

- **Commonwealth v. Bartholomew Molloy** (Suffolk Superior Court) - Bartholomew Molloy, the owner of a trucking company, pled guilty to indictments charging him with failure to pay the prevailing wage, failure to pay wages in a timely manner, and failure to pay overtime in connection with work performed on the Central Artery/Tunnel Project. The defendant was placed on probation for three years. He was also ordered to pay \$11,488 in restitution to one employee and was debarred from public works construction for six months.
- **Commonwealth v. Noel St. George, Jr.** (Suffolk Superior Court) - The defendant pled guilty to failure to pay the prevailing wage rate, filing false certified payroll records and failure to provide workers' compensation insurance for work performed by his trucking company on the Central Artery/Tunnel Project. St. George was placed on probation for two years, ordered to pay a \$500 fine and was debarred from participating or bidding on public works projects for three years. He was also ordered to pay \$23,319.77 in restitution for wages owed to his drivers.
- **Commonwealth v. Lynden Wright** (Suffolk Superior Court) - Lynden Wright, co-owner of L&D Trucking, pled guilty to failure to pay the prevailing wage rate for work performed by his employees on the Central Artery/Tunnel Project, failure to file certified payroll records, failure to pay wages in a timely manner, failure to pay unemployment taxes, and failing to provide workers' compensation coverage for his employees. He was placed on probation for one year and ordered to pay \$20,985.74 in restitution. Wright was also ordered to pay \$1,000 in fines and was debarred from participating or bidding on government contracts for three years.
- **Commonwealth v. Diane Wheatley** (Suffolk Superior Court) - Diane Wheatley, co-owner of L&D Trucking, pled guilty to failure to pay the prevailing wage rate, failure to submit certified payroll records, failure to pay wages in a timely manner, failure to pay unemployment taxes, and failing to provide workers' compensation coverage for her employees. Wheatley was placed on probation for one year and ordered to pay a \$500 fine. She is also debarred from participating or bidding on government contracts for three years.
- **Commonwealth v. Michael Walorz** (Suffolk Superior Court) - Michael Walorz, president of Walorz Trucking, pled guilty to failure to pay the prevailing wage rate and failing to file certified payroll records for work performed by his truck drivers on the

Central Artery/Tunnel Project. He was placed on pre-trial probation for one year, and ordered to pay \$2,721.21 in back wages to his employees.

- **Commonwealth v. Arthur L. Norris, Jr.** (Suffolk Superior Court) - Arthur Norris was charged with failure to pay the prevailing wage rate and failure to file certified payroll records for work performed by his truck drivers on the Central Artery/Tunnel Project. He was placed on pre-trial probation for one year and ordered to pay \$2,831.23 in restitution for wages owed to his employees. Norris was also ordered to pay \$1,000 in fines and was debarred from participating or bidding on public works construction projects for six months.
- **Commonwealth v. Thomas P. Morabito** (Suffolk Superior Court) - Owner of T.P. Morabito Trucking, Thomas P. Morabito pled guilty to failure to pay overtime and failure to pay wages in a timely manner for work performed on the Central Artery. He was ordered to pay \$2,700 in fines and \$317.20 in restitution.
- **Commonwealth v. Ralph Caruso, Jr.** (Suffolk Superior Court) - The defendant was charged with failure to pay the prevailing wage rate and filing false certified payroll records for trucking work performed by his employees on the Central Artery/Tunnel Project. He was placed on pre-trial probation for one year and ordered to pay \$244 in restitution for wages owed to his employees.
- **Commonwealth v. Tom Bowley/Tewksbury Industries** (Middlesex Superior Court) - Tom Bowley, corporate president of Tewksbury Industries, was charged with two counts of manslaughter following the deaths of two workers. Prior to the injuries, the defendant had been informed of general defects regarding the safety of his scrap metal yard by OSHA, insurance companies and various consultants. The defendant pled guilty to two counts of assault & battery, and was sentenced to 400 hours community service and three years probation.
- **Commonwealth v. James Verni, DBA Lube Express** (New Bedford District Court) - James Verni, the owner of Lube Express, a car service center, admitted to sufficient facts for findings of guilty on charges of non-payment of wages and failure to pay unemployment contributions. The charges were continued without a finding for one year and Verni was ordered to pay \$2,810 in restitution to three former employees and \$2,000 to the Division of Employment and Training.

- **Commonwealth v. Joseph Lewis and Boston Towing Inc.** (Boston Municipal Court) - Boston Towing and its president, Joseph Lewis, admitted to sufficient facts for findings of guilty on charges of non-payment of wages and failure to obtain workers' compensation insurance. The charges were continued without a finding for one year. The defendants were placed on probation and ordered to pay \$1,154 in restitution to two former employees who worked as tow truck drivers, \$500 in court costs with an alternative sentence of guilty findings and 10 days in the house of correction.
- **Commonwealth v. D&R General Contracting Inc. and Richard Morello** (Woburn District Court) - D&R General Contracting and its president, Richard Morello, admitted to sufficient facts for findings of guilty on charges of failure to pay the prevailing wage rate and failure to pay the correct overtime rate. The corporation also admitted to sufficient facts for a finding of guilty on charges of failure to provide true and accurate payroll records and failure to provide payroll records. The charges were continued without a finding for two years. The corporation was ordered to pay \$21,463.79 in restitution to four former employees, \$10,000 in court costs and \$40,000 in community service projects. Morello was ordered to pay \$1,000 in court costs and debarred for six months.
- **Commonwealth v. Janice Falcone** (New Bedford District Court) - Janice Falcone, the owner of a hair and beauty salon, admitted to sufficient facts for findings of guilty on charges of non-payment of wages, failure to pay unemployment contributions and failure to provide workers' compensation coverage. The charges were continued without a finding for one year. Falcone was placed on probation and ordered to pay \$2,461 in restitution to five former employees, \$3,525 to the Division of Employment and Training and \$3,000 in court costs, with an alternative sentence of up to 60 days in the house of correction on the non-payment claims, up to one year on the unemployment claim and up to two and one-half years on the workers' compensation claim.
- **Commonwealth v. Michael Brulport** (Chelsea District Court) - Michael Brulport, the president and owner of Northern Insulation, Inc., admitted to sufficient facts for findings of guilty on charges of non-payment of wages, failure to pay unemployment contributions and failure to provide workers' compensation coverage. The charges were continued without a finding for one year. Brulport was ordered to pay \$3,000 in restitution to one former employee, \$1,000 to the Division of Employment and Training and \$100 in court costs.

- **Commonwealth v. Kingsberry Building Technologies Inc. and Charles Martin** (Malden District Court) - Kingsberry Building Technologies, Inc. and its president, Charles J. Martin, admitted to sufficient facts for guilty findings on charges of failure to pay the prevailing wage, workers' compensation fraud, unemployment tax fraud, failure to provide true and accurate payroll records and failure to provide pay stubs to employees. The charges were continued without a finding for one year. The defendants were ordered to pay \$10,980 in restitution to two former employees, restitution of \$28,600 to Eastern Casualty Company and \$5,500 in court costs with an alternative sentence of six months in the house of correction committed. The defendants were also debarred from bidding on public works construction projects for one and one-half years.

- **Commonwealth v. Carmelina's Waterfront, Inc. and David S. Arsenault** (Salem District Court) - Carmelina's Waterfront and its president, David S. Arsenault, admitted to sufficient facts for guilty findings on charges of failure to pay unemployment contributions and failure to provide workers' compensation coverage. The cases were continued without a finding for 18 months and the defendants were ordered to pay \$2,638.03 in restitution to the Division of Employment and Training and \$2,000 in court costs.

- **Commonwealth v. Northeast Sweeping & Asphalt Paving Corporation, EMP Sweeping & Asphalt Corporation, Deanna Zucchari, Peter Maggio and Edward Crasco** (Malden District Court) - Both corporations worked in concert to hire and pay employees for work on various highway maintenance projects. The corporations were both managed by Peter Maggio. Northeast, Deanna Zucchari and Edward Crasco all admitted to sufficient facts for findings of guilty on charges of non-payment of wages and failure to provide workers' compensation coverage. Zucchari also admitted to sufficient facts on charges of failure to register with the Division of Employment and Training, failure to provide true and accurate payroll records and failure to pay the correct prevailing wage rate. Crasco also admitted to sufficient facts on a charge of larceny by check. Maggio admitted to sufficient facts on charges of non-payment of wages. The cases were continued without a finding for one year. All parties were ordered, jointly and severally, to pay \$19,261.66 in restitution to 10 former employees and all parties were debarred from public works projects for three years. Crasco was required to pay court costs of \$2,000 and Zucchari was ordered to pay court costs of \$385. EMP pled guilty to charges of non-payment of wages, failure to register with the Division of Employment and Training, failure to provide true and accurate payroll records and failure to pay the correct prevailing wage rate. The corporation was placed on probation for one year and debarred from

public works projects for three years.

- **Commonwealth v. Sentry Corporation and John T. Jacobus** (Hingham District Court) - Sentry Corporation and its president, John T. Jacobus, pled guilty to seven counts of failure to pay the prevailing wage and two counts of failure to provide true and accurate payroll records. The defendants were placed on probation for one year and were ordered to pay \$15,319.69 in restitution to four employees and \$2,000 in fines. They were also debarred for six months. In addition, the defendants admitted to sufficient facts for findings of guilty of workers' compensation fraud. This charge was continued without a finding for two years and the defendants were ordered to pay a \$2,000 fine and \$31,218 in restitution to Wausau Insurance Company.

- **Commonwealth v. Timothy Croft and Advanced Craftsmans Co.** (Ayer District Court) - Timothy Croft, owner of Advanced Craftsman Co., pled guilty to three counts of failing to file a business certificate and was ordered to pay \$150 in fines. Croft also admitted that there were sufficient facts to find him guilty of three counts of failure to pay the prevailing wage rate. These matters were continued without a finding for six months with the condition that the defendant be debarred from public works construction for that period of time. The defendant was also ordered to pay \$3,720.06 in restitution to three employees.

- **Commonwealth v. Skyline Roofing and Contracting and Lester Hooben** (Taunton District Court) - Skyline Contracting and Roofing, Inc. and its president, Lester Hooben, pled guilty to six counts of failure to pay the prevailing wage rate, one count of submitting false payroll records, three counts of failure to pay wages in a timely manner, and three counts of failure to pay overtime. Hooben was sentenced to 30 days in the House of Correction, suspended for one year. He was also ordered to pay \$8,238.48 in restitution, \$2,150 in fines, and was debarred from public works construction for six months. Skyline was also debarred from public works construction for six months.

- **Commonwealth v. Brentwood Construction and John Fein** (Barnstable District Court) - John Fein, the operator of a Hyannis construction company, was charged with failure to pay the prevailing wage rate and failure to provide true and accurate records. The defendant admitted to sufficient facts for findings of guilty. The case was continued without a finding for three months and the defendant was debarred for six months, and was ordered to pay \$10,000 in back wages to two employees.

- **Commonwealth v. Diversified Contracting, Inc.** (Dorchester District Court) -

Diversified was found guilty of four counts of failure to pay the prevailing wage rate and one count of failure to file true and accurate certified payroll records following a bench trial. The defendant was ordered to pay \$13,000 in fines.

- **Commonwealth v. Medical Weight Loss Center, Inc.** (Brighton District Court) - Medical Weight Loss was found guilty of failure to pay wages following a bench trial. The defendant was ordered to pay \$1,000 in fines and \$804 in restitution to one employee.
- **Commonwealth v. J & G Electric, Inc. and Joseph Gauthier** (Peabody District Court) - J & G Electric and its president, Joseph Gauthier, pled guilty to charges of failure to pay the prevailing wage rate to one employee and failure to pay overtime to five others. The defendants were placed on probation for two years and ordered to pay \$18,059 to the employees. Both defendants were debarred for six months.
- **Commonwealth v. Quality Insulation, Inc. and William L. White, Jr.** (Framingham District Court) - Quality Insulation pled guilty to two counts of failing to pay the prevailing wage rate and one count of failure to provide true and accurate certified payroll records. Quality's compliance officer, William White, Jr., admitted to sufficient facts for a finding of guilty on the charge of failing to provide true and accurate certified payroll records. The charge against him was continued without a finding for six months. The company was debarred from public works construction for six months. Quality and White were ordered to pay \$7,220.45 in restitution to two employees.
- **Commonwealth v. Hickox School of Information Technology and Ralph Covino** (Brockton District Court) - The former Hickox School of Information Technology, Inc. and its president/treasurer, Ralph Covino, admitted to sufficient facts for findings of guilty on charges of failure to pay wages to four instructors, failure to make unemployment insurance contributions, and failure to provide workers' compensation insurance coverage. The complaints were continued without a finding for one year. The defendants were ordered to pay \$1,913 in restitution to the instructors of the former computer training school, \$1,500 to the Division of Employment and Training, and \$100 in court costs.
- **Commonwealth v. Naratoone Security, Inc., Okey Chikere and Emmanuel Onos** (Dorchester District Court) - Naratoone Security Inc. was charged with failure to make unemployment contributions. Its president, Okey Chikere, was charged with four counts

of failure to pay wages. Both admitted to sufficient facts for a finding of guilty on eighteen complaints. The cases were continued without a finding for one year, and the defendants were ordered to pay \$22,960 in unemployment insurance contributions to the Division of Employment and Training. Chikere and the company's Chief Financial Officer, Emmanuel Onos, were also ordered to pay a total of \$3,918.98 to four employees who failed to receive their wages and earned vacation pay when they were laid off from their positions as security officers.

- **Commonwealth v. Pedigree Career Institute Educational Services, Inc. and Kevin Hallinan** (Lynn District Court) - Pedigree Career Institute and its president and treasurer, Kevin Hallinan, admitted to sufficient facts for findings of guilty on thirteen counts of failure to pay wages. Pedigree was found guilty and the charges against Hallinan were continued without a finding for three years. Both defendants were placed on supervised probation and ordered to pay \$13,500 in restitution to thirteen employees. PCI and Kevin Hallinan are also charged with failure to make unemployment insurance contributions. Those charges are currently scheduled for trial.
- **Commonwealth v. Maria Fatima Carmo d/b/a Sunrise Restaurant** (Fall River District Court) - Maria Fatima Carmo, owner of the Sunrise Restaurant, was found guilty on one count of failure to provide workers' compensation insurance coverage. Carmo also admitted to sufficient facts for a finding of guilty on four counts of failure to pay wages to four employees. The defendant was placed on supervised probation for one year and was ordered to pay \$2,327 in restitution to the employees.
- **Commonwealth v. American Transportation and Kevin O'Brien** (Peabody District Court) - Kevin O'Brien, president and treasurer of American Transportation, pled guilty to two counts of failure to pay wages to two employees who worked for him as drivers. In addition, both defendants pled guilty to one count each of failure to provide workers' compensation insurance coverage. O'Brien was placed on probation for one year and was ordered to pay \$1,400 in restitution to the two employees. He and the company were fined \$500 for the workers' compensation insurance violations.
- **Commonwealth v. Body by L.A.W., Inc./Brian Tanguy** (Quincy District Court) - Brian Tanguy, the president and treasurer of Body by L.A.W., pled guilty to two charges of failing to pay wages to two employees. He was ordered to pay \$266 in restitution and was placed on probation for three months.

- **Commonwealth v. Cambodian Community of Massachusetts** (Chelsea District Court) -The company admitted to sufficient facts for a finding of guilty on one charge of failing to pay wages to one employee. The charge was dismissed upon the company's payment of \$2,152.89 in wages due the employee.
- **Commonwealth v. Champion-Maisons, Inc./Raymond Peveri** (Lynn District Court) - Champion-Maisons and its president, Raymond Peveri, admitted to sufficient facts for findings of guilty on charges of failing to provide workers' compensation insurance coverage. Raymond Peveri and the corporation were ordered to pay \$500 in fines.
- **Commonwealth v. Allied Weatherproofing** (Lawrence District Court) - Allied Weatherproofing was charged with failure to pay overtime and failure to provide true and accurate payroll records. The workers had been paid in full, so the overtime charges were dismissed upon payment of \$200 in court costs. The charge of failure to provide true and accurate records was continued without a finding for one year.
- **Commonwealth v. Dr. Peter Stathouloupoulos** (Worcester District Court) - Dr. Peter Stathouloupoulos, a Worcester dentist, admitted to sufficient facts on one count of failure to provide workers' compensation insurance. The charge was continued without a finding for three months and the defendant was ordered to pay \$1,000 in court costs.
- **Commonwealth v DAM Concrete Forms, Inc, Sean Dormady and Michael Dormady** (Hingham District Court) -Three co-defendants, DAM Concrete Forms, Inc., Sean Dormady, the president, and Michael Dormady, the de facto head of the corporation, operated a concrete forms company. DAM Concrete and Michael Dormady were charged with one count of workers' compensation insurance fraud, two counts of failure to pay prevailing wages and two counts of failure to provide true and accurate payroll records. The corporation pled guilty and was ordered to pay \$30,000 in restitution to Eastern Casualty Insurance Co. and was debarred from engaging in any public works projects for six months. Michael Dormady was placed on pre-trial probation and is jointly and severally liable for the restitution. His son, Sean Dormady, was charged with two counts each of prevailing wage and records violations. He admitted to sufficient facts and the charges were continued without a finding for six months.
- **Commonwealth v. Stafford Lewis d/b/a Atlantic Masonry** (Dorchester District

Court) - Stafford Lewis, the owner of Atlantic Masonry, was charged with failure to pay the prevailing wage and provide payroll records. The charges were continued without a finding for six months. Lewis was ordered to pay \$23,000 in restitution and he was also fined \$1,500 for failing to provide true and accurate records.

- **Commonwealth v. Franny's Landscape and Francis Venuto** (Lawrence District Court) - Franny's Landscape and its president, Francis Venuto, were charged with one count of failure to pay prevailing wage rates and one count of failing to provide true and accurate records. These matters were continued without a finding for one year. The defendant was ordered to pay \$15,000 restitution to two employees and debarred for three months.
- **Commonwealth v. J.S. Luiz and Joseph Luiz** (New Bedford District Court) - J.S. Luiz and its president, Joseph Luiz, were charged with failure to pay prevailing wages and failure to provide true records. The court continued all matters without a finding for two years and ordered the defendants to pay restitution of \$62,132.77 to its employees.
- **Commonwealth v. Marquee Restaurant and Ron Mochi** (Boston Municipal Court) - Ron Mochi, owner of Marquee Restaurant, was charged with one count of non-payment of wages. He admitted to sufficient facts and was ordered to pay restitution in the amount of \$1,800. The charges were continued without a finding for three years.
- **Commonwealth v. Jennie Woo** (Malden District Court) - Jennie Woo, the president of a Malden restaurant, was tried and convicted of failure to pay wages to three employees. She was placed on probation for one year and ordered to pay \$9,216.90 restitution to her former employees. A charge of failure to provide workers' compensation insurance was continued without a finding for one year.
- **Commonwealth v. William Berneburg** (Quincy District Court) - William Berneburg, the president of an office machine business, pled guilty to failing to pay wages to one employee. He was placed on probation for six months and ordered to pay \$1,875 in restitution to his employee, plus \$100 for court costs.
- **Commonwealth v. Yao Feng** (Cambridge District Court) - Yao Feng, the president of a Cambridge computer company, was charged with failure to pay wages to an employee and failure to pay unemployment insurance contributions. Both charges were continued

without a finding for six months while the defendant paid \$1,730.76 in restitution to the employee and \$3,344.50 to the Division of Employment and Training.

- **Commonwealth v. Richard Cox and J.C. Bostonian Enterprises, Inc.** (Roxbury District Court) - Richard Cox, the president of a Boston landscaping business, pled guilty to charges of failure to pay the prevailing wage and failure to pay wages to five employees. The corporation was convicted of failure to provide true and accurate payroll records. Cox was sentenced to 60 days in the House of Correction suspended for two years with probation, and ordered to pay restitution to his employees totaling \$2,907.70. He was debarred from public works construction for six months. The company was debarred for 12 months.
- **Commonwealth v Together Health Care and Terri Eldridge** (Wareham District Court) - Terri Eldridge, the former owner of Together Health Care Service, pled guilty to charges of non-payment of wages and failure to pay unemployment contributions. Eldridge was ordered to pay \$513 restitution to one employee and \$1,289 to the Division of Employment and Training and received a two month house of correction sentence, suspended for one year with probation.
- **Commonwealth v. D.W. White & Sons, Inc. and David White** (Lowell District Court) - David White, the president of D.W. White & Sons, Inc., pled guilty to four prevailing wage charges. The company pled guilty to four counts of failure to pay the prevailing wage and one count of failure to provide true and accurate payroll records; the company and White were debarred for six months. The defendant was ordered to pay \$36,258 restitution. Companion cases in Concord and Ipswich courts were continued without a finding.
- **Commonwealth v. Tuff Turf Landscaping** (Hingham District Court) - The defendant admitted to sufficient facts for finding of guilty, for failing to pay wages to 12 employees. The case was continued without a finding for two years and the defendant was ordered to make restitution for back overtime wages owed to the 12 employees.
- **Commonwealth v. J.F. Esposito and John Esposito** (Hingham District Court) - John Esposito, owner of J.F. Esposito, admitted to sufficient facts for findings of guilty for failure to pay wages and failure to remit DET in 1997. The charges were continued without a finding. Esposito was ordered to pay \$700 restitution to the employee and

\$10,473 to the Division of Employment and Training.

- **Commonwealth v. Mike Shastany** (Barnstable District Court) - Mike Shastany, the owner of a carpentry contractor, pled guilty to one count of non-payment of wages. Shastany was placed on probation for six months, and ordered to pay \$275 restitution to the one employee and a \$35 victim witness fee. Shastany also admitted to not paying workers' compensation insurance and received a continuance without a finding for six months.
- **Commonwealth v. Olympic Painting and George Vasiliades** (Peabody District Court) - George Vasiliades, president of Olympic Painting, admitted to sufficient facts to charges that three employees were not paid wages for their work as painters. Vasiliades also admitted to engaging in workers' compensation fraud for under reporting his payroll during certain periods and failing to keep workers' compensation coverage at other times.
- **Commonwealth v. Dollar King Stores and Joshuad Peled** (Dorchester District Court) - Joshuad Peled, the former owner of the now closed Dollar King stores in Brockton, Dedham and Dorchester, was charged with two counts of failure to pay wages and unemployment taxes, failure to maintain workers' compensation and failure to maintain employment taxes. He was placed on five years' supervised probation and ordered into a drug treatment program. He was ordered to pay \$9,320.74 restitution to two employees and back taxes to the Division of Employment and Training.
- **Commonwealth v. Lee's Rebar and Steel and Roy Lee** (Springfield District Court) - Roy Lee, owner of Lee's Rebar and Steel Company, pled guilty to failure to pay the prevailing wage, failure to keep proper records, failure to provide workers' compensation and failure to pay unemployment insurance. Lee was sentenced to six months in the House of Correction, suspended for three years. He was ordered to pay \$13,632 restitution to the Unemployment Compensation Trust Fund and \$4,000 in fines.
- **Commonwealth v. Robert Bolduc and Pride Convenience, Inc.** (Springfield District Court) - Robert Bolduc, president of Pride Convenience, Inc., pled guilty to eight counts of non-payment of wages. He was placed on probation for one year and ordered to pay \$4,785.07 in restitution to eight employees and \$4,000 in fines.
- **Commonwealth v. Douglas LaBelle** (Springfield District Court) - Douglas LaBelle, president of Healthy Habits, Inc., admitted to sufficient facts for findings of guilty on 12

charges of non-payment of wages when his health club was closed. The charges were continued without a finding for three months and the defendant was ordered to pay \$4,156 in restitution to the employees.

- **Commonwealth v. Richard Williams** (Springfield District Court) - Richard Williams, president of Sentinel Investigations, formerly known as Sentinel Security, admitted to sufficient facts for a finding of guilty on charges of non-payment of wages. The charges were continued without a finding for six months. The defendant was ordered to pay \$350 in restitution and \$500 in court costs.
- **Commonwealth v. Donald Edwards** (Springfield District Court) - Donald P. Edwards admitted to sufficient facts for a finding of guilty on charges of failure to pay wages to one employee, failure to pay into the unemployment trust fund, and failure to provide workers' compensation insurance. The charges were continued without a finding for 18 months. Restitution to the victim was ordered in the amount of \$6,057.70. Restitution to the trust fund was to have been determined at a restitution hearing, but the defendant failed to appear and a warrant was issued.
- **Commonwealth v. Marlene Meiuller** (Palmer District Court) - Marlene Meiuller admitted to sufficient facts for a finding of guilty to one charge of non-payment of wages. She was placed on probation for one year and ordered to pay \$1,458 in restitution to the employee.
- **Commonwealth v. Dean P. Todd d/b/a Eagle Home Improvement Co.** (Pittsfield District Court) - Dean P. Todd, admitted to sufficient facts for a finding of guilty on one charge of failure to pay wages. The charge was continued without a finding for one year and the defendant was ordered to pay \$327 in restitution to the employee.
- **Commonwealth v. McCaulay Roberts Jacquesalliez d/b/a Australian Love Bagels** (Ware District Court) - McCaulay Roberts Jacquesalliez, owner of Australian Love Bagels, admitted to sufficient facts for a finding of guilty on charges of non-payment of wages and failure to provide workers' compensation. The charges were continued without a finding for one year and the defendant was fined \$500 on the workers' compensation charge. The judge allowed the defendant to make a \$500 donation in food to a food pantry within three months in lieu of the fine. The defendant was also ordered to pay \$4,573 restitution to four employees.

- **Commonwealth v. Francis A. Waterman d/b/a Waterman Excavating & Landscaping** (Adams District Court) - Francis Waterman d/b/a Waterman Excavating and Landscaping pled guilty to four charges of failure to pay prevailing wages to employees and one charge of failing to pay overtime. He was placed on probation for one year and ordered to pay \$3,000 in restitution to the four employees. He was also fined \$500 and debarred for six months.

SIGNIFICANT SETTLEMENTS

- **Commonwealth v. Waste Management, Inc.** (Suffolk Superior) - Waste Management Corporation entered into settlement agreement following a decision by the Suffolk Superior Court on the Commonwealth's Motion for Summary Judgement in a civil action for declaratory judgement. The defendant agreed to begin using proper deductions in calculating the appropriate prevailing wage rate for municipal solid waste hauling. The court's decision reaffirmed that municipal solid waste haulers are subject to the prevailing wage law.
- **George E. Frotton Trucking Co., Inc.** - Frotten Trucking Company entered into a settlement agreement resolving claims of failure to pay the prevailing wage rate. The company agreed to transfer equipment appraised at \$27,500 to a former employee. The employee worked as a truck driver on the Central Artery/Tunnel Project and was not paid the correct prevailing wage rate. The company also agreed to a six month debarment from public works.
- **Commercial Epoxy Flooring Co., Inc.** - Commercial Epoxy Flooring Company entered into a settlement agreement resolving claims of failure to pay the prevailing wage rate to five employees. The company agreed to pay \$10,774.11 in restitution to the former employees, and to a six month debarment.
- **Viking Systems, Inc. and Brian L. Straub** - Viking Systems Company, and its president, Brian Straub, entered into an settlement agreement to pay restitution of \$8,843.54 to four former employees and entered into a payment plan with the Division of Employment and Training to pay \$67,386.37 plus 6% simple interest in 72 monthly payments of \$1,116.78.
- **Jody Reale and Reale Associate, Inc.** - Reale Associates and its president, Jody Reale, entered into a settlement agreement resolving a prevailing wage issue. The company agreed to

pay restitution of \$18,897.71 to five former employees. The employees worked as equipment operators on several public works projects and were not paid the correct prevailing wage rate.

- **Sophia Poutous and Poutous Contracting, Inc.** - Poutas Contracting and its president, Sophia Poutous, entered into a settlement agreement regarding not paying employees for all hours worked on various public works projects. The company agreed to pay restitution of \$15,713.09 to three employees.
- **Quality Care Centers of Massachusetts, Inc. d/b/a Franville Nursing and Rehabilitation, President, Bruce A. Shear** - Franville Nursing and its president, Bruce Shear, entered into a settlement agreement resolving allegations of non-payment of wages. The company agreed to pay a total of \$86,863.74 in restitution to 70 former employees.
- **Paul A. Hayes and P.H. Mechanical Corporation** - The company and its president, Paul A. Hayes, entered into a settlement agreement to resolve allegations of prevailing wage violations due to misclassification of employees as apprentices on public works projects. The agreement requires the defendant to pay \$10,540.31 in restitution to five employees. In addition, the company agreed to perform a self-audit on apprentices and to voluntarily pay all other amounts due its employees.
- **Markings, Inc. and Stephen R. Stella** - The company and its president, Stephen R. Stella, entered into a settlement agreement to resolve allegations of prevailing wage violations. The company agreed to pay \$150,633 in back wages to 44 current and former employees,
- **G.D. Sheehan Trucking, Inc.** - G.D. Sheehan Trucking, Inc. entered into a settlement agreement to resolve allegations that truck drivers were not paid for travel time enroute to and from the Central Artery in 1997 and 1998 as required. The company agreed to pay \$2,340 in back wages.
- **HusCo., Inc.** - HusCo., Inc. entered into a settlement agreement to resolve allegations of failure to pay the prevailing wages. The owner agreed to pay \$4,279 in restitution to a former employee.
- **Castagna Construction** - Castagna Construction entered into a settlement agreement to resolve allegations of failure to pay the prevailing wage. The defendant agreed to pay \$2,852 in restitu-

tion and signed a settlement agreement regarding future compliance with the prevailing wage laws.

- **GSP, Inc.**- GSP, Inc. entered into a settlement agreement to resolve prevailing wage allegations. The company paid \$6,401 in restitution to the employees and agreed to a voluntary six month debarment.
- **Griffin Electric** - Wayne Griffin, the owner of an electrical contracting company, agreed to resolve prevailing wage allegations that arose from an improper calculation of benefits contributions. He agreed to correct this practice and make appropriate restitution.
- **Andreassi Brothers, Inc.** -Rocco and Richard Andreassi, president and treasurer, respectively, entered into a settlement agreement to resolve prevailing wage and overtime violations. They agreed to pay \$5,989 in restitution to their employees and to comply with the prevailing wage laws.
- **Connecticut Valley Institute, Inc. d/b/a Charles River Hospital** - Charles River Hospital and its president, Frederick J. Thacher, entered into a settlement agreement to pay wages to employees after the hospital closed in the amount of \$147,500 and make 401K contributions in the amount of \$11,732.48.
- **Riverside Park** - This amusement company entered into a settlement agreement to pay over \$37,000 in overtime to year-round employees.

DEBARMENTS

Thirty-five (35) companies and individuals were debarred from public works as a direct result of the Division's enforcement efforts. The following list provides an overview of debarments obtained by FLBP in Fiscal Year 1999:

- **Caruso & McGovern Construction, Inc.**, Gerald J. McGovern, President, and Steven J. Caruso, Treasurer, One Industrial Way, Georgetown, MA 01833 - debarred for a period of six months beginning July 17, 1998 through January 17, 1999.
- **Roy Lee, Jr.**, 269 Stonyhill Road, Building G-1 Apt. 109, Wilbraham, MA 01095 - debarred for a period of one year beginning August 6, 1998 through August 6, 1999.

- **Francis A. Waterman**, 97 Main Street, Cheshire, MA 01225 - debarred for a period of six months beginning September 10, 1998 through March 10, 1999.
- **K & J Mechanical, Inc.**, Adalgisa Donnellan, President, 91 Hibiscus Avenue, Weymouth, MA 02188 - debarred for a period of six months beginning September 21, 1998 through March 21, 1999.
- **Sentry Corporation and John T. Jacobus, President**, 21 Fottler Road, Hingham, MA 02043 - debarred for a period of six months beginning September 24, 1998 through March 24, 1999.
- **Bremco, Inc., and Reginald Morse, President**, P.O. Box 1491, Claremont, NH 03743 - debarred for a period of six months beginning October 8, 1998 through April 8, 1999.
- **Lynden G. Wright and Diane Wheatley d/b/a L&D Trucking**, Bellingham MA, - debarred for a period of six months beginning October 16, 1998 through April 15, 1999.
- **GSP, Inc.**, Gregory Pimenta, President, 140 Rear Fremont Street, Taunton, MA 02780 - debarred for a period of six months beginning October 20, 1998 through April 20, 1999.
- **George Vasiliades d/b/a Olympic Painting**, George Vasiliades, President, 4 Samos Circle, Peabody, MA 01960 - debarred for a period of three years beginning October 19, 1998 through October 19, 2001.
- **Northeast Sweeping & Disposal Corporation**, Edward Crasco, President, 1 Porter Avenue, Revere, MA 02151 - debarred for a period of three years beginning November 20, 1998 through November 20, 2001.
- **EMP Sweeping & Asphalt Paving Corporation**, Deanna Zucchari, President, 20 Production Road, Bay #8, Walpole, MA 02081 - debarred for a period of three years beginning November 20, 1998 through November 20, 2001.
- **Arthur L. Norris, Jr.**, 2 Riverside Drive, Marblehead, MA 01945 - debarred for a period of six months beginning December 3, 1998 through June 2, 1999.

- **Noel St. George, Jr.**, d/b/a NSG Trucking, 14 Meade Street, Coventry, RI 02816 - debarred for a period of three years and two months beginning October 15, 1998 through December 20, 2001.
- **Franny's Landscape Co., Inc.**, Francis A. Venuto, President, 8 Arlington Place, Framingham, MA 01702 - debarred for a period of three months beginning December 15, 1998 through March 15, 1999.
- **Timothy Croft**, Owner of Advanced Craftsman Co., 51 Tyler Road, Townsend, MA 01469 - debarred for a period of six months beginning December 16, 1998 through June 16, 1999.
- **Kingsberry Building Technologies, Inc.**, and Charles J. Martin, President, 10 Winship Drive, Wakefield, MA 01880 - debarred for a period of eighteen months beginning June 1, 1999 through December 1, 2000.
- **Skyline Contracting & Roofing, Inc.**, and Lester Hooben, President, 399 Washington Street, Taunton, MA 02780 - debarred for a period of six months beginning January 12, 1999 through July 12, 1999.
- **Amaral Excavating, Inc.**, 17 Hammond Street, Somerville, MA 02145, and Daniel P. Amaral, President, 47 Governor Winthrop Road, Somerville, MA 02143 - debarred for a period of three years beginning February 3, 1999 through February 3, 2002.
- **JT&C Construction, Inc.**, Josephine Cristaldi, President, and Angelo Cristaldi, Manager, 14 Appleton Street, North Andover, MA 01845, - debarred for a period of six months beginning January 1, 1999 through July 1, 1999.
- **J.C. Bostonian Enterprises, Inc.**, 60 Winthrop Street, Roxbury, MA 02119, - debarred for a period of one year beginning March 10, 1999 through March 9, 2000; and Richard Cox, President, debarred for a period of six months beginning March 10, 1999 through September 9, 1999.
- **J&G Electric, Inc. and Joseph O. Gauthier**, President, 15 Atherton Circle, Lynnfield, MA 01940, - debarred for a period of six months beginning March 18, 1999 through September 18, 1999.

- **Commonwealth Trucking, Inc.**, Matthew Connolly, President, 31 Taylor Street, North Quincy, MA 02170, - debarred for a period of six months beginning March 22, 1999 through September 21, 1999.
- **Matthew Connolly**, 31 Taylor Street, North Quincy, MA 02170, - debarred for a period of three years beginning March 22, 1999 through March 21, 2002.
- **Diversified Contracting, Inc.**, 192 Walnut Street, Dorchester, MA 02124 (former address), - debarred for a period of six months beginning April 5, 1999 through October 4, 1999.
- **Richard F. Morello**, 13 West Park Drive, Wakefield, MA 01880, - debarred for a period of six months beginning April 15, 1999 through October 15, 1999.
- **Quality Insulation, Inc.**, Joseph Jillson, President, 2 Industrial Road, Milford, MA 01757, - debarred for a period of six months beginning April 26, 1999 through October 26, 1999.
- **Dam Concrete Forms, Inc.**, Michael L. Dormady, Operations Manager, 577 Circuit Street, Hanover, MA 02339, - debarred for a period of six months beginning April 27, 1999 through October 26, 1999.
- **A.C. Equipment Co., Inc.**, Angelo Ciardiello, President, 5 Collins Road, Wakefield, MA 01880, - debarred for a period of three months beginning May 15, 1999 through July 15, 1999.
- **Finish Line Construction** or any company owned by Michael Mullen, 52 Mahogany Run, Leominster, MA 01453-3485, - debarred for a period of six months beginning May 18, 1999 through November 17, 1999.
- **Finish Line Construction** or any company owned by David Angelli, Owner, 25 York Terrace, Lynn, MA 01902, - debarred for a period of six months beginning May 18, 1999 through November 17, 1999.
- **Sunrise Restaurant**, Maria Fatima Carmo, Owner, formerly 982 Eastern Avenue, Fall River,

MA, - debarred for a period of three years beginning June 10, 1999 through June 10, 2002.

- **Bartholomew Molloy**, 378 Centre Street, Dorchester, MA 02124, d/b/a Molloy Excavating, 79 Eliot Street, Norwood, MA 02062, - debarred for a period of six months beginning June 15, 1999 through December 15, 1999.

- **Brentwood Construction and John Fein**, President, 27 Fresh River Lane, Falmouth, MA 02540, - debarred for a period of six months beginning June 14, 1999 through December 14, 1999.

- **Commercial Epoxy Flooring Co., Inc.**, Robert Attenello, President, 23 Old Windsor Road, Bloomfield, CT 06002, - debarred for a period of six months beginning June 8, 1999 through December 8, 1999.

- **George E. Frotton Trucking Co., Inc.**, George E. Frotton, President, 116 Old Boston Road, Tewksbury, MA 01876 - debarred for a period of six months beginning June 18, 1999 through December 18, 1999.

OUTREACH EFFORTS

OUTREACH AND EDUCATION INITIATIVES

Outreach and education continue to be a priority for the Division. In May of 1999, the Attorney General appointed a new Outreach Coordinator to expand the dialog with employers, employee groups and the community. The Coordinator acts as a liaison with the community, encouraging an open dialogue between FLBP, employers, and employees about their rights and responsibilities, as well as about the Division's enforcement efforts. Through proactive outreach and ongoing communication, the Division is able to both foster a higher level of understanding of the laws throughout the employment arena and better respond to issues as they arise in the field. The Division's Assistant Attorneys General and Inspectors also act as liaisons to the business and labor communities. They are available to answer questions and address concerns relative to the Division's enforcement efforts and other responsibilities of the Office.

SPEAKING ENGAGEMENTS/TRAININGS

Since July 1998, the Fair Labor and Business Practices Division staff has presented at numerous speaking engagements, seminars and conferences for business, labor and other concerned constituent

groups including:

- Western Massachusetts Employer Association
- Boston University School of Public Health
- Chinese Progressive Association
- Massachusetts Bar Foundation
- Boston Bar Association
- Western Massachusetts Auditors
- American Payroll Association, Boston Chapter
- Labor Guild of Boston
- South Shore Chamber of Commerce
- Massachusetts Continuing Legal Education
- North Central Massachusetts Chamber of Commerce
- University of Massachusetts at Lowell
- Small Town Administrators Association
- Massachusetts Arborists Association
- Associated Industries of Massachusetts
- Utility Contractors Association of North America
- City Solicitors and Town Counsel Association
- PaySTUBS
- Massachusetts Safety Council
- Massachusetts Camping Association
- Massachusetts Association of Municipal and Town Councils
- City of Somerville
- Tri-County Department of Public Works
- Massachusetts Association of Retarded Citizens
- Massachusetts Food Association
- Quincy College
- Emerson Hospital
- Massachusetts Building Trades Council
- Associated Builders and Contractors
- Northeast Payroll Conference
- Urban Schools Summit
- Massachusetts Certified Public Purchasing Official (MCPPO) Program
- Woman in Construction

FLBP HOTLINE

FLBP staffs a Hotline in the Boston Office, providing information and taking complaints from the general public. Hotline personnel include three intake clerks and a duty officer from the inspectional staff. The Hotline received over 82,000 telephone calls during Fiscal Year 1999 and also directly assisted numerous walk-ins. This daily contact with the public is an important aspect of FLBP's education and outreach efforts.

REGIONAL OFFICES

In addition to the Boston Office, FLBP staffs four satellite offices. The Springfield Office operates full-time with four inspectors, a deputy managing attorney and a secretary. Offices in Worcester, Fall River, and Pittsfield are open one day a week and are staffed by experienced inspectors. These offices allow FLBP to assist workers and employers throughout the Commonwealth by providing them with direct local access to services and resources. When the satellite offices are not staffed, a call forwarding system in each of the part-time offices forwards calls to the Boston Office. This service provides callers with immediate assistance and local access at no additional cost.

CENTRAL REGISTER PROJECT

FLBP regularly provides the Secretary of State with notice of debarments so that information can be published weekly in the Central Register notifying awarding authorities, general contractors and other interested parties. In addition, whenever a contract is open for bid or awarded, the Division sends awarding authorities and contractors letters and information advising them of their rights and obligations under the prevailing wage law.

PUBLICATIONS AND ADVISORIES

FLBP issues a variety of publications detailing the wage and hour laws. These include brochures, posters, booklets, letters and advisories containing information to assist employers and employees throughout the Commonwealth. The Attorney General has also undertaken a translation initiative to make this literature available in a number of languages.

FLBP issued three comprehensive advisories this year addressing: the Small Necessities Leave Act; the Amendments to the Wage and Hour Laws; and Vacation Policies.

INSURANCE FRAUD DIVISION

INTRODUCTION

The Insurance Fraud Division ("IFD") currently consists of eight Assistant Attorneys General, one Special Assistant Attorney General, one paralegal, and one secretary. The Insurance Fraud Division works in conjunction with other divisions in the Business & Labor Protection Bureau to investigate and prosecute illegal activities that adversely affect local businesses and fair competition.

Members of the IFD are devoted to the investigation and prosecution of all types of fraudulent activity perpetrated against insurers and public entities. The IFD's cases vary widely, and include multi-million dollar premium fraud cases, major conspiracies by medical and legal professionals, fraudulent schemes in auto repair businesses, staged motor vehicle accidents, inflated claims against homeowner's policies, and cases involving claimants working while collecting workers' compensation benefits. While many of the targets and defendants tend to be private citizens, the IFD also prosecutes insurance agents, claims adjusters, and damage appraisers.

The IFD receives referrals from a number of sources. The largest source of referred cases is the Massachusetts Insurance Fraud Bureau. In addition, the IFD receives referrals from the Human Resources Division, the Governor's Auto Theft Strike Force, the Department of Industrial Accidents, the Workers' Compensation Rating and Inspection Bureau, the National Insurance Crime Bureau, and the Social Security Administration. It is noteworthy that the IFD also receives many complaints and referrals from concerned citizens, private attorneys, clerk-magistrates, and judges. Clearly, this indicates that the Division's efforts in fighting insurance fraud are appreciated throughout the Commonwealth.

HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES

The Insurance Fraud Division obtained charges in 47 new cases in Fiscal Year 1999 and closed 49 cases. In addition, the IFD has approximately 80 cases currently under investigation and pending formal charges or indictments. Cases prosecuted include charges of workers' compensation fraud, motor vehicle insurance fraud, insurance fraud, as well as larceny, conspiracy, tax evasion, corporate bribery, home improvement fraud, and forgery. New cases charged in Fiscal Year 1999 include allegations that defendants obtained in excess of \$1,432,591 in fraudulent insurance payments. The 49 cases resolved in Fiscal Year 1999 resulted in orders requiring restitution payments totaling \$256,147.16.

SIGNIFICANT CASES

MOTOR VEHICLE INSURANCE FRAUD

- **Commonwealth v. Charlayne Wilson and Charles Edekpai** (Middlesex and Norfolk Superior Courts) -- Charlayne Wilson was an academic counselor at the Northeastern School of Criminal Justice. Working with Charles Edekpai, she submitted motor vehicle insurance claims in connection with a series of 16 accidents involving two cars. According to the claims files, the same damage was reported in each successive claim. Wilson was indicted in both Norfolk Superior Court and Middlesex Superior Court on a number of charges, including motor vehicle insurance fraud, larceny over \$250, and forgery. After consolidating those cases, she pled guilty and was sentenced to five years probation, suspended for two years and ordered to pay \$13,489 in restitution. Charles Edekpai was charged with larceny over \$250, motor vehicle insurance fraud, and attempted larceny. He pled guilty and was sentenced to 2½ years in the House of Correction, suspended for 4 years and was ordered to pay \$37,977 in restitution.

- **Commonwealth v. Scott Gaumond and Robert Newell** (Suffolk Superior Court) -- Scott Gaumond and Robert Newell were indicted, along with three other co-defendants, following an investigation by the Insurance Fraud Bureau. The multiple insurance fraud charges against Gaumond and Newell resulted from their orchestration of and participation in the filing of 12 falsified lost wage claims to insurance companies. In nearly all the cases, they represented to the insurance companies that as a result of motor vehicle accidents they lost wages from their jobs at a company called Able Industries, Inc. To corroborate these claims, they submitted fraudulent lost wage statements from Able, falsifying salary, start date, and time lost from work. In addition, Gaumond submitted falsified tax returns and fraudulent IRS withholding forms to support his claims.

Scott Gaumond entered guilty pleas to 31 counts of insurance fraud, motor vehicle insurance fraud, larceny over \$250, and conspiracy. For the insurance fraud charges, he was sentenced to two years in the House of Correction and ordered to pay \$15,000 in restitution. On the remaining charges, he was sentenced to 2½ years in the House of Correction, suspended for five years.

Robert Newell also entered guilty pleas to multiple charges of motor vehicle insurance fraud, larceny over \$250, and conspiracy. He was sentenced to 2½ years in the House of Correction,

suspended for two years and ordered to pay \$14,600 in restitution.

Both Gaumond and Newell, along with two other co-defendants, were indicted again during fiscal year 1999. They were each indicted on 26 counts of larceny over \$250 and home improvement contractor violations for a pattern of defrauding elderly homeowners. The defendants allegedly defrauded eleven victims, ten of whom are over the age of 65, by charging them greatly inflated prices for home improvements that were far below the acceptable standards of quality. Of the ten victims over the age of 65, the average age at the time of the fraud was 80.

- **Commonwealth v. James J. Tello** (Somerville District Court) -- James Tello alleged that his car had been stolen from his residence. He then filed a theft report with the Medford Police department and a claim with his insurer, Metropolitan Insurance Company. He was paid \$5,904.46 as a result of that claim. An investigation revealed, however, that Tello had concealed his vehicle at his place of business in Tewksbury prior to the date of the reported theft. He was charged with motor vehicle insurance fraud, larceny over \$250, filing a false theft report, and concealing a motor vehicle. He pled guilty and was sentenced to 2½ years in the House of Correction, with 18 months to serve, the balance suspended for two years. He was also ordered to pay restitution in the amount of \$7,200.
- **Commonwealth v. John Lennox** (Wareham District Court) -- John Lennox filed a motor vehicle insurance claim seeking personal injury protection benefits for wages lost as a result of an accident. However, the defendant was not employed at the time of the accident and, thus, his claim for lost wages was false. He was charged with motor vehicle insurance fraud and larceny over \$250. A jury found him guilty on both charges. However, ruling that the statute only applies to theft or damage claims, the judge reversed the guilty finding for the motor vehicle insurance fraud charge. We have filed a notice of appeal to the Appeals Court seeking reinstatement of the conviction.
- **Commonwealth v. Wendy Horne a/k/a Wendy Early** (Springfield District Court) -- While Wendy Horne was employed at the Monson Developmental Center in 1994, she reported a work related injury. After treating for a period of time with a physician, she was told that she could return to work and that she was no longer disabled. In order to continue collecting disability payments from her employer's disability insurer, Provident Life and Accident insurance Company, she forged her doctor's signature on a health care claim

form which falsely documented disability. In addition, Horn forged her employer's signature on a wage and salary verification form in connection with an automobile accident, which she then submitted to the Commerce Insurance Company. Horn pled guilty to larceny over \$250, motor vehicle insurance fraud, and attempted motor vehicle insurance fraud. She was sentenced to nine years probation and ordered to pay \$7,200 in restitution.

- **Commonwealth v. Alan Viera** (New Bedford District Court) -- In order to fraudulently obtain money from the Plymouth Rock Insurance Company, Alan Viera and a co-defendant staged the theft of Viera's motor vehicle. Viera filed a stolen motor vehicle report with his insurance company. An investigation revealed that the theft was, in fact, staged and the insurance company denied the defendant's claim. He was charged with motor vehicle insurance fraud, conspiracy, and attempt to commit larceny over \$250. Viera pled guilty and was sentenced to 2½ years in the house of correction, suspended for three years with probation. In addition, he was ordered to pay \$1,000 in restitution as reimbursement to the insurance company for the cost of their investigation.

WORKERS' COMPENSATION FRAUD

- **Commonwealth v. Shelley Keirstead** (Worcester Superior Court) -- Shelley Keirstead began collecting temporary total workers' compensation benefits after reporting that opening and closing the door of the school bus she was driving caused an injury to her shoulder. She was indicted after it was discovered that during this period of alleged incapacity she was being paid for entertaining around the Worcester area as "Boom-Boom the Clown." In addition, it was discovered that during the same period she had been working as a personal care assistant for disabled adults. Keirstead was charged with workers' compensation fraud. She pled guilty and was sentenced to six months in jail, suspended for five years, and ordered to pay \$20,000 in restitution.

- **Commonwealth v. Charles and Christine Caswell** (Middlesex Superior Court) -- Mr. Caswell reported a work related injury that he incurred while working for his family's business. He and his wife, Christine, submitted wage verification forms in which they grossly overstated the amount of his actual income. Charles Caswell claimed to have earned almost \$90,000 a year. Mrs. Caswell, as treasurer of the corporation, verified the \$90,000 income. In fact, his actual earnings were allegedly only \$3,000 a year. Both were charged with workers' compensation fraud, insurance fraud, and larceny over \$250. Due to the terminal illness of Mr. Caswell, the defendants were placed on pre-trial probation and ordered to pay \$50,000 in restitution.

- **Commonwealth v. Dr. Robert Fitzgerald** (Worcester Superior Court) -- Robert Fitzgerald was a chiropractor in Clinton, Massachusetts who aided a patient in the filing of fraudulent workers' compensation claims. His patient, Federico Williamson, claimed he was injured while at work. Williamson treated with Dr. Fitzgerald for this alleged injury. Despite the fact that Fitzgerald had treated this patient in the past for the same injury sustained during a motor vehicle accident, he documented that the patient had no previous medical history or injuries. Based on these statements, the insurance company paid Williamson's workers' compensation claim. Dr. Fitzgerald was charged with workers' compensation fraud and larceny over \$250. He was placed on pre-trial probation for two years and ordered to pay \$5,000 in restitution and \$2,000 in fines.
- **Commonwealth v. Moses Kbreab** (Ayer District Court) -- Moses Kbreab, while a security guard at First Security Service, reported to supervisors and medical staff at a job site that he had sustained a head injury while ducking under a trailer. Kbreab collected \$4,170.16 in total disability payments from his employer's workers' compensation insurer, Sentry Insurance. Sentry then canceled payments due to inconsistencies in Kbreab's statements. However, soon after, Kbreab refiled his total disability claim with Sentry. Unbeknownst to both Sentry and First Security Service, during the period of time in which Kbreab was claiming total disability he ran the Cape Cod Marathon, the New Bedford Half-Marathon, and the Boston Marathon. He was charged with workers compensation fraud, larceny over \$250, and attempted larceny. He admitted to facts sufficient for a finding of guilty and was sentenced to one year probation. He was ordered to pay full restitution in the amount of \$4,170.16.
- **Commonwealth v. Thomas Lightbody** -- Thomas Lightbody sustained a laceration to his hand while working as a mason on the Central Artery Project. Investigation showed that during the time in which he was collecting workers' compensation benefits for this injury, he was also working and getting paid as a construction worker. Lightbody was sentenced to two years probation and ordered to pay \$1,400 after pleading guilty to charges of larceny over \$250 and workers' compensation fraud.
- **Commonwealth v. George Vinciguera** -- Vinciguera filed a claim for benefits after he suffered a fractured sternum as he was operating a front-end loader while working on the Central Artery Project. At the same time that Vinciguera maintained his claim of total disability, a private investigator observed him working at an apartment building moving furniture, mat-

tresses, and debris. Vinciguera was charged with larceny over \$250 and workers' compensation fraud. His case was continued without a finding and he was ordered to pay \$500 in restitution.

- **Commonwealth v. Hiram Ibanez** -- Hiram Ibanez was working on the Central Artery Project as an apprentice carpenter. He claimed he had been injured when he slipped and dislocated his arm. He was paid total disability benefits for the injury. Meanwhile, investigator observed that Ibanez was working at a day care center at the same time he was collecting disability benefits. He was charged with workers' compensation fraud and larceny over \$250. Ibanez admitted to sufficient facts and was placed on probation and ordered to pay \$4,000 in restitution.

OTHER SIGNIFICANT CASES

- **Commonwealth v. Michael Dow** (Boston Municipal Court) -- Michael Dow was an insurance agent and the owner of his own insurance agency in Boston and Framingham. He accepted insurance premium payments from clients and then converted those monies to his own use, while falsely telling the clients he had purchased their insurance. He also filed forged premium finance applications to a finance company and kept the proceeds of those loans. Dow pled guilty to 13 counts of larceny over \$250 and agreed to surrender all of his insurance licenses and securities broker licenses. He was ordered to not reapply for such licenses for 10 years, to pay \$25,000 in restitution and \$20,000 in fines, and to perform 400 hours of community service. Finally, the defendant was required to participate in a videotaped interview explaining the details of how he committed his crimes. That videotape will be used by the Office of the Attorney General in training programs and seminars on the subject of fraud by insurance agents.
- **Commonwealth v. Marc Laroque** (Uxbridge District Court) -- Marc Laroque was an insurance agent and office manager at the East Douglas Insurance Agency. Mr. Laroque forged a Certificate of Insurance for Perkins Trucking, a subcontractor of one of his clients, in order to artificially lower its workers' compensation premiums. This certificate was then given to Liberty Mutual during a 1996 workers' compensation insurance audit for Perkins Trucking, and relied upon in setting the workers' compensation rates. The defendant was charged with larceny, forgery, and uttering. He entered a guilty plea and was sentenced to one year probation and ordered to pay \$500 in fines.
- **Commonwealth v. Ella Cox** (Natick District Court) -- Ella Cox was an insurance claims

representative who defrauded Liberty Mutual Insurance Company by issuing unauthorized company checks to several of her relatives. Ms. Cox reopened claims which had been closed by the company and issued settlement checks in the names of her daughter, sister, and ten month old grandson. Her relatives cashed eight checks totaling \$37,000. Cox was charged with forgery, larceny over \$250, and attempted larceny. She pled guilty to these charges and was sentenced to two years in the house of correction, suspended for five years. In addition, she was ordered to pay \$12,000 in restitution and perform 480 hours of community service.

- **Commonwealth v. Peter and Irene Dolnick** (Dedham District Court) -- Mr. and Mrs. Dolnick endorsed and cashed a series of total disability checks that were issued to Mr. Dolnick's mother. Mr. and Mrs. Dolnick failed to notify insurer that the true recipient of the disability checks was deceased. Entitlement to workers' compensation benefits terminates at death and the recipient's estate is not entitled to further weekly benefits. Both defendants were charged with larceny over \$250 and forgery. Peter Dolnick pled guilty and was sentenced to one year probation and ordered to pay \$3,854 in restitution. Irene Dolnick's case was continued without a finding for nine months and she was ordered to pay \$3,855 in restitution.

OTHER EFFORTS

- **Commonwealth v. James N. Ellis, Jr., et. al** (Worcester Superior Court) -- A considerable amount of the time and effort of the IFD continues to be spent on the prosecution of James N. Ellis, Jr., Nicholas Ellis and other partners, employees and clients of the former Ellis & Ellis law firm of Worcester. During FY 1999, the following matters concerning the pending prosecutions were addressed.

Defendants' Motions to Dismiss Due to Lack of Disinterested Prosecutor -- Superior Court Judge Robert Bohn, Jr. decision denying the defendants' motion to dismiss because of a lack of "disinterested" prosecutors was upheld by the Supreme Judicial Court of Massachusetts. This motion was based on the contention that, due to the nature of the funding of the IFD, its prosecutors are not "disinterested" and are, therefore, unconstitutionally biased. Judge Bohn rejected this argument, endorsed the funding mechanism as constitutionally sound, and found the prosecutors of the IFD unbiased. AAG Erin Olson successfully argued the appeal before the Supreme Judicial Court. The SJC unanimously upheld the denial of the motion to dismiss finding that there were no constitutional violations in the statutory funding mechanism.

Defendants' Motion to Dismiss Due to Selective Prosecution -- Judge Bohn denied the

defendant's motion to dismiss based on the claim that they were the victims of selective prosecution because the IFD does not prosecute insurance companies, but only claimants against insurance companies. Judge Bohn held that the defendant had not made even a *prima facie* showing of selective prosecution and there was nothing improper in the prosecution of the defendants.

Defendant's Motion to Dismiss Due to Violation of Marital Privilege Before the Grand Jury -- Judge Bohn denied the defendant's motion to dismiss the indictments against former Ellis & Ellis client and employee, James Economou. *Massachusetts Lawyers Weekly* declared this one of the 20 most important decisions of 1998.

Defendant's Motion to Suppress Identifications -- After a three day evidentiary hearing, Judge Bohn also denied the defendants' motion to suppress the identification of two nurses that were employees of the firm. The nurses were identified by former clients as coaching them on how to exaggerate their injuries during independent medical exams.

Defendant's Motion to Change Venue -- Judge Bohn also denied the defendants' motion to change venue of the trial from Worcester County to Suffolk County. The basis for their motion was that the jury pool in Worcester County had been tainted and biased by the news coverage of the indictments and criminal prosecution of the defendants.

Defendant's Motion to Suppress all Evidence Obtained During the Search -- The defendants filed a motion to suppress the evidence obtained during the search of the Ellis & Ellis law offices. They contend that the search warrant was overly broad and the evidence seized exceeded the scope of the warrant. The evidentiary hearing on this motion lasted nearly a month. We are still awaiting Judge Bohn's decision on the motion.

Defendant's Motion to Dismiss on Account of Prior Adjudication -- The defendant James N. Ellis, Jr. filed a motion to dismiss his indictments in the Formoso/Milan case claiming that the prior dispositions before the Department of Industrial Accidents and in Federal District Court precluded the present criminal prosecution. Judge Bohn denied this claim.

Commonwealth's Motion for Protective Order -- The Commonwealth filed a motion for protective order during two separate evidentiary hearings seeking to prevent the required production of investigators and expert's notes. In a written opinion, Judge Bohn allowed both motions and entered the protective order.

- **Commonwealth v. Gary Sbordone** (Middlesex Superior Court) -- Judge Charles Barrett denied the defendant's Motion to Dismiss based on Commonwealth v. McCarthy and Commonwealth v. O'Dell grounds. Defense counsel argued that the Commonwealth had not presented sufficient evidence to support the indictments and that the Grand Jury presentation was unfair and misleading. Judge Barrett found that there was ample probable cause to support the indictments and that there was nothing improper or misleading about the Grand Jury presentation.
- **Central Artery/Harbor Tunnel Project**-- The IFD continues to work with legal counsel and the administration of the Central Artery/Harbor Tunnel Project ("Project") in recognizing, reporting, investigating, and prosecuting insurance fraud associated with the Project. In FY 1999 the IFD charged and closed three cases of workers' compensation fraud by workers in the Project. A number of additional cases are currently under investigation and awaiting formal charges.
- **Agency Liaisons** -- The IFD has established ongoing relationships with a number of agencies and has designated Assistant Attorneys General to act as liaisons. The goal of these relationships is to increase state and federal cooperation in fraud cases. The following is the list of attorneys that are agency liaisons:
 - Social Security Administration -- AAG Erin Olson
 - Board of Registration in Medicine -- AAG Erin Olson
 - Board of Bar Overseers -- AAG Erin Olson
 - Division of Registration -- AAG Joshua Krell
 - Division of Insurance -- AAG Amy Sharff
 - Division of Standards -- AAG Brian Burke
 - Human Resources Division -- AAG John Crimmims
- **Repair Shop Registration Revoked** -- On February 24, 1999, the Office of Consumer Affairs and Business Regulation revoked the repair shop registration of Mario Marengi. AAG Brian Burke requested the revocation and argued at the hearing that arengi and his shop engaged in a history of fraudulent accidents and claims for auto rentals.

SPEAKING ENGAGEMENTS AND TRAININGS

- Attorneys in the IFD participated in a number of speaking engagements and trainings throughout FY 1999. The following is a list of trainings and workshops that members of the IFD facilitated.

Insurance Premium Avoidance Seminar -- The Office of the Attorney General and the Insurance Fraud Bureau hosted a premium avoidance fraud seminar in Worcester. AAG John Ciardi and AAG John Crimmins were presenters to the many adjusters, attorneys, and investigators in attendance.

Insurance Agent Fraud Seminar -- AAG David Marks and AAG Amy Sharff were presenters at the Insurance fraud Bureau sponsored seminar on insurance agent fraud. AAG Sharff spoke about the Armand Arce case she prosecuted in FY98 and AAG Marks discussed the Michael Dow case. The seminar was attended by attorneys, insurance adjusters, and investigators.

Licensed Private Detectives Association -- Annual Holiday Meeting -- AAG Brian Burke addressed 150 licensed private detectives at their annual meeting at the Braintree Sheraton Tara Hotel. AAG Burke described the role of the IFD, as well as the ways in which this office develops cases for prosecution. He also discussed the issue of insurance company vendor fraud.

Batterers Intervention Training Conference -- In September, AAG Amy Sharff was a presenter at the Batterers Intervention Certification Training. This conference is affiliated with the Department of Public Health and is a certification program for trainers in batterers intervention. AAG Sharff spoke about the prosecution of domestic violence cases in front of attorneys, social workers, clergy, and others who provide intervention for batterers.

Annual Attorney General's Office Domestic Violence Training -- AAG Amy Sharff spoke before 300 police officers, attorneys, and other members of the law enforcement community. The topic of her presentation was investigation and documentation in cases of reported domestic violence.

Harvard Trial Advocacy Workshop -- In January, AAG Steve Thomas participated for a fifth time as a teaching team member in Harvard Law School's Trial Advocacy Work-

shop. The workshop is an intensive three week course for second and third year students on preparing for and litigating civil and criminal cases.

DIVISION STATISTICAL SUMMARY

NEW CASES CHARGED IN FY99

Motor Vehicle Insurance Fraud	16
Workers' Compensation Fraud	17
Workers' Compensation Premium Fraud	3
Other Insurance Fraud	<u>11</u>
TOTAL	47

CASES CLOSED IN FY99

Motor Vehicle Insurance Fraud	26
Workers' Compensation Fraud	17
Property Insurance Fraud	1
Workers' Compensation Premium Fraud	1
Other Insurance Fraud	<u>4</u>
TOTAL	49

MEDICAID FRAUD CONTROL UNIT

INTRODUCTION AND CURRENT INITIATIVES

The Massachusetts Medicaid program administers approximately \$5 billion of healthcare services to over 700,000 members. It is a state-administered, federally financed, program that provides healthcare for the indigent and disabled.

The Attorney General's Medicaid Fraud Control Unit operates separately from the Medicaid program and prosecutes healthcare providers who commit crimes that adversely affect the Commonwealth's Medicaid program as well as individuals who abuse, neglect, or mistreat elderly and disabled residents of the Commonwealth's 550 Medicaid funded long term care facilities.

Recognizing that Medicaid fraud is complex and costly to prosecute, the federal government provides

funding for the Medicaid Fraud Control Unit's operation in every state. The Massachusetts Unit continues to aggressively pursue healthcare fraud as it sets the national pace in regards to the number of successful prosecutions and affirmative civil actions it produces.

Consistent with its mission to conduct a state wide program for the investigation of healthcare fraud, the Medicaid Fraud Control Unit uses a "strike force" concept of investigators, auditors, nurses, pharmacists and attorneys seeking to have a significant deterrent impact on those healthcare providers that defraud the Medicaid program. Through the extensive use of Special Grand Juries, as well as its statutory and regulatory discovery authority, the Unit has obtained convictions and recovered monies for the Medicaid program exceeding the Unit's annual expenditures.

During Fiscal Year 1999, the Medicaid Fraud Control Unit brought both criminal and civil enforcement actions against nursing home owners, pharmacies, physicians, dentists, home healthcare companies, billing intermediaries, and other medical providers. These enforcement actions focused on providers that misrepresented to the Medicaid program the services they provided, inflated the costs of their services, provided medically unnecessary services, or violated Medicaid's anti-kickback laws. As a result, the Unit recovered \$1.4 million, completed 45 investigations, brought 24 indictments, obtained several convictions and initiated 69 new investigations.

The Medicaid Fraud Control Unit also investigates hundreds of patient abuse incidents each year referred from the Department of Public Health as well as incidents involving sexual assaults, financial exploitation, and long term care facilities that knowingly provide substandard care. During fiscal year 1999 alone, the Medicaid Fraud Control Unit investigated over two hundred cases, and brought several significant prosecutions against individuals that assaulted nursing home residents. The Unit obtained several convictions including the incarceration of a nurses aide for repeated abuse and assault of five elderly Alzheimer patients over a four month period.

In addition, the Medicaid Fraud Control Unit investigates physicians and psychiatrists that prescribe controlled substances for non-medical reasons, not supported by medical diagnosis or necessity. The Unit investigates dentists and durable medical equipment companies for upcoding and unbundling their services. It investigates pharmacy chains and pharmaceutical companies that overcharge the Medicaid program and inflate the costs of prescription drugs. And, the Medicaid Fraud Control Unit investigates the relationships between physicians, hospitals, and laboratories to detect illegal referrals, kickbacks and conflicts with patient care.

HIGHLIGHTED EFFORTS & SIGNIFICANT ACTIVITIES

CRIMINAL/CIVIL PROVIDER FRAUD AND ANTI-KICKBACK CASES

- **Hyde Park and Medford Nursing Home Operator:** Two nursing home corporations, its owner, treasurer and chief financial officer were sentenced in Suffolk Superior Court after pleading guilty to multiple felony counts of filing false Medicaid claims and larceny. The treasurer and CFO were sentenced to one year in the house of correction, house arrest and placed on probation for four years and ordered to pay \$100,000 in restitution.

In a related civil disposition, the nursing home's owner and two other partners entered into a civil settlement agreement with the Attorney General's Office to repay an additional \$263,000 to the Medicaid program. As part of the civil settlement, all parties are permanently banned from owning nursing homes or participating as Medicaid providers with any long-term care facility in the Commonwealth.

- **Two Boston Dentists Settle Fraud Allegations:** Two Boston dentists agreed to pay \$300,000 in civil penalties and restitution to settle allegations of fraudulent abuse in their billing practices to the Medicaid program in connection with their dental practices in Lowell and Lawrence.

The civil complaint alleged that from September 1994 through September 1998, the corporation's president and his partner billed Medicaid for more expensive services than they actually performed, misrepresented the services they provided and billed for services that are non-reimbursable through the Medicaid program. The complaint further alleged that the corporation allowed a dentist, a non-provider in the Medicaid program, to illegally bill her services through the company's group provider number.

It was also alleged that neither the two defendants nor the corporation kept accurate records to report the reasons that their patients needed certain services that were covered by Medicaid.

Under the terms of the settlement, one of the dentists will pay \$140,000 and withdraw from participating in the Medicaid program for four months. Following the four month period, the dentist must submit an approved pre-treatment plan to Medicaid for the first six months after returning to the Medicaid program.

The settlement requires the other dentist to reimburse \$160,000 to the Medicaid program, on behalf of the corporation, for over billing that allegedly took place during the four year

period.

- **Pharmacy Voluntary Disclosure/Amnesty Program**: The Massachusetts MFCU recovered more than \$450,000 as a part of an amnesty initiative involving hundreds of pharmacies that overcharged the Massachusetts Medicaid program for prescriptions.

The Attorney General's "Voluntary Disclosure Program" began after a six-month investigation by the MFCU found that more than 600 Massachusetts pharmacies had charged the state Medicaid program full price for partially filled prescriptions and prescriptions that were ordered but never delivered.

The MFCU investigators found that pharmacies were dispensing partially filled prescriptions to customers when they lacked sufficient stocks of a drug. After distributing the partial prescription, the pharmacies would tell the customers to come back for the remainder of their prescription the following day.

In many instances, the recipients of the medication would not return, but the pharmacies' automatic computer billing system billed the Medicaid program the cost of the full prescription.

In February 1998, near the end of the MFCU probe, all of the state's 1,100 pharmacies were notified in writing that they were required by state law to review and report any potential overcharges that may have occurred as a result of prescriptions billed to Medicaid but not dispensed.

- **Jamaica Plain Dentist**: A Jamaica Plain dentist will be prohibited from discriminating against HIV patients and has agreed to pay \$60,000 to settle discrimination and Medicaid fraud charges.

As part of the discrimination case, the Jamaica Plain dentist and his office manager agreed to a consent judgment and a \$20,000 penalty. The dentist also entered into a separate judgment in which he agreed to pay \$40,000 in civil penalties and restitution to settle allegations of fraudulent billings to the Medicaid program.

Under the terms of the consent judgment, the dentist and office manager are prohibited from retaliating against or mistreating HIV patients and the dentist will treat HIV positive people who have no dental insurance or whose dental insurance has run out, free of charge. The

program will be monitored by the HIV Dental Ombudsman Program of the Boston Public Health Commission and will equal 105 free visits.

Of the \$40,000 civil penalty and restitution, \$20,000 will be paid to the Medicaid program, \$11,550 will be distributed in the form of \$150 each to the 77 Medicaid recipients that paid cash for an upgraded service, and \$8,450 will be donated to the Battered Children and Women's Program at the Elizabeth Stone House in Jamaica Plain in the name of those Medicaid recipients who were entitled to a refund but could not be located.

The case was coordinated by the Medicaid Fraud Control Unit and the Consumer Protection and Antitrust Division.

- **Boston Dermatologist:** A Boston physician was found guilty of Medicaid false claims after a two week jury trial in Suffolk Superior Court. The physician was convicted of charges that arose from a state police undercover investigation that focused on the physician's prescribing habits.

The physician was sentenced to one year probation and, as result of his convictions, the physician's license to practice medicine, which is currently suspended, is awaiting revocation proceedings at the Board of Medicine. The charges were the result of a multi-state/federal investigation by the MFCU, the State Police, the Boston Police Department, the Federal Bureau of Investigation's Healthcare Fraud Squad and the Drug Enforcement Administration's Drug Diversion Control Unit.

- **Methuen Nursing Home:** The MFCU and a Methuen Nursing Home reached an agreement in which the nursing home will pay \$125,000 to settle charges that the nursing home overcharged the Medicaid program and misrepresented the acuity level of patients in its care.

The nursing home was a 41 bed long-term care facility in Methuen which provided nursing home care for individuals from the Greater Lawrence area. It closed at the end of August 1996.

The two count civil complaint alleged that the nursing home misrepresented the level of care it provided to its patients which resulted in the nursing home being reimbursed at a higher Medicaid rate. The complaint alleged that nursing home employees were instructed to rewrite documents resulting in misrepresentations of the amount of care the patients received.

By using this scheme, the nursing home fraudulently received a higher rate of reimbursement from the Medicaid program.

- **Emergency Room Billing Services Global Settlement:** An Emergency Room Billing Service agreed to repay \$3.1 million in a national settlement for allegedly over-billing Medicaid, Medicare and other Federal programs for emergency room services. The Massachusetts' Medicaid program received \$285,344 as a result of the settlement.

The settlement was the result of a civil lawsuit filed in Oklahoma City by a former employee of the Oklahoma-based emergency room billing service. The litigation focused on claims for services provided in 11 states -- Arkansas, Louisiana, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Texas and West Virginia -- from 1992 to 1994.

Emergency room services are billed to state and federal programs using five codes which describe the complexity of a patient's illness. The alleged over-billing occurred when the Emergency Room Services Company upcoded the severity of the services actually rendered.

The Director of the Maryland MFCU and the Director of the Massachusetts MFCU coordinated the multi-state settlement efforts through the National Association of Medicaid Fraud Control Units.

- **Marlborough Home Health Company:** A Marlborough home health care company reimbursed the state's Medicaid program \$195,000 to settle allegations related to its prescription drug billing practices.

The home health care company entered into a settlement agreement with the MFCU to resolve charges that it over billed Medicaid for extra units of prescription drugs and billed Medicaid the full price for prescription products that were discounted by the manufacturer.

Instead of crediting Medicaid for the manufacturers discounted coupons on certain merchandise, the pharmacy allegedly profited by charging full price for the purchase of the marked down items. The company was also cited for allegedly billing for the wrong Medicaid recipients and for failing to have the proper documentation to support refills to certain recipients. In total, MFCU

investigators identified hundreds of situations where the pharmacy had allegedly billed Medicaid without producing valid documentation.

- **Medford Audiologist:** A Medford audiologist paid \$100,000 in restitution, penalties and damages to settle allegations that he overcharged the state's Medicaid program.

Under the terms of the settlement agreement, filed with a civil law suit in Suffolk Superior Court, the audiologist agreed to pay \$100,000 in connection with his role as president of his Medford corporation for failing to pass on manufacturers' discounts that he received to the Medicaid program. The MFCU also alleged that the audiologist overcharged Medicaid for medical ear molds and accessories used in dispensing hearing aids.

- **New Jersey Pharmaceutical Company:** A New Jersey pharmaceutical company that provides insulin delivery systems to Massachusetts' hospitals and pharmacies agreed to settle anti-kickback allegations. The pharmaceutical company paid \$100,000 in goods and fines to resolve the allegations that the company's promotional practices violated the Massachusetts Medicaid anti-kickback law.

The agreement requires that the pharmaceutical company pay a \$10,000 fine and to distribute \$90,000 of its patented insulin delivery systems, as well as insulin, free of charge to Medicaid recipients.

The Attorney General conducted an investigation of the pharmaceutical companies promotional practices and alleged that the company instituted a "draft advantage" marketing program. The program offered rebates to independent pharmacists based on the volume of pharmaceutical company products that the pharmacist purchased.

The Attorney General alleged that the cash refunds violated the state's Medicaid anti-kickback statute by offering rewards as an inducement to pharmacists to purchase the company's products.

After being notified by the MFCU that the alleged practice was against the law, the company immediately discontinued its rebate program in Massachusetts and cooperated with the Attorney General's investigators.

The pharmaceutical company also has agreed to develop a corporate compliance plan to review its national marketing program and to discontinue those promotional practices that violate state

and federal laws. The company will distribute insulin and insulin delivery systems to Massachusetts state hospitals and the Massachusetts General Hospital.

- **Salisbury Nursing Home**: The Massachusetts MFCU reached a civil settlement agreement with a Salisbury nursing home's operator to remedy problems identified with a bank account for the facility's residents' personal needs allowance money. The nursing home corporation and its president paid a total of \$21,600 in restitution, administrative fines, and costs of investigation.

The MFCU investigation focused on the nursing home's management of the residents' bank accounts. Each nursing home resident in the Commonwealth receives \$60 per month as an allowance for personal needs that can be spent by the residents in any way they see fit. The funds usually are spent on such things as clothing, hair cuts or beautician services or to attend social outings outside the facility. Many nursing homes manage these monies in a trustee bank account set up for the patients.

The MFCU's investigation uncovered that on several occasions, the nursing home used the funds from the residents' bank account to meet business expenses at the facility amounting in essence to interest free loans.

The settlement agreement also includes a compliance component to insure the proper administration of the account in the future. According to the terms of the agreement, the nursing home's president is required to bear the expense of conducting quarterly audits of the account by a certified public accountant.

PATIENT ABUSE PROSECUTIONS

- **Wilmington Nurses Aide**: A former nurses aide was sentenced to four to five years in state prison for abusing elderly residents at a Wilmington nursing home, including slapping, kicking and spitting on patients who lived at the facility.

The aide also received a suspended two-year House of Correction sentence and three years probation on the patient abuse charges. After the aide was sentenced at Middlesex Superior Court, she was immediately imprisoned at MCI Framingham.

The aide was convicted on seven counts of patient abuse and two counts of felony elder abuse. The aide physically and mentally mistreated five elderly patients under her care at the special

Alzheimer's Unit at the Wilmington nursing home.

Witnesses testified that the aide assaulted the five elderly residents, all of whom were over 80 years of age, on seven different occasions between October 1997 and February 1998. The charges of felony elder abuse involved an incident in which another employee witnessed the aide forcing an 83-year-old female patient to eat her own feces and a second incident in which the aide was witnessed kicking and stomping on the crotch of an 81-year-old resident resulting in severe bruising to the patient. The aide also slapped an elderly woman in the head and kicked her in the shins and, in another incident, pushed a patient out of her wheelchair onto the floor, grabbed her arms and dragged her to her bedroom.

The nurses aide was also convicted of other incidents of patient abuse including spitting directly into the face of a 92-year-old patient, pulling the hair of an 86-year-old patient, and assaulting an 87-year-old male resident. All of the victims suffered from severe medical conditions including Alzheimer's Disease and senile dementia.

- **Boston Nursing Home Security Guard:** A former nursing home security guard pled guilty in Suffolk Superior Court to assault and battery on an elderly person. The security guard admitted to forcefully shoving a 77-year-old nursing home resident to the concrete pavement. The resident suffered a fractured left hip and a laceration to his forehead which required stitches.

At the time of the incident, the security guard had been hired by the nursing home to protect the Roxbury facility.

During unauthorized hours, the 77-year-old resident was smoking in a designated outside smoking area when the guard told him to put out his cigarette. When the resident attempted to put the cigarette to his lips, the guard grabbed the burning cigarette from his hands, threw it to the ground and crushed it with her foot. When the resident became agitated at the guard's actions, the guard grabbed his wrists, swung at him and forcefully shoved him to the ground.

The guard was sentenced to one year of probation with the condition that she undergo anger management counseling. In sentencing the guard to probation, the court considered that the guard had served 35 days in jail after she had been arraigned and placed on bail.

- **Saugus Nurses Aide:** A former nurses aide at a Saugus nursing home pled to sufficient facts on charges that he illegally restrained, neglected and harmed an Alzheimer's patient.

The nurses aide restrained a 63 year old resident by binding him to his bed with a blanket that was tightly drawn across his chest and tied to the bed frame. Due to the alleged restraint, the patient was unable to sit up, turn to his side, or get up out of bed. The aide then left the patient's floor without checking on him for several hours. The patient was later found suffering from respiratory distress after inhaling his own vomit into his lungs.

- **Lynn Behavior Specialist:** A former nursing home behavior specialist admitted to patient abuse and assault and battery in Lynn District Court.

The behavior specialist admitted to forcefully shoving a 45-year-old nursing home patient at a Lynn nursing home.

The resident had problems communicating effectively due to a severe traumatic brain injury and a history of drug abuse. He was known to play a game of "hide and seek" with the staff. The patient engaged in his form of "hide and seek" leading the defendant and another behavior specialist to search for him on the lower floor. After the defendant had called to the other employee indicating that he had found the patient, the other employee witnessed the accused forcefully grab the disabled patient by the arm and flipped him hard to the floor.

The defendant was fired following the facility's investigation and the court placed the defendant on supervised probation for one year.

- **Ludlow Nurse:** A Ludlow nurse admitted in Holyoke District Court that she struck an 85 year old man in the face at a local nursing home.

The nurse admitted to sufficient facts to support a finding of guilty to one count of patient abuse and one count of assault and battery.

The Ludlow nurse was a Licensed Practical Nurse (LPN) at the Mount Marie Health Care Center in Holyoke when she struck an 85 year old male patient, who suffered from dementia, in the face. Two Certified Nurses Aides witnessed the incident and notified the Director of

Nursing. The LPN admitted to the nursing home administrator that she slapped the resident. The court sentenced her to one year probation.

DIVISION STATISTICAL SUMMARY

STATISTICAL SUMMARY

Formal Investigations Initiated	69
Investigations Completed and Closed	45
Individual Indictments	24
Convictions	9

PATIENT ABUSE/NEGLECT CASES

Abuse & Neglect Referrals	568
Abuse & Neglect Investigations	252
Total Criminal Complaints & Indictments	8
Prosecutions Completed and Closed	5
Individuals Convicted	5
Pending Prosecutions	19

CIVIL/CRIMINAL FINANCIAL RECOVERIES

Number of Civil Recovery Cases	17
Civil Recovery	\$1,267,271.54
Number of Criminal Recovery Cases	3
Criminal Recovery	\$100,185.00
Total Recovery	\$1,367,456.54

TASK FORCES AND OUTREACH EFFORTS

Recognizing that the vast majority of healthcare providers in the Commonwealth are eager to provide quality healthcare, the Massachusetts Medicaid Fraud Control Unit has continued to educate the provider community regarding Medicaid program regulations, their application to fraud alerts and the use of effective corporate compliance plans. In pursuit of those providers that operate outside legal boundaries, the Medicaid Fraud Control Unit has participated with several enforcement associations.

The National Association of Medicaid Fraud Control Units initially was conceived and founded in 1978 as a means by which the Medicaid Fraud Control Units could provide health care fraud training to investigative personnel, and thus comply with federal requirements. In the early 1980's there was little emphasis placed on health care fraud and few programs that offered any kind of health care fraud training, let alone that which was specific to the highly regulated Medicaid program. Training has continued to be the organization's most important and time-consuming function over the years, and increasingly has become more sophisticated and professional. The National Association of Medicaid Fraud Control Units has offered approximately 70 training programs altogether, sponsoring or co-sponsoring seven in 1998 alone. The Unit directors meet regularly to discuss emerging trends in fighting healthcare fraud. In conjunction with the Federal Department of Justice, the National Association of Medicaid Fraud Control Units has brought several prosecutions against healthcare corporations resulting in millions of dollars returned to the Medicare and Medicaid programs nationwide.

The Northeast Healthcare Law Enforcement Association consists of chief investigators from Medicaid Fraud Control Units in New England, and those from New York and New Jersey, the Massachusetts State Police Diversion Investigative Unit and federal law enforcement agencies, including the Drug Enforcement Administration, the Federal Bureau of Investigations, the Internal Revenue Service and the Office of the Inspector General. The group shares investigative strategies, develops joint state/federal health care fraud investigations and prosecutions, and sponsors quarterly training programs.

The Medicaid Fraud Control Unit representatives, along with the Federal Drug Enforcement Agency and the Board of Registration in Medicine and Pharmacy, work with various state and federal agencies concerning drug diversion enforcement, including the sharing of investigative resources to develop comprehensive prosecutions.

The Medicaid Fraud Control Unit's Chief Investigator meets with representatives from the Bureau of Special Investigations, the agency within the Executive Office of Public Safety responsible for the investigation of frauds committed by Medicaid's members, to discuss welfare fraud and inter-agency investigations.

The Medicaid Fraud Control Unit also coordinates enforcement actions with representatives from the Division of Registration's Health Care Fraud Unit, the agency responsible for bringing complaints

against health care professionals before various professional licensing boards seeking license suspensions or revocations.

The Medicaid Fraud Control Unit's Patient Abuse Investigative Team coordinates with officials from the Department of Public Health to discuss the investigation and prosecution of nursing home owners that fraudulently bill Medicaid for substandard care and individuals who abuse, neglect and mistreat residents of long term care facilities.

The Medicaid Fraud Control Unit's Pharmacy Coordinator provides training opportunities to the state's registered pharmacists instructing and educating them on the Medicaid Fraud Control Unit's pharmacy enforcement program and the latest trends, laws, and regulations affecting the pharmacy community.

The Medicaid Fraud Control Unit meets quarterly with the New England Anti-Fraud Association, which consists of private insurance health care fraud investigators, and also meets monthly with the Division of Medical Assistance, the agency that administers the state's Medicaid program, to discuss effective fraud review programs, referrals and the development of health care fraud investigations.

CRIMINAL BUREAU

APPELLATE DIVISION

CRIMINAL INVESTIGATIONS DIVISION

ENVIRONMENTAL CRIMES STRIKE FORCE

ECONOMIC CRIMES DIVISION

FINANCIAL INVESTIGATIONS DIVISION

HIGH TECH AND COMPUTER CRIMES DIVISION

PUBLIC INTEGRITY DIVISION

SAFE NEIGHBORHOOD INITIATIVE

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

CRIMINAL BUREAU

The mission of the Criminal Bureau is to protect the citizens of the Commonwealth and advance the law enforcement priorities of the Attorney General through the prosecution of individuals who violate state criminal laws, particularly in the areas of computer crime, economic crime, environmental crime, narcotics violations, and public corruption. In addition to prosecuting significant cases, the Criminal Bureau develops criminal justice policy, establishes on-going partnerships with communities and law enforcement throughout the Commonwealth, and provides training and assistance to state and federal agencies. The Bureau is comprised of highly-specialized legal teams, forensic experts, and individuals who serve as resources both within the Office of the Attorney General and to prosecutors, law enforcement agents, and members of the public throughout the Commonwealth.

The Criminal Bureau is organized into ten divisions, each of which reflects an area of specialization and expertise: 1) Appellate; 2) Criminal Investigations; 3) Economic Crimes; 4) Environmental Crimes Strike Force; 5) Financial Investigations; 6) High-Tech and Computer Crimes; 7) Public Integrity; 8) Safe Neighborhood Initiative; 9) Special Investigations and Narcotics; and 10) Victim/Witness Assistance.

Assistant Attorneys General in the Criminal Bureau who serve as trial lawyers represent the Commonwealth in criminal prosecutions throughout the state, primarily in the areas of computer crime, economic crime, environmental crime, narcotics violations, and public corruption. On the appellate side, Assistant Attorneys General conduct post-conviction proceedings, including representing the Commonwealth in appeals of criminal convictions, and defending against federal habeas corpus challenges to state criminal convictions. Appellate attorneys also appear on behalf of state officials, members of the judiciary, prosecutors, and other law enforcement agents named as defendants in state and federal civil suits generated by prisoners. Assistant Attorneys General in the Bureau further serve the public by responding to inquiries and complaints on myriad issues from citizens, reviewing extradition documents from executive officers of the 50 states, and sponsoring and participating in training programs on criminal justice issues.

An important component of the Criminal Bureau has been the Safe Neighborhood Initiative (SNI), a collaborative community prosecution effort among the Office of the Attorney General, the Boston Police Department, the Mayor of Boston's Office, the Suffolk County District Attorney's Office, the U.S. Attorney's Office, and community residents. During the past six years, the SNI has been found to reduce crime, increase economic stability, and improve the quality of life in the neighborhoods where it has been established. The SNI operates on a community prosecution model now in place in Dorchester, Roxbury, Chelsea, Brockton, Taunton and Montague-Turner's Falls.

In addition to combating urban violence and reducing crime, Attorney General Reilly's other law enforcement priorities include protecting families, children and the elderly, and fighting High Tech Crime and financial fraud. The resources of the Criminal Bureau are continually channeled in ways that further these priorities.

The Chief of the Criminal Bureau is Gerard T. Leone, Jr., formerly Deputy First Assistant District Attorney in Middlesex County. Kurt N. Schwartz, Deputy Bureau Chief, is a veteran prosecutor and former police officer in the Commonwealth. Mark D. Smith serves as Senior Litigation Counsel.

The Division Chiefs and Directors within the Criminal Bureau are: Appellate Division, Pamela L. Hunt; Criminal Investigations Division, Detective Lieutenant Mark Delaney; Economic Crimes Division, Carol A. Starkey; Environmental Crimes Strike Force, Martin E. Levin; Financial Investigations Division, Paul Stewart; High-Tech and Computer Crimes Division, T. Gregory Motta; Public Integrity Division, James H. O'Brien; Safe Neighborhood Initiative, Susan Spurlock; Special Investigations and Narcotics Division, William T. Bloomer; and Victim/Witness Assistance, Kathleen Morrissey. During a significant part of FY99, Jeremy Silverfine served as the Public Integrity Division Chief, and Massachusetts State Police Captain John D. Kelly served as the commanding officer of the Criminal Investigations Division.

The Criminal Bureau also has two Bureau Attorneys. Mary A. Phillips, Bureau Attorney for Training and Administration, coordinates the Attorney General's grand jury process throughout the Commonwealth, develops training programs for the Criminal Bureau, serves as the Chair of the Training Committee for the Office of the Attorney General, and advises the Bureau Chief on administrative and budgetary matters. Elisabeth J. Medvedow, Bureau Attorney for Policy and Legislation, develops and coordinates criminal justice initiatives, reviews and drafts legislation affecting the criminal justice system, produces the Law Enforcement Newsletter, serves as Co-Chair of the Diversity Committee for the Office of the Attorney General, and is a member of the Supreme Judicial Court's Standing Committee on Substance Abuse.

Currently, there are 43 prosecutors, seven financial investigators, 12 support staff, two victim witness advocates, and two program coordinators for the Safe Neighborhood Initiative. In addition, 29 members of the Massachusetts State Police are assigned to the Bureau to investigate criminal conduct in the Commonwealth.

APPELLATE DIVISION

The Appellate Division handles a wide variety of criminal, federal habeas corpus, state habeas corpus and other civil cases which impact criminal prosecutions and the criminal justice system. The Division's caseload includes appeals and post-convictions matters in criminal cases prosecuted at the trial level by the Attorney General's Criminal Bureau and from convictions of criminal contempt throughout the Commonwealth, all habeas corpus petitions filed in federal court that challenge Massachusetts convictions, parole surrenders, civil commitments, and renditions, and appeals in the First Circuit Court of Appeals from the denial or granting of habeas corpus relief. The Division also engages in civil litigation defending judges, clerks, probation officers and other court personnel, District Attorneys, Assistant District Attorneys and other prosecutorial personnel sued civilly in state or federal court for actions taken during the criminal justice process. The Division defends the constitutionality of criminal statutes and challenges to statutes, court rules, practices and procedures concerning all aspects of the criminal justice system, represents the interests of prosecutors when subpoenaed to testify or provide documents in civil cases, supervises agency staff attorneys handling litigation involving the Department of Correction and the Parole Board, and handles appeals and federal court litigation concerning the Parole Board and Probation Department.

The Appellate Division's caseload reflects the Attorney General's commitment to representation of the interests of the state's prosecutors in both criminal and civil arenas. Well over half of the cases handled by the Division during FY99 concerned District Attorneys' offices in some way. Through centralization in the Appellate Division of all litigation concerning the state's prosecutors and all cases in the Office that affect the validity of convictions or impact the criminal justice system, the development of an amicus brief program and participation in other criminal justice initiatives, the Appellate Division plays a leadership role in the Commonwealth and is able to maximize its expertise in criminal law and procedure.

Federal habeas corpus litigation accounts for a significant portion of the Division's caseload. The passage by Congress of the 1996 amendments to the federal habeas corpus statute has continued to result in a substantial increase in not only the number of petitions filed by Massachusetts prisoners, but also in the amount of work required to defend these cases.

In addition to their case work, Division attorneys participate in and present training programs both for the Criminal Bureau and officewise, as well as provide assistance to other Criminal Bureau attorneys on a variety of matters, including investigations, motions, trials, post-conviction proceedings, and single justice actions. The Division also works closely with the District Attorneys' offices, especially their Appellate Divisions, in identifying and acting as a clearinghouse on criminal law issues of statewide importance and interest.

During FY99, the following attorneys and support personnel were assigned to the Appellate Division for part or all of the year: Annette Benedetto, AAG; William Duensing, AAG; David Edmonds, AAG; Bonny Gilbert, AAG; Ellyn Lazar, AAG; Susanne Levens, AAG; Gregory Massing, AAG; William Meade, AAG; Cathryn Neaves, AAG; Kenneth Steinfield, AAG; Catherine Sullivan, AAG; William Weinreb, AAG; Pamela Hunt, AAG and Division Chief; Daneka Barbour and Kelli Murray, support staff.

CASE STATISTICS

CASES HANDLED

During Fiscal Year 1999, Appellate Division attorneys handled 603 cases, 15% fewer than in recent years, but still over 40% greater than the number of cases handled in FY92. Over 312 new cases were opened and 253 were resolved during the year. Over the last eight years, there has been an increase in every kind of case handled by the Division.

The number of new cases has remained constant for the last seven years despite the fact that during that time increasing numbers and types of cases have been referred to agency counsel to handle under the supervision of the Appellate Division. The 315 new cases opened in FY99 is nearly a 100% increase over the 161 new cases opened in FY91. In addition, in FY99, 171 cases were referred by the Appellate Division to agency counsel at the Department of Correction or the Parole Board who defend these cases as Special Assistant Attorneys General, as well as to the District Attorneys, or the various sheriffs' departments.

The following is an outline of the case activity for the Appellate Division for FY99:

	Cases Opened	Cases Disposed	Total Cases Handled
A. Federal Habeas	146	104	300
B. Federal Civil	22	18	41
C. State Civil	35	55	113
D. State Habeas	20	34	51
E. Criminal	84	32	82
F. G.L. c. 211 §3 and	5	5	5
Other Single Justice Cases			
G. Other	3	7	11
TOTALS	315	255	603

The following is a comparison of case activity for the Appellate Division for the last eight years:

	<u>FY 1999</u>	<u>FY 1998</u>	<u>FY 1997</u>	<u>FY 1996</u>	<u>FY 1995</u>	<u>FY 1994</u>	<u>FY 1993</u>	<u>FY 1992</u>
Total Cases Opened	315	360	343	344	341	307	351	222
Total Cases Disposed	255	365	370	406	515*	213	282	206
Total Cases Handled	603	721	715	778	747	652	649	428

* INCLUDES 125 OLD CASES.

APPELLATE BRIEFS AND MAJOR SUBSTANTIVE FILINGS

During FY99, the Appellate Division filed over 45 appellate briefs in the United States Supreme Court, Court of Appeals for the First Circuit, Supreme Judicial Court and Massachusetts Appeals Court. Two briefs were written at the request of the United States Supreme Court in opposition to petitions for certiorari in federal habeas corpus cases. After briefing, certiorari was denied in both cases.

Nine briefs were filed in the United States Court of Appeals for the First Circuit, all in federal habeas corpus cases. Twelve briefs were filed in the Supreme Judicial Court in a variety of criminal and civil cases including the constitutionality of the DNA database statute; interpretation of immunity provisions of the Massachusetts Tort Claims Act; the burden of proof of criminal responsibility; proper procedures when a clerk magistrate denies an application for criminal complaint; whether trial and appellate courts may impose a nominal filing fee for filing civil lawsuits upon inmates who can afford to pay; constitutionality of arraignment procedures in Plymouth County; whether a state court can order police to return to a criminal defendant money that had been forfeited in federal proceedings; whether a person charged with failing to pay child support may be extradited; and the Commonwealth's appeal from a verdict that an individual was no longer sexually dangerous. The 19 briefs filed in the Appeals Court primarily involved appeals from criminal convictions, but also concerned state civil and habeas corpus cases on such issues as the powers and authority of the Parole Board in determining parole eligibility, civil motor vehicle violations and civil rights actions brought against state prosecutors.

The Appellate Division continued its practice of filing amicus briefs on behalf of the Attorney General in cases having broad impact and importance to the criminal justice system, consistent with the Attorney General's statutory responsibility as the chief law enforcement officer of the Commonwealth. To that end, three amicus briefs were filed in the state appellate courts in FY99. One brief was written in response to the Supreme Judicial Court's request for special briefing on whether the court should retain the "presump-

tion of sanity” or alter the method by which cases involving the insanity defense should be tried, and the constitutional implications of such a change. Amicus briefs were also written in cases involving the proper procedure by which a criminal defendant may seek to correct a sentence, and the statutory construction and application of the sentence structure under the home invasion statute.

The Appellate Division also prepares and files lengthy substantive memoranda in opposition to petitions for habeas corpus relief, in support of motions to dismiss or for summary judgment in civil cases or trial and post-trial proceedings in criminal cases, most of which are the equivalent of full appellate briefs. During FY99, in addition to appellate briefs, Division attorneys filed 156 substantive legal memoranda; 89 were filed in federal habeas corpus cases and 67 in other civil and criminal cases.

RENDITIONS

Attorneys from the entire Criminal Bureau, at the request of the Governor’s office, render opinions to the Governor on the legal sufficiency of applications for the Governor’s warrants sought by other states, as well as requests by Massachusetts District Attorneys, the Department of Correction and the Parole Board to rendite fugitives to Massachusetts. From July 1, 1998, through June 30, 1999, 151 cases were reviewed. Criminal Bureau attorneys also handle the habeas corpus cases brought by an individual challenging the validity of a Governor’s warrant in the state and federal trial and appellate courts, and coordinate extradition of the fugitive of the requesting state.

CASE HIGHLIGHTS

HISTORY

The Division’s caseload has changed over the last eight years. Since 1991, there has been a substantial increase in criminal and federal habeas corpus cases, and the Division has transferred much of its civil litigation, primarily involving prisoners, including Treatment Center litigation and annual petitions for release from the Treatment Center, and appeals in unemployment benefit cases, to the Government Bureau or to agency counsel at DOC or the Parole Board. The Division only handles these types of cases when a novel or substantial issue is involved. The Division has retained those civil cases which directly or indirectly involve challenges to criminal convictions, the actions of those in District Attorneys’ offices or the criminal justice system, and has taken over handling other similar cases which were previously handled in the Government Bureau, including some State Police and Public Safety cases.

In a number of areas, including expungement motions in criminal cases and matters where members of a District Attorney's office are subpoenaed to provide documents or testimony in civil cases, the Division has worked to develop the legal principles and establish the law. These cases, however, have become so prevalent that it became necessary to transfer them to the District Attorneys or the Probation Department. The Division continues to represent the District Attorneys' offices in federal court cases.

FEDERAL HABEAS CORPUS

One of the Appellate Division's primary missions is representing the Commonwealth's interest in federal habeas corpus cases challenging state criminal convictions and custody. These cases represent approximately 50% of the Appellate Division's caseload and require a substantially high percentage of the attorneys' time. Most cases require the filing of lengthy and complex memoranda and occasionally, evidentiary hearings are held in federal court in these cases.

During the course of the fiscal year, the Appellate Division carried 300 federal habeas cases, a number well exceeding those handled in previous years. In the last decade, the Attorney General's Office has seen a 400% increase in the number of federal habeas corpus cases filed. For example, in FY87, only 30 new federal habeas corpus cases were handled by six staff attorneys and a Division Chief, compared to the 146 new cases handled by nine staff attorneys and a Division Chief in FY99.

The April, 1996, amendments to the federal habeas corpus statute remain largely responsible for the increased number of cases. The number of new federal habeas filings has continued to rise in FY98 and FY99 where the approximately 150 new cases that were filed in each of those years reflect more than a 30% increase over FY97, the first full fiscal year after the new law went into effect, and a 78% increase over the number of cases filed prior to the amendments.

The Division has been particularly successful in defending against habeas corpus challenges. In the last eight years, only four cases from over 765 disposed were ultimately unsuccessful from the Commonwealth's perspective. The habeas corpus cases handled by the Division involve challenges to a wide variety of state court convictions obtained throughout the Commonwealth, including a number of first degree murder and other high profile cases. Most of the Division's federal habeas cases also continue to involve the interpretation and application of the substantial revisions to the statute and in FY99, the Division successfully litigated several important cases involving the various provisions of the new federal statute, and its application to Massachusetts convictions. This year, the Division was successful in every federal habeas corpus case decided by the First Circuit. In two cases, one involving a Worcester County murder conviction from the 1970s, and the other involving a Hampden County rape conviction, the Division was successful in

convincing the First Circuit to reverse orders of District Court judges that would have issued the writ and required new trials. In a third case, the Division won reinstatement of a Suffolk County murder conviction. Another case involved the successful defense of an attack on the constitutionality of the new juvenile court jurisdiction statute applicable to murder cases.

STATE HABEAS CORPUS CASES

During FY99, the Appellate Division handled 51 state habeas corpus actions by prisoners seeking immediate release from confinement in such matters as challenges to validity of governor's warrants and extradition, challenges to criminal convictions, claims that parole surrenders were unlawful, and attacks on civil commitments to the Treatment Center.

In one state habeas corpus case, on behalf of the Parole Board, the Division successfully appealed an adverse ruling by a Superior Court judge concerning the calculation of parole eligibility for sentences that have mandatory minimum and non-mandatory terms. In another case, the Division convinced the court to reject a challenge to the statute concerning sentencing and incarceration of juveniles convicted of murder. In a third case, a matter of first impression in Massachusetts, the Supreme Judicial Court agreed with the Division's arguments that permitted extradition of a man charged in Oregon with failing to support his minor children for prosecution in that state.

STATE AND FEDERAL CIVIL CASES

The Appellate Division handled 41 federal civil matters, which primarily involved civil rights actions brought against state prosecutors, public defenders, judges and other criminal justice system officials, and actions against the Parole Board by inmates denied parole. Despite the variety of defendants and claims, Division attorneys were successful in obtaining dismissals prior to any time-consuming and burdensome discovery. Several cases involved representation of prosecutors who were subpoenaed to testify or produce their investigative or trial files, or cases where the integrity or validity of state criminal prosecutions were at issue. In one case, we successfully resisted the efforts of a federal postal supervisor charged in Bristol County with assaulting a female employee to remove the criminal prosecution from state to federal court.

The Appellate Division's state civil caseload of 113 cases include appeals in all cases handled at the trial court level by agency counsel at the Parole Board which challenge Parole Board practices, policies and decisions, while the large majority of state civil cases involve representation of prosecutors, judges, public defenders, and other court personnel sued for actions taken in their official capacity. The Division

also actively seeks to prevent collateral attacks on criminal convictions in cases where defendants bring civil or tort claim actions against prosecutors, courts, and witnesses for their actions relating to prosecutions, and has intervened on behalf of the various District Attorney offices to stay civil proceedings until related criminal cases are concluded, or to oppose efforts by criminal defendants seeking the return of money or property subject to forfeiture proceedings.

During FY99, the Appellate Division, along with the Government Bureau, successfully defended a number of cases which made various constitutional challenges to the state's statute creating a DNA database. We convinced the Supreme Judicial Court to vacate an injunction which had halted implementation of the statute, and to find the statute constitutional. In another case, involving the Tort Claims Act relating to actions of a state prosecutor, the Division was successful in convincing the SJC to reverse the trial court and also to declare that the Commonwealth can take an immediate appeal from an adverse ruling on an immunity defense. In another case, where the Commonwealth appealed from a jury verdict that an individual was no longer sexually dangerous, the Supreme Judicial Court agreed that the Commonwealth can take such an appeal, but rejected our argument that the judge's instructions precluded the jury from considering extensive evidence of the petitioner's sexual misconduct.

CRIMINAL CASES

The majority of criminal cases handled by the Appellate Division are appeals from criminal convictions in prosecutions brought by the trial divisions of the Criminal Bureau. The number of cases handled this year, 82, continues to reflect the volume of the Criminal Bureau trials and convictions. The Division also represents the Commonwealth when a defendant petitions the United States Supreme Court for a review of a state conviction and handles all appeals from trial court judgments of summary criminal contempt.

During FY99, the Division handled criminal appeals from convictions or from the denial of motions for a new trial in a variety of cases including narcotics, arson, tax evasion, election law violations, and larceny and fraud. Most of the Division's criminal cases were successful, although the Appeals Court ordered a new trial in a narcotics case and remanded a tax prosecution to the trial court for additional findings. In addition, the Appeals Court reversed a trial court finding of summary contempt in one case and ordered a lesser sanction in another. In a case of first impression, the Division prosecuted a successful appeal from a trial court ruling that had ordered the State Police to return \$38,000 to a criminal defendant even though the money had already been ordered forfeited in federal proceedings. The Division's most significant criminal case was the first degree murder conviction for the 1995 murder of Assistant Attorney General Paul R. McLaughlin. The Appellate Division Chief worked jointly with Special Prosecutor Thomas Brennan for nearly four years in the investigation, prosecution, and trial of that murder case which resulted in a

conviction in May, 1999.

G.L. C. 211 §3 AND OTHER SINGLE JUSTICE MATTERS

The Appellate Division handled a number of cases in the single justice session of the Supreme Judicial Court. These matters frequently involve representation of the courts and judges, in defense of some aspect of the criminal justice process or system.

Among the cases handled in FY99 were the successful defense to challenges involving: the practice in Plymouth County of holding arraignments at the jail in order to save the various cities and towns the expense of housing and transporting arrestees who were unable to make bail after weekend arrests; a challenge to an order of immunity; litigation involving the role of a clerk's hearing and whether there is a right to appeal to a judge when a clerk magistrate denies the issuance of a complaint; the trial and appellate courts' powers to impose a reduced filing fee on a prisoner seeking to file or take an appeal in a civil case, where the prisoner has adequate funds in his prison account to pay the nominal fee; procedures under the state's bail statute; and matters concerning media coverage of a high-profile murder trial.

CRIMINAL JUSTICE INITIATIVES

Many of the attorneys in the Appellate Division work for the betterment of the legal profession and are engaged in public service in a number of ways.

- Assistant Attorneys General Cathryn Neaves and William Duensing served on the National Association of Attorneys General (NAAG) working group on corrections and inmate litigation.
- Assistant Attorney General William Meade serves as a member of the Editorial Board of the Massachusetts Law Review.
- Assistant Attorney General Pamela Hunt is a member of the Massachusetts Sentencing Commission and serves as chairperson of the Commission's Committee on Intermediate Sanctions. AAG Hunt is also a member of the Supreme Judicial Court's Standing Advisory Committee on the Criminal Rules, and is on the NAAG Criminal Law Committee. She was appointed a member of the Criminal Justice Section Council of the Massachusetts Bar Association and Vice Chairperson of the Appellate Bench Bar Committee.

- Division attorneys are active members of the Commonwealth's Appellate Attorneys Action Project and work closely with the District Attorneys' offices on matters of statewide interest and impact.
- The Division has provided information on behalf of the Attorney General to the Parole Board and the Governor's Council relevant to their consideration of pardon, commutations, and parole decisions for those serving parole-eligible sentences.
- Division attorneys actively participate in officewide initiatives such as the Abandoned Property Project and the Diversity Committee.

SAAG SUPERVISION

PAROLE BOARD

Agency counsel at the Parole Board are designated Special Assistant Attorneys General (SAAG) to handle the Board's litigation in the state trial courts. Appellate Division attorneys work with Board counsel in the defense of these matters, and handle all appeals in these cases. The Appellate Division is also involved in many Parole Board cases which require coordination with the Department of Correction. Assistant Attorneys General from the Appellate Division and the Government Bureau defend all cases concerning the Parole Board in federal court.

DEPARTMENT OF CORRECTION

Department of Correction attorneys, under the direction and supervision of the Appellate Division and the Government Bureau, handle civil and state habeas corpus litigation filed by prisoners in a number of matters including challenges to conditions of confinement, prison disciplinary matters, and calculation of sentence credits. Agency counsel handle petitions filed by sexually dangerous persons for discharge from the Treatment Center, while Appellate Division attorneys defend cases which attack the validity of original SDP commitment or the underlying criminal conviction.

DISTRICT ATTORNEYS

Whenever a District Attorney has a conflict of interest in an appellate case or in a case involving a parole hearing, the Commonwealth's interests are represented by either Assistant Attorneys General or by

an Assistant District Attorney who is designated a Special Assistant Attorney General and is supervised by attorneys in the Appellate Division. In addition, Assistant District Attorneys in Berkshire County are designated Special Assistant Attorneys General to handle challenges to renditions pursuant to governor's warrants in that county.

COMMISSIONER OF PROBATION

During FY99, agency counsel in the Office of the Commissioner of Probation, under the supervision of the Appellate Division, were designated Special Assistant Attorneys General to handle matters in which a motion to expunge probation and court records in criminal cases was filed.

CRIMINAL INVESTIGATIONS DIVISION

The Criminal Investigations Division provides the Criminal Bureau with highly trained and experienced investigators from the ranks of the Massachusetts State Police, as well as a core of civilian investigators. The Division investigates a variety of crimes, predominantly in the area of organized crime, narcotics trafficking, public corruption, firearm violations, money laundering, securities violations, tax fraud, computer crime, crimes against the elderly, and environmental crime.

The Division also provides technical support and resources to other divisions within the Office of the Attorney General and to municipalities within the Commonwealth in such areas as handwriting analysis and photography/video expertise. The Criminal Investigations Division has developed outstanding cooperative working relationships with many law enforcement agencies throughout the Commonwealth, as well as throughout the country.

The State Police Unit assigned to the Criminal Bureau is commanded by Detective Lieutenant Mark Delaney; Lieutenant Steve Matthews serves as the Executive Officer. Lieutenant Frank Matthews oversees the Public Integrity/Special Investigations unit in Boston. Lieutenant Joe Flaherty commands the High-Tech and Computer Crimes Division, and oversees the Springfield Special Investigations Unit run by Sergeant John Gibbons. Sergeant Rich Prior commands the Narcotics Unit with the assistance of Sergeant Tom Coffee. Collectively, the State Police assigned to the Criminal Bureau bring over 100 years of investigative experience through a variety of backgrounds and experience.

Several significant investigations have been initiated since January of 1999. One in particular, which has kept the Office operating at a blazing pace, is the investigation into theft and corruption within the State Treasury. A Special Grand Jury is looking into the widespread corruption and theft of more than nine million dollars from the State coffers. Indictments from the first phase of the investigation are expected within the next several months.

The High-Tech and Computer Crimes Division continues to lead the way in the Commonwealth through their assistance to other agencies and their continued pursuit of hackers, child pornographers and Internet thieves. A recent e-mail bomb threat to the Secretary of State's office resulted in the arrest of an individual from the Leominster area. The threat was made by a disgruntled individual who threatened to blow up a state office building. A quick response by the High-Tech and Computer Crimes Division resulted in an arrest and search of the defendant's home by State Police bomb experts.

During FY99, the Criminal Investigations Division accomplished the following:

Investigations	186
Arrests	77
Search Warrants	47
Assistance to other Agencies	60
Drug Money Seized	\$775,432.84
Background Investigations	1049

ENVIRONMENTAL CRIMES STRIKE FORCE

MAKING THE GOVERNMENT WORK TO PROTECT THE ENVIRONMENT

The Massachusetts Environmental Crimes Strike Force, a collaborative effort of the Attorney General, the Secretary of Environmental Affairs, Department of Environmental Protection, Environmental Police, and State Police, continued to pull together available government resources in the service of enforcing the state's environmental laws. The Strike Force also worked with the U.S. Environmental Protection Agency and the U.S. Attorney's Office for the District of Massachusetts, pursuing joint state and federal environmental crimes investigations. The Strike Force's enforcement efforts included cases in Berkshire County, Middlesex County, and Worcester County.

Fiscal Year 1999 saw successful trials in the largest asbestos dumping case in the Commonwealth to date, and the first criminal prosecution for interfering with a hazardous waste site cleanup action pursuant to G.L. c. 21E. The Strike Force also won the Commonwealth's first criminal conviction of a public official for environmental violations.

During Fiscal Year 1999, the Strike Force unit operating out of the Criminal Bureau of the Attorney General's Office opened investigations in 24 matters, and concluded 17 investigations. The Strike Force resolved cases against three defendants, convicting all.

CRIMINAL CASE HIGHLIGHTS

CASES INITIATED IN FISCAL YEAR 1999

- **Commonwealth v. Stepping Stone Realty, Inc. & James Harrity, Jr.**: This real estate

company and its president were charged in Worcester District Court with violating state air pollution and solid waste laws in connection with the renovation of a residential property in Worcester. The defendants allegedly operated an unpermitted asbestos removal project in the basement of the residential property and failed to comply with air pollution regulations intended to prevent the emission of asbestos fibers. The asbestos waste was then allegedly buried in the basement.

CASE DISPOSITIONS IN FISCAL YEAR 1999

- **William Bertrand**: This Billerica contractor was convicted by a Middlesex County jury for illegally disposing of hazardous waste and illegally interfering with a hazardous waste site cleanup action pursuant to G.L. c. 21E. The defendant was hired to transport approximately 1200 tons of oil contaminated soil from a 21E site in Wilmington to an asphalt recycling company in Maine. Evidence showed that the defendant delivered only 105 tons to the recycling facility, which charged \$28 a ton to accept the contaminated soil. The defendant dumped much of the remaining contaminated soil at a Carlisle home, having offered it to the unsuspecting homeowners for use as fill. The defendant kept the approximately \$30,000 that he would have had to pay to the recycling company. The defendant was sentenced to two and a half years in the House of Correction, six months to serve, with two years probation.
- **Commonwealth v. Jonathan Gabriel** The president of New England Demolition, Inc. of Worcester was convicted by a Worcester County jury for illegally removing and disposing of asbestos and violating a DEP solid waste cleanup order. The evidence showed that at demolition jobs in Holden and Worcester, the defendant and his company failed to follow required asbestos removal procedures to insure that the asbestos was not released to the ambient air. The defendant also ordered his employees to illegally dispose of asbestos waste in a smokestack at a commercial building in Worcester. The employees ordered to perform the job were not protected from exposure to the asbestos. The asbestos dumped in the stack filled approximately 250 bags, making this the largest asbestos disposal prosecution in the Commonwealth. The defendant was sentenced to two years in the House of Correction, with an additional two years suspended, two years with probation.
- **Commonwealth v. Leo Senecal** The Department of Public Works Chief for the City of North Adams plead guilty in Berkshire Superior Court to charges of illegally disposing of

hazardous waste without a license and in a manner which could endanger the environment. The defendant admitted to having ordered City employees to dig a trench on DPW property and dump three 50-gallon drums of waste oil in the trench. He instructed one of his employees to cover the trench with dirt. The defendant thereafter misled DEP inspectors about the incident and the whereabouts of the dumping. The defendant was sentenced to five years probation with the special condition that he step down as DPW superintendent and that he not have any supervisory authority over any DPW employee or any work of the DPW for five years.

BROADENING ENVIRONMENTAL IMPACT

Strike Force activities continued to extend the impact of its environmental prosecution efforts beyond the deterrence and remediation achieved in particular cases. Strike Force members participated in educational efforts reaching other law enforcement agencies, the private bar, and the community as a whole. These efforts included seminars attended by Massachusetts local law enforcement agencies, hazardous waste inspectors from states throughout the northeastern United States, and members of the Massachusetts Bar, as well as a symposium on emerging environmental trends sponsored by New England School of Law. The University of Massachusetts Work Environment Justice Fund, created as a result of the Strike Force's 1994 prosecution of a Somerville lead smelting company, granted its fifth annual awards to seed projects for improving workplace health and safety among low income workers. A total of \$100,000 was awarded to seven non-profit agencies across the state.

The members of the Environmental Crimes Strike Force for all or part of FY99 were: Martin Levin, Chief, AAG; Michael Dingle, AAG; Pamela Talbot, AAG; Irfan Nasrullah, Volunteer AAG; Gail Larson, Lieutenant; John Lapan, Trooper; Michael Moore, Environmental Police Officer; Michael Sweeney, Sergeant; and Pat Haley, Environmental Police Officer.

ECONOMIC CRIMES DIVISION

INTRODUCTION

The Economic Crimes Division investigates and prosecutes all types of private sector, white collar and economic crime in state courts across the Commonwealth. The Division is charged with stemming the serious and egregious effects of private sector white collar offenders within the state through both proactive prevention and aggressive prosecution. The seriousness of the cases prosecuted by the Division demonstrates the crippling impact of economic crime as it travels through families, communities, and in some instances, throughout the state, forever changing those affected. The victims of these crimes take many shapes, from the vulnerable elderly individual, to the small business or large corporation.

Although the cases handled by the Division vary in size, from the \$50,000 theft from a single elderly victim, to the multi-million dollar theft from a large corporation, the intensity of harm is treated with equal importance. Each year, the goal of the Division is not only to indict and convict guilty felons from stripping victims of their life savings, their businesses, or ultimately, their personal futures, but also to assist the public and private sector in creating systemic change in order to prevent fraud.

Massachusetts citizens annually incur hundreds of millions of dollars in losses through private sector fraud. Since Fiscal Year 1995, the Economic Crimes Division has obtained 250 convictions and dispositions totaling over \$70 million dollars in private stolen funds from victims throughout the Commonwealth. The statistics contained within this report paint a portrait of the battle waged by a group of qualified professionals against private sector fraud, committed to making offenders accountable for their financial crimes.

Throughout the past year, the Economic Crimes Division focused on three priority areas: (1) lawyer fraud, (2) tax crimes, and (3) all types of financial crimes (including theft and securities fraud) which victimize both vulnerable individuals and large corporations. Cases involving financial crimes against the elderly are priority prosecutions for the Economic Crimes Division.

The Economic Crimes Division consists of seven attorneys, one special assistant attorney general, and one secretary, in addition to civilian financial investigators and state police officers. The members of the Division during part or all of the year consist of the following: Carol Starkey, Chief, AAG; Molly Parks, AAG; Kevin Brekka, AAG; Sarah Hartry, AAG; Lori Balboni, AAG; Phillip McGovern, AAG; Mark Mulligan, AAG; Andy Zaikis, SAAG; Olivia Blanchette, Secretary; James McFadden, Investigator; Patrick Ormond, Investigator; Brad Chase, Investigator; David Baker, Investigator; and Sallyann Nelligan, Inves-

tigator. Paul Stewart, Director of Financial Investigators, and the State Police Unit assigned to the Criminal Bureau, have been invaluable to the successful work of the Division.

In Fiscal Year 1999, the Economic Crimes Division commenced another 10 complex criminal prosecutions against those individuals, entities, and corporations that took advantage of positions of power in the private sector to the detriment of the working men and women of the Commonwealth. During the same time, 36 convictions were obtained against white collar criminals and corporations, including those defendants who were not charged within this fiscal year. The attached charts reflect the statistics for the financial and tax prosecutions indicted for the past fiscal year, and all cases completed by the Division throughout the last four fiscal years.

**PRIVATE SECTOR FRAUD: THE FINANCIAL AND TAX PROSECUTIONS
HANDLED BY THE ECONOMIC CRIMES DIVISION**

Economic Crimes Division

1995-1999

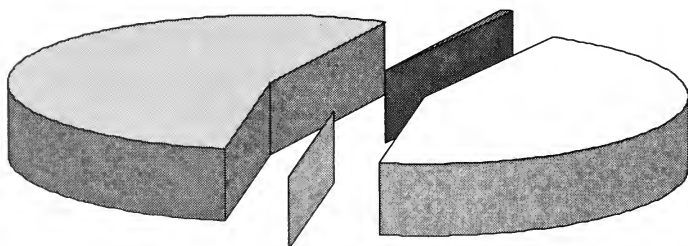
250 Dispositions

**Traditional White
Collar Crime**

{ Guilty }
54%

**Traditional White
Collar Crime**

{ Acquittals/Dismissals }
1%



Tax Cases

{ Acquittals/Dismissals }
0%

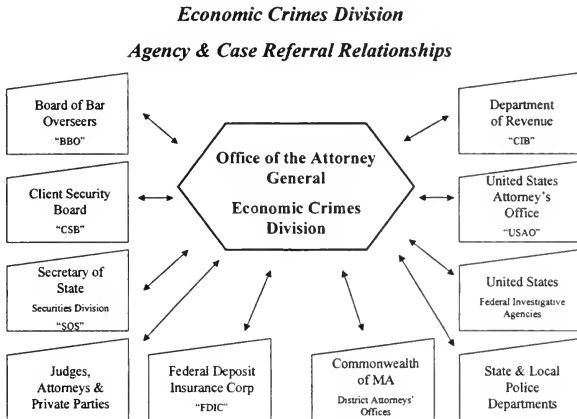
Tax Cases

{ Guilty }
45%

THE DIVISION'S AGENCY LIAISONS

The Economic Crimes Division receives referrals from both state and federal agencies, as well as judges, attorneys, private parties, and police departments throughout the Commonwealth.

The Division continues to work closely with such offices and agencies as the Board of Bar Overseers ("BBO"), the Client Security Board ("CSB"), the Criminal Investigations Bureau of the Department of Revenue ("CIB" of "DOR"), the F.D.I.C., the Secretary of State of the Commonwealth ("SOS"), the



United States Attorney's Office ("USAO"), and various District Attorney's Offices across the state.

THE FINANCIAL PROSECUTIONS

The investigations initiated by the Division tend to be difficult, complex white collar cases that involve the analysis and review of prolific documentation, tracing an economic crime through exposing the "paper trail" of evidence left by the white collar criminal. In order to conduct a thorough investigation of an economic fraud, extensive interviews and testimony must be obtained from all people involved or affected by the theft. In addition, most cases require the use of an expert witness to aid an assistant attorney general or investigator in evaluating the perpetrator's handwriting, the financial formula employed, or the mental state which enabled the defendant to perpetrate the crime.

To answer the challenging goals of the Economic Crimes Division in prosecuting the most elaborate of financial schemes, law enforcement techniques have grown more sophisticated in response to the changing face of private sector fraud over the passage of time. Computer technology and enhanced litigation tools are frequently employed by Division members to explain often complicated financial matters to a grand jury or a trial jury. The significant effect of such efforts sends the message that our evolving technological age will be embraced by law enforcement officials to prosecute even the most sophisticated felon as we advance to the next century.

CATEGORIES OF FINANCIAL CASES PROSECUTED BY THE ECONOMIC CRIMES DIVISION

The following is a synopsis of the types of cases accepted for investigation and prosecution within the Economic Crimes Division, utilizing the Division's law enforcement techniques, resources and initiatives.

Types of Cases and Case Highlights

Within the broad focus areas of lawyer fraud and other types of financial crimes, there are essentially six categories of white collar crime that are investigated and prosecuted by the Office of the Attorney General's Economic Crimes Division. They are: (1) Organizational Fraud; (2) Fiduciary Fraud; (3) Investment/Securities Fraud; (4) Health Care Fraud; (5) Identity Fraud; and (6) Tax Fraud. While these types of schemes overlap in a number of ways, they are distinguishable by the position of the perpetrator within the scheme, the type of victim and/or the manner in which the fraud is perpetrated.

Organizational Fraud: This refers to crimes committed by an employee, agent, representative or contractor of an organization. The victim of these schemes is the organization which generally is a corporation. The crimes that are usually the subject of the investigation are larceny or embezzlement, false entry in corporate books, forgery and uttering. The fraudulent conduct often appears in the form of a false billing scheme. The perpetrator uses his access to a payroll system or to payment documents, such as purchase orders, to cause payments for services not provided or to create unauthorized checks for his own personal use.

CASE HIGHLIGHTS

- **Commonwealth v. John Curtis, et. al** (Suffolk Superior Court) This Canton resident was indicted on charges that he stole more than one million dollars from Star Market through an elaborate scheme involving fake purchase orders, bogus billings and other alleged deceptions. John Curtis, 54, was the head of the maintenance department for Star Market until November, 1995 and responsible for the maintenance and purchase of equipment for all of Star Market's 39 stores. Linda Christmas, and Carole and Bill Melanson were also indicted for conspiring with Curtis in one of his false billing schemes in return for a kickback of tens of thousands of dollars. The matters were resolved against all parties, and the court ordered substantial incarceration, restitution or probation sentences for each defendant.

- **Commonwealth v. Brian P. Psota** (Suffolk Superior Court) A former payroll specialist for Media One, Brian P. Psota, plead guilty to stealing over \$225,000 while employed as the corporate accounting manager over a five-year period, spending the money on lavish vacations and building a new home. The defendant was sentenced to two years in the House of Correction, one year to serve, with a \$50,000 restitution payment to be made forthwith to the victim corporation on the date of the plea, and 20 hours of community service to be completed per month during his probation.

Fiduciary Fraud: This refers to crimes committed by individuals in positions of trust, such as attorneys, trustees, executors and guardians. The Division receives a majority of its BBO referrals alleging lawyer fraud, one of the Division's focus areas. The victims are those who entrusted their assets to the fiduciary and those who were the beneficiaries of the trusts or estates. The crimes charged include larceny, embezzlement, forgery, uttering and perjury. Forgery, uttering and perjury are frequently charged because part of the scheme often includes the submission of false signatures on payment instruments and/or the submission of false statements to a probate court, banking institution or insurance company. These crimes are especially egregious because the perpetrator will often be a friend of the family or someone who has had a relationship with the victim for many years. The defendant will steal from individuals all the while portraying himself as a protector, friend or confidant of the victim, many of whom are elderly or infirm.

Case Highlights

Commonwealth v. Charles Victor, II (Suffolk Superior Court)

Commonwealth v. Thomas Cargill (Suffolk Superior Court)

Commonwealth v. Walter Palmer (Suffolk Superior Court)

Commonwealth v. John Conroy (Suffolk Superior Court)**Commonwealth v. Jeffrey Boxer** (Norfolk Superior Court)

Five Massachusetts attorneys were recently indicted or plead guilty to larceny and tax indictments, their combined alleged fraud totaling over \$4.45 million from multiple victims. The cases of Thomas Cargill, Walter Palmer, Charles Victor, II and John Conroy, involved stealing large sums of money. Cargill and Palmer are alleged to have plundered the accounts and estates of multiple clients, misappropriating millions of dollars. In Conroy's case, the defendant admitted to stealing from trusts established for charities, and in the Victor matter, the defendant plead guilty to stealing nearly half a million dollars from estates of children suffering from lead paint poisoning. The final matter involved a disbarred attorney, Jeffrey Boxer, who stole \$188,000 from four clients, comprised of both elderly and disabled victims.

Investment/Securities Fraud: This refers to crimes committed by individuals serving in the capacity of financial advisers. It also involves whole organizations set up as fraudulent investment houses. The victims are individuals who have handed over money based on the understanding that the money will be invested on their behalf. This type of financial fraud is usually in the form of a "ponzie" scheme where the perpetrator is returning just enough money to his victims to persuade them that their investments are profitable, all the while depleting the majority of the equity for the defendant's own use. The fraudulent investment house conspirators accomplish their theft by persuading the victims that they can be trained to make money through securities trading, while engaging the victim in a fixed market. This scheme also uses its victims to lure in others, such as friends and associates, by requiring them to recruit other investors, much like a pyramid scheme. The crimes charged include larceny, embezzlement, securities fraud, false statement of corporate assets, bucketing, conspiracy, forgery and uttering.

Case Highlights

- **Commonwealth v. Albert Levesque** (Bristol Superior Court) A former Metropolitan Insurance agent and financial advisor, Albert Levesque, indicted for stealing approximately \$200,000 by coercing an elderly widow into transferring assets into trust accounts from which he later embezzled, plead guilty and received two years in the House of Correction, committed, with a two year House of Correction sentence, suspended, to run from and after the incarcerated portion of his sentence.
- **Commonwealth v. Jeffrey Maniff** (Norfolk Superior Court) The Commonwealth

received one of its strongest sentences after conviction in a financial crimes case involving an Easton man charged with allegedly stealing more than \$325,000 from an elderly woman who lives in a nursing home. Jeffrey Maniff was indicted on 13 counts of larceny over \$250, and five counts of securities fraud. The indictments allege that Maniff, an accountant and businessman who ran a luxury auto leasing operation, stole the money after befriending two elderly women, ages 97 and 90, offering to perform tax work and banking transactions for them. He was sentenced to nine to ten years in state prison, in addition to paying back the full amount of restitution.

Health Care Fraud: This refers to crimes committed by individuals working on behalf of health and science foundations or health care providers who, through their position of authority, are able to convert monies for their own use. The perpetrator is generally an individual in a position of high authority in the organization, such as a department chief, a member of the board of trustees or chairman of a foundation. The schemes include converting the institution's funds through a false billing scheme, embezzling funds received for research purposes, or converting premiums paid for insurance coverage. The victims in these matters are not only the institutions but also the claimants and service providers, for example physicians.

Case Highlight

Although the Division currently has matters of this category under investigation, an example of a past completed prosecution handled within this category is Commonwealth v. Bernardo Nadal-Ginard, Suffolk Superior Court. Dr. Nadal-Ginard held the positions of Chief of Cardiology at Boston Children's Hospital, President of the non-profit corporation known as the Boston Children's Heart Foundation, tenured Professor at Harvard Medical School and Howard Hughes Investigator. In his various positions of authority, Dr. Nadal-Ginard was entrusted with hundreds of thousands of dollars for research and treatment of children with heart disease and defects. At the conclusion of a month-long jury trial in Suffolk Superior Court, Dr. Nadal-Ginard was convicted of 12 counts of larceny. He was sentenced to a year in the House of Correction with three years of probation. He was further ordered to complete two full years of community service, working full-time for free, and to pay full restitution to the victim foundation.

Identity Fraud: This refers to crimes where the initial object of theft is the "identity" of the victim -- their name, credit card number, social security number or bank account number, cell phone number or computer station. Once the identity is usurped, it then becomes the instrument through which money is stolen or other crimes are committed. The victims are limitless as are the avenues through

which an identity can be stolen. The identity can be acquired through telephone gimmicks, electronic scanning of cell lines or as an offshoot of a con game.

Case Highlight

- **Commonwealth v. Kerrin Alfonso** (Suffolk and Norfolk Counties) This case involves a woman known as the “Queen of Identity Fraud,” who is alleged to have used identifying information from family, friends, former employers and acquaintances to create counterfeit checks and to open fraudulent credit accounts. Alfonso is alleged to have stolen several hundred thousand dollars in fraudulent credit purchases.

TAX FRAUD PROSECUTIONS

Although each Assistant Attorney General in the Economic Crimes Division handles a caseload including tax cases, one Assistant Attorney General, with the assistance of one Special Assistant Attorney General concentrates full time on this subject area. Since July of 1995, the Tax Prosecution Unit litigated a significant number of cases in the criminal courts and conducted several long-term investigations of suspected tax crimes. Many cases were referred to the Office of the Attorney General by the Criminal Investigations Bureau of the Department of Revenue, and investigators of that agency actively assisted the Tax Prosecution Unit in investigations and prosecutions, particularly in the area of analysis of documentation relating to potential tax violations. Additional cases were developed by the Tax Prosecution Unit as a result of referrals from other agencies.

Case Highlights

- **Commonwealth v. Paul Cacchiotti** (Suffolk Superior Court) After a Middlesex jury trial completed in late July of 1998, the jury found CPCS attorney Paul Cacchiotti guilty of extortion, larceny, tax evasion and filing false income tax returns. The defendant was convicted of extorting money from his indigent criminal clients while being paid by the Commonwealth for his legal services. In addition, Cacchiotti failed to report on his income tax returns the legal fees that he had earned from his private clients. The defendant was sentenced to two years in the House of Correction, committed, with a from and after sentence of two years probation during which time he must complete 400 hours of community service and make \$1,500 in restitution to the family of the attempted extortion victim. Due to the

extensive tax charges in the case, the investigation and the prosecution was a joint effort of both the Economic Crimes Division and the Public Integrity Division.

- **Commonwealth v. Gary Burris** (Suffolk Superior Court) This matter involves a Pittsfield vending machine business which was the subject of a search warrant executed from western Massachusetts. Burris and several restaurant owners were subsequently indicted upon the completion of a grand jury tax investigation. Burris recently plead guilty and received, on an unagreed plea, two years probation, 250 hours of community service and a \$50,000 fine.

CASES CHARGED BY THE ECONOMIC CRIMES DIVISION

INDICTMENT DATE

CASE DESCRIPTION

9/10/98

Commonwealth v. Brian P. Psota

(Larceny Prosecution)

COURT: Suffolk Superior

DESCRIPTION: Brian Psota is alleged to have stolen over \$220,000 from Continental Cable-vision, Inc., now Media One, while employed as a payroll clerk and corporate accounting manager over a five year period using three different fraudulent schemes.

CHARGES: Larceny Over \$250 (3 Counts)
False Entries in Corporate Books (3 Counts)
Attempted Larceny over \$250 (1 Count)
(AAG C. Starkey)

10/2/98

Commonwealth v. Walter Palmer

(Larceny Prosecution)

COURT: Suffolk Superior

DESCRIPTION: The defendant, a disbarred attorney, is alleged to have embezzled at least two million dollars from his former clients through his abuse as trustee, guardian and executor to at least six former clients.

CHARGES: Embezzlement (6 Counts)

(AAG K. Brekka)

10/29/98

Commonwealth v. Neil R. McCrystal

(Larceny Prosecution)

COURT: Bristol Superior

DESCRIPTION: The target was a property manager for the Hamilton Company, who allegedly stole approximately \$104,000 by (1) creating a fictitious company and approving payment by Hamilton clients of the invoices for work never performed or for work actually performed by employees on the company payroll, and (2) stealing various checks payable to Hamilton clients and depositing them directly to his personal bank account.

CHARGES: Larceny Over \$250 (8 Counts)
 Larceny Over \$250 (3 Counts)

(AAG M. Parks)

10/21/98

Commonwealth v. Castro Aristis
(Narcotics Prosecution)

COURT: Suffolk Superior

DESCRIPTION: Aristis is charged with Hector Florian in a drug trafficking operation in the Chelsea and possibly Fitchburg areas. He lives in Chelsea and lists his employment as Mario's Fruit Company.

CHARGES: Trafficking Cocaine (2 Counts)
 Conspiracy to Violate Drug Law (1 Count)

(AAG P. McGovern)

10/27/98

Commonwealth v. Hector Florian
(Narcotics Prosecution)

COURT: Suffolk Superior

DESCRIPTION: Florian is charged with Aristis in a drug trafficking operation in the Chelsea and possibly Fitchburg areas. He lives in Chelsea and has stated that he works in customer service for ATA American Trans Air at Logan Airport.

CHARGES: Trafficking Cocaine (2 Counts)
 Conspiracy to Violate Drug Law (1 Count)

(AAG P. McGovern)

12/16/98

Commonwealth v. Dermot P. O'Brien
(Larceny Prosecution)

COURT: Suffolk Superior

DESCRIPTION: This defendant is alleged to have stolen over \$250,000 from a non-profit charitable organization, Morgan Memorial Goodwill Industries, while operating as a Payroll Specialist, and then converting the money to pay for his own gambling debt.

CHARGES: Larceny Over \$250 (3 Counts)
 False Entries in Corporate Books (3 Counts)
 Forgery (7 Counts)

(AAG C. Starkey)

3/10/99 **Commonwealth v. Dermot P. O'Brien**
(Tax Prosecution)

COURT: Suffolk Superior

DESCRIPTION: This defendant is alleged to have filed false tax returns and failing to file tax returns due to his theft of over \$250,000 from a non-profit charitable organization, Morgan Memorial Goodwill Industries.

CHARGES: Filing False State Income Tax Returns (3 Counts)
 Willful Failure to File (3 Counts)

(AAG C. Starkey)

3/16/99 **Commonwealth v. Neil McCrystal**
(Tax Prosecution)

COURT: Suffolk Superior

DESCRIPTION: The defendant is alleged to have stolen money while operating as the property manager for the Hamilton Company, using a scheme to falsely bill the company for work he never performed totaling approximately \$500,000.

CHARGES: Willful Filing of False Income Tax Returns (2 Counts)

(AAG M. Parks)

3/16/99 **Commonwealth v. Arnold Brandyberry**
(Tax Prosecution)

COURT: Suffolk Superior

DESCRIPTION: As the President and CEO of a Western Mass corporation, Berkshire Paper Co., Inc., the defendant is alleged to have failed to file non-resident income tax returns from 1993 through 1996. During this period, he earned between \$145,000 to \$190,000 in salary which he failed to report as Massachusetts source income.

CHARGES: Willful Failure to File State Income Tax Returns (4 Counts)
 (AAG L. Balboni)

6/3/99 **Commonwealth v. Richard T. Cousins**
(Tax Prosecution)

COURT: Suffolk Superior

DESCRIPTION: The defendant was the sole corporate officer for Trenton Construction Corp., a pile driving business. He is alleged to have failed to pay and file returns for state income tax withheld from his employees' paychecks.

CHARGES: Willful Failure to Account for and Pay Over Withholding Taxes (2 Counts)

(AAG M. Parks)

CASES DISPOSED BY THE ECONOMIC CRIMES DIVISION

CONVICTION DATE CASE DESCRIPTION

7/16/98 **Commonwealth v. Steven Derrick**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Bohn

DESCRIPTION: This matter involves a husband and wife who leased cabs through various corporations while failing to report and pay all of their collected sales taxes.

CHARGES: Willful Attempt to Evade and Defeat Sales Taxes (7 Counts)
 Willful Failure to Account For and Pay Over Sales Taxes (4 Counts)

SENTENCE: The defendant plead guilty on all counts. He was sentenced to two years in the (edit 6) House of Correction, suspended for two years probation, with the completion of six months of home confinement. The defendant was further ordered to pay \$30,000 in fines and surfines, \$10,000 of which must be paid within one week of imposition of the sentence, and the balance to be paid during the first six months following the completion of his sentence. Finally, the defendant was ordered to file all past due tax returns and new tax returns. \$60 Victim/witness fee.

(SAAG A. Zaikis)

7/16/98 **Commonwealth v. Susan Derrick**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Bohn

DESCRIPTION: This matter involves a husband and wife who leased cabs through various corporations while failing to report and pay over all of their collected sales taxes.

CHARGES: Willful Attempt to Evade and Defeat Sales Taxes (1 Count)
 Willful Failure to Account For and Pay Over Sales Taxes (2 Counts)

SENTENCE: Placed on file without change of plea.

(SAAG A. Zaikis)

7/30/98 **Commonwealth v. Paul Cacchiotti**
(Tax Prosecution)

COURT/JUDGE: Middlesex Superior/Fremont-Smith

DESCRIPTION: After a Middlesex jury trial completed in late July of 1998, the jury found CPCS attorney Paul Cacchiotti guilty of extortion, larceny, tax evasion and filing false income tax returns. The defendant was convicted of extorting money from his

indigent criminal clients while being paid by the Commonwealth for his legal services. In addition, Cacchiotti failed to report on his income tax returns the legal fees earned from his private clients. Due to the extensive tax charges in the case, the investigation and the prosecution was a joint effort of both the Economic Crimes Division and the Public Integrity Division.

CHARGES: Attempted Extortion (3 Counts)
 Larceny Over \$250 (1 Count)
 Tax Evasion (1 Count)
 Filing of False Tax Return (1 Count)

SENTENCE: The jury returned not guilty verdicts on the first two (edit 7) counts of the Attempted Extortion Indictment. The jury returned guilty verdicts as to all other counts. The defendant received two years House of Correction, committed, with a from and after two year probation sentence. Defendant was ordered to complete 200 hours community service with each year of probation. The defendant was further ordered to make restitution of \$1,500 to the victim of the attempted extortion charge. \$60 Victim/witness fee.

(AAGs L. Balboni/A. Lawlor)

8/6/98 **Commonwealth v. John Curtis**
 (Larceny Prosecution)

COURT/JUDGE: Suffolk Superior/Borenstein

DESCRIPTION: The defendant admitted that he stole in excess of \$1 million from Star Market through his position as the head of their maintenance department.

CHARGES: Larceny Over \$250 (24 Counts)
 Larceny Over \$250 (1 Count)
 False Corporate Records (24 Counts)
 False Corporate Records (1 Count)
 Conspiracy to Commit Larceny (2 Counts)
 Conspiracy to Commit False Corporate Records (2 Counts)
 Larceny Over \$250 (1 Count)

SENTENCE: The defendant plead guilty to all charges. He admitted he stole in excess of one million dollars from Star Market Corporation, and was sentenced to two and-a-half years in the House of Correction, five years probation, and restitution through surrender of two residences (valued at over \$325,000). Court offered less incarceration than the Commonwealth's recommendation based on defendant's statement that he would make above described restitution. Victim/witness fee waived over Commonwealth's objection.

(AAG K. Brekka)

8/11/98 **Commonwealth v. Jeffrey Maniff**
 (Larceny/Securities Fraud Prosecution)

COURT/JUDGE: Norfolk Superior/Houston

DESCRIPTION: The defendant met the victims, two elderly sisters, while doing their taxes, and then proceeded to use the money to fund his luxury rental car business as well as purchase other items for his home and family.

CHARGES: Larceny Over \$250 (3 Counts)

SENTENCE: Defendant received a sentence of four and one half years State Prison committed, with four and-a-half years State Prison committed from and after on the first two indictments. On the next two counts, the defendant was sentenced to 10 years probation, from and after, with a condition of probation being the payment of \$321,658 in restitution, and prohibition from work as an accountant or fiduciary. The court also issued a Stay-Away order from the victims. The rest of the charges were guilty filed. \$60 Victim/witness fee.

(AAGs S. Hartry and M. Mulligan)

8/14/98

Commonwealth v. Paul Cacchiotti

(Tax Prosecution)

COURT/JUDGE: Middlesex Superior/Bennett

DESCRIPTION: After a Middlesex jury trial in late July of 1998, the jury found CPCS attorney Paul Cacchiotti guilty of extortion, larceny, tax evasion and filing false income tax returns. The defendant was convicted of extorting money from his indigent criminal clients while being paid by the Commonwealth for his legal services. In addition, Cacchiotti failed to report on his income tax returns the legal fees that he had earned from his private clients. Due to the extensive tax charges in the case, the investigation and the prosecution was a joint effort of both the Economic Crimes Division and the Public Integrity Division.

CHARGES: Tax Evasion (1 Count)
Attempted Extortion (1 Count)
False Tax Return (1 Count)

SENTENCE: The defendant was sentenced to two years in the House of Correction, committed, with a from and after sentence of two years probation during which time he must complete 400 hours of community service and make \$1,500 in restitution to the family of the attempted extortion victim.

(AAGs L. Balboni/A. Lawlor)

8/20/98

Nancy Burgess v. Commonwealth

(Petition for Writ of Habeas Corpus)

COURT/JUDGE: Middlesex Superior/Zobel

DESCRIPTION: This defendant, convicted of larceny, is sought by Connecticut for a probation violation following completion of her Massachusetts sentence. The defendant unsuccessfully challenged a Governor's Warrant and sought release on bail.

SENTENCE: Disposition: Petition for a writ of habeas corpus denied.

(AAG M. Parks)

9/8/98 **Commonwealth v. Philip J. Tavares**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Volterra

DESCRIPTION: Tavares lived in New Hampshire and worked as a physician in Massachusetts during the years 1991 through and including 1996, and failed to file non-resident income tax returns. Tavares earned approximately \$497,775 income, and he owed approximately \$29,833 in tax liability.

CHARGES: Willful Failure to File Non-Resident State Income Tax Returns (6 Counts)

SENTENCE: The defendant received a sentence of pre-trial probation for one year, with a from and after sentence of unsupervised probation for one year, and \$5,000 court costs over the Commonwealth's objection. All other counts were sentenced concurrently.

(AAG S. Hartry)

9/18/98 **Commonwealth v. Dan Beliveau**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Ball

DESCRIPTION: This defendant was a salesman who worked and lived in Massachusetts while failing to file income tax returns and falsely claiming his wages were earned out of state.

CHARGES: Willful Filing of a False Income Tax Return (1 Count),
Willful Failure to File State Income Tax Returns (4 Counts)

SENTENCE: The defendant was sentenced to a \$10,000 fine, and one year unsupervised probation. The rest of the charges were guilty filed. \$60 Victim/witness fee.

(SAAG A. Zaikis)

9/23/98 **Commonwealth v. Joseph Haven**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Ball

DESCRIPTION: This matter involves an employee who collected worker's compensation payments while being paid under the table by his employer.

CHARGES: Willful Filing of False Income Tax Returns (2 Counts)

SENTENCE: \$100 fine, two years probation. \$60 Victim/witness fee.

(AAG A. Zaikis)

10/20/98

Commonwealth v. 770 Broadway, Inc.

(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Quinlan

DESCRIPTION: 770 Broadway, Inc. operated five retail bedding and furniture stores in Southeastern Massachusetts under the name of Off-Track Bedding. Marie Campbell was the corporation's bookkeeper. The defendants filed 31 false and fraudulent monthly sales tax returns for the periods of March 1992 through December 1994. Campbell prepared and filed each of the false and fraudulent returns and in doing so, used four distinct schemes to underreport the sales tax owed, including subtracting a round number or excluding the sales and taxes owed by one of the five stores.

CHARGES: Willful Failure to Account For and Pay Over Sales Tax (3 Counts)

SENTENCE: Defendant plead guilty. On each count, court imposed fine of \$7,500 plus surfine of \$2,500. Total fines and surfines \$30,00, including \$ 60 Victim/Witness fee. (Edit 8)

(AAG M. Mulligan)

10/20/98

Commonwealth v. Marie Campbell

(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Quinlan

DESCRIPTION: 770 Broadway, Inc. operated five retail bedding and furniture stores in Southeaster Massachusetts under the name of Off-Track Bedding. Marie Campbell was the corporation's bookkeeper. The defendants filed 31 false and fraudulent monthly sales tax returns for the periods of March 1992 through December 1994. Campbell prepared and filed each of the false and fraudulent returns and in doing so, used four distinct schemes to underreport the sales tax owed, including subtracting a round number or excluding the sales and taxes owed by one of the five stores.

CHARGES: Willful Failure to Account For and Pay Over Sales Tax (3 Counts)

Willful Filing of False Sales Tax Returns (3 Counts)

SENTENCE: The defendant was sentenced to one year House of Correction, suspended for one year of probation with 500 hours community service. \$60 Victim/witness fee.

(AAG M. Mulligan)

10/27/98

Commonwealth v. Alan S. Katz

(Larceny/Forgery/Uttering Prosecution)

COURT/JUDGE: Middlesex Superior/Worcester Superior/White

DESCRIPTION: The charges relate to a sophisticated course of criminal conduct in which Katz used aliases, phony business names, an answering service, fake letterhead and business cards, and counterfeit checks drawn on non-existent banks (created by him using computers and laser printers) to steal thousands of dollars' worth of computers from

small computer businesses all over the country. Katz defaulted in 1994 and was recently picked up by the Oregon authorities. He is now held on \$100,000 cash bail.

CHARGES: Larceny Over \$250 (4 counts)
 Receiving Stolen Property (2 Counts)
 Forgery (4 Counts)
 Uttering (3 Counts)
 Attempted Larceny (1 Count)

SENTENCE: The defendant was adjudicated a common and notorious thief, and given a sentence of 12 to 20 years, seven years to serve, the balance suspended for five years probation, with \$27,921.70 in restitution, 1000 hours of community service, and enrollment in a compulsive gambling program. All others charges were guilty, and concurrent with the larceny charge. \$50 Victim/witness fee.

(AAG C. Starkey)

10/28/98 **Commonwealth v. Irving Morgan**
 (Tax Prosecution)

COURT/JUDGE: Suffolk Superior/McHugh

DESCRIPTION: This case involves Morgan's alleged failure to file and pay taxes for the years during 1991 up to and including 1995, in an amount totaling approximately \$22,757.25 and \$400,000 in income.

CHARGES: Willful Failure to Pay State Income Taxes (5 Counts)

SENTENCE: Defendant plead guilty to all counts. He was sentenced to five years probation and \$3,000 per count, total fine \$5,000 to be paid over the term of probation. If fine is paid within four years, probation will be terminated. Probation supervision fee imposed for first year only. \$60 Victim/Witness Fee (edit 9)

(AAG L. Balboni)

10/29/98 **Commonwealth v. Arthur J. Bradley**
 (Larceny Prosecution)

COURT/JUDGE: Essex Superior Court/Van Gestel

DESCRIPTION: The defendant is an attorney (disbarred in August 1997) who acted under a power of attorney for an elderly client and proceeded to embezzle all of his funds - roughly \$63,000. After the matter was referred to Elder Services of Merrimack Valley, the defendant sold a piece of real estate and substantially repaid the victim.

CHARGES: Larceny Over \$250 (5 Counts)

SENTENCE: The defendant was sentenced to three years of probation with the following conditions: \$2,000 restitution, payable in monthly installments, and 100 hours community service. On four of the counts, the defendant received three years probation, to run concurrently. \$60 Victim/witness fee.

(AAG M. Parks)

11/10/98 **Commonwealth v. Paul E. Hardy**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Ball

DESCRIPTION: The defendant is a close associate of Robert Lockwood, a Beverly Farms businessman, who was indicted for failure to file income tax returns. When he finally filed five years worth of delinquent tax returns, they were all fabricated.

CHARGES: Filing False Tax Returns (3 Counts)
 Failure to File Tax Returns (2 Counts)

SENTENCE: The defendant plead guilty to all charges. He received a sentence of two years probation and a \$6,000 fine. \$60 Victim/Witness fee

(SAAG A. Zaikis)

11/20/98 **Commonwealth v. Josephine Lontok**
(Larceny Prosecution)

COURT/JUDGE: Suffolk Superior/Doerfer

DESCRIPTION: The defendant is the former supervisor of Filene's Basement's Transportation Department. Between 1991 and 1996, she allegedly stole in excess of \$230,000 through a false billing scheme.

CHARGES: Larceny Over \$250 (6 Counts)
 False Filing in Corporate Books (1 Count)
 Attempt to Commit a Crime (1 Count)

SENTENCE: Defendant plead guilty to all charges, and was sentenced to one year home confinement with furlough to work 40 hours per week, and placed on 10 years probation. She was further ordered to pay \$238,242.04 restitution, \$60,000 to be paid immediately, and 800 hours community service to be performed within four years. On the False Filing in Corporate Books and Attempt to Commit a Crime charges, the defendant received 10 years probation to run concurrently with the Larceny Over. \$60 Victim/witness fee.

(AAG K. Brekka)

11/30/98 **Commonwealth v. Mark N. Schlafman**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Ball

DESCRIPTION: The defendant is a business executive who filed false tax returns for several years.

CHARGES: Willful Filing of False Income Tax Returns (3 Counts)

SENTENCE: The defendant plead out along the terms of a plea agreement under which he will cooperate in our upcoming trial against Robert Lockwood and his associ-

ated corporations.

(SAAG A. Zaikis)

12/10/98

Commonwealth v. Alvin Goldstein

(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Quinlan

DESCRIPTION: Goldstein is president and treasurer of Barb-Al, Inc., a corporation which owns and operates a retail card and gift shop in Randolph under the name Barbara's Hallmark. The retail store has been in existence for more than 10 years, and since its inception, no withholding or sales tax returns have been filed and no amounts for sales or withholding taxes were paid to DOR.

CHARGES: Willful Failure to Account For and Pay Over Sales Taxes (5 Counts)
Willful Failure to Account For and Pay Withholding Taxes (5 Counts)
Willful Making and Subscribing False Tax Returns (4 Counts)
Willful Making and Subscribing False Withholding Tax Returns (1 Count)

SENTENCE: The defendant plead guilty to all charges. He received a sentence of two years House of Correction, suspended for five years probation. The conditions of probation are as follows: first 90 days of probation to be served as home confinement, curfew Monday through Friday - 6:00 p.m.-8:00 a.m., except Monday, Wednesday, Thursday - 9:30 a.m.-8:00 a.m, to allow to teach at Northeastern, 24 hour confinement Saturday and Sunday, 5,000 hours of community service to be performed at a senior citizen's center in Randolph. All other charges to run concurrently. \$60 Victim/witness fee.

(AAG L. Balboni)

2/8/99

Commonwealth v. Albert Levesque

(Fiduciary Embezzlement Prosecution)

COURT/JUDGE: New Bedford Superior/Tierney

DESCRIPTION: The defendant was a sales representative for Metropolitan Life Insurance Company who handled life insurance and mutual funds. The defendant assisted an elderly couple in establishing a trust for which the defendant became trustee. After the husband's death, the defendant convinced and pressured the wife to cash in her investments and bonds and deposit the proceeds in the Trust accounts. Once the money was in the Trust accounts, the defendant proceeded to deplete the accounts for his own personal use and gambling habit. Levesque stole over \$200,000.

CHARGES: Fiduciary Embezzlement (3 Counts)

SENTENCE: The defendant plead guilty to all charges and received a sentence of two years in the House of Correction, committed, with two years probation, suspended, from and after count one. Probation fee \$45 per month while on probation. \$60 Victim/witness fee.

(AAG M. Mulligan)

2/12/99

Commonwealth v. Paul MacDonald

(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Lopez

DESCRIPTION: The defendant is a close associate of Robert Lockwood, a Beverly Farms man indicted on tax charges, who was paid off the books but who attached fabricated tax forms to his tax returns to get credit for withholding taxes that were never paid over on his behalf.

CHARGES: Willful Filing of False Income Tax Returns (5 Counts)

SENTENCE: Over the Commonwealth's objection, Judge Lopez placed the defendant on pre-trial probation for a period of three years.

(AAG A. Zaikis)

2/22/99

Commonwealth v. Charles A. Victor, II

(Larceny Prosecution)

COURT/JUDGE: Suffolk Superior/Lopez

DESCRIPTION: The defendant was an attorney who, while serving as trustee, misappropriated over \$45,000 from seven trusts established for children who suffered lead poisoning injuries. The defendant used the money from the trusts to finance his various business ventures, fund his failing law practice and to purchase items for his personal use.

CHARGES: Fiduciary Embezzlement (6 Counts)

Larceny Over \$250

SENTENCE: The defendant plead guilty to all charges, and received a sentence of two to four years in State Prison, with a sentence of five years probation, from and after Count 1, with full restitution of \$446,936.60. Execution of sentence stayed until March 8, 1999. \$60 Victim/witness fee.

(AAG M. Mulligan)

2/19/99

Commonwealth v. Domingo Pena

(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Volterra

DESCRIPTION: The defendant was the former owner-operator of Domingo's Olde Restaurant. In December 1996, he plead guilty to Failure to Account for and pay over Meals Tax and Tax Evasion. He was sentenced to two years House of Correction, suspended, six months home confinement, and supervised probation with the condition that he cooperate with DOR to settle his tax obligations.

CHARGES: Failure to Account For and Pay Over Meals Taxes (2 Counts)

Tax Evasion (2 Counts)

SENTENCE: The defendant was sentenced to two years HOC, suspended for six months home confinement, supervised probation with condition that he cooperate with DOR to settle his tax obligations.

(AAG K. Brekka)

2/15/99 **Commonwealth v. Wajahat Malick**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Lopez

DESCRIPTION: The defendant was the Controller of Prestige Imports, Inc. In that capacity, between April 1989 and January 1991, the defendant stole in excess of \$1,016,000. The defendant plead guilty on March 8, 1993, and was sentenced as a common and notorious thief to 18-20 years, committed, 12-15 years imprisonment, on and after.

CHARGES: Willful Filing of False Income Tax Returns (5 Counts)

SENTENCE: Over the objection of the Commonwealth, the defendant was placed on pre-trial probation for three years.

(AAG K. Brekka)

3/2/99 **Commonwealth v. John P. Conroy**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Lopez

DEFENDANT DESCRIPTION: The defendant, a Boston accountant/lawyer, was charged with stealing funds from several charities and filing numerous income tax returns over the years.

CHARGES: Willful Filing of False Tax Returns (3 Counts)
Embezzlement by a Trustee (1 Count)

SENTENCE: The defendant plead guilty to all charges and received a sentence of two years House of Correction. \$60 Victim/witness fee.

(SAAG A. Zaikis)

3/29/99 **Commonwealth v. Jeffrey Boxer**
(Larceny Prosecution)

COURT/JUDGE: Norfolk Superior/Graham

DESCRIPTION: This matter involves an attorney (now disbarred) who solicited clients with investment losses and then embezzled the settlements he obtained for them. He embezzled a total of roughly \$188,000 from four separate clients, several of whom are elderly and one of whom is disabled. He repaid about \$41,000 after complaints to the BBO.

CHARGES: Larceny Over \$250 (5 Counts)

Embezzlement by Fiduciary (1 Count)

SENTENCE: The defendant plead guilty to all charges. He was sentenced to 18 months House of Correction, committed, with three years probation, from and after Count 1. \$60 Victim/witness fee.

(AAG M. Parks)

4/14/99 **Commonwealth v. Brian P. Psota**
(Larceny Prosecution)

COURT/JUDGE: Suffolk Superior/Lopez

DESCRIPTION: Brian Psota is alleged to have stolen over \$225,000 from Continental Cable vision, Inc., now Media One, while employed as a payroll clerk and corporate accounting manager. Over a five-year period, the defendant is alleged to have used three different fraudulent schemes in order to convert the money for expensive trips, clothes and improvements for his family home.

CHARGES: Larceny Over \$250 (3 Counts)
False Entries in Corporate Books (3 Counts)
Attempted Larceny Over \$250 (1 Count)

SENTENCE: The defendant plead guilty to all charges. He was sentenced to two years House of Correction, one year to serve, balance suspended for three years with the following conditions of probation: payment forthwith of \$50,000 to the corporate victim, and 20 hours per month of community service to be served for the three years of probation. On the False Entries in Corporate Books, the defendant received two years House of Correction, suspended for three years of probation, to run concurrent with the larceny charge. The defendant further received two years House of Correction, suspended for three years of probation, to run concurrent on the Attempted Larceny Over \$250 charge. \$60 Victim/witness fee.

(AAG C. Starkey)

4/14/99 **Commonwealth v. Robert Flater**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Lopez

DESCRIPTION: This is a failure to file investigation against an individual who worked in Massachusetts for a number of years while failing to file any tax returns.

CHARGES: Failure to Account for Withholding Taxes
Failure to File Income Tax Returns
Failure to File Excise Tax Returns

SENTENCE: The defendant plead guilty. Two years pre-trial probation, \$50,000 fine. \$60 Victim/witness fee.

(SAAG A. Zaikis)

4/14/99 **Commonwealth v. Susan Teixeira**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior Court/Quinlan

DESCRIPTION: Mario and Susan Teixeira are a married couple who ran a jewelry store on Nantucket Island. They did not file income tax returns for several years and have grossly under-reported their taxable sales on their business tax returns.

CHARGES: Failure to File Income Tax Returns

SENTENCE: One year pre-trial probation.

(SAAG A. Zaikis)

4/14/99 **Commonwealth v. Mario Teixeira**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior Court/Quinlan

DESCRIPTION: Mario and Susan Teixeira are a married couple who ran a jewelry store on Nantucket Island. They did not file income tax returns for several years and have grossly under-reported their taxable sales on their business tax returns.

CHARGES: Failure to File Income Tax Returns

SENTENCE: The defendant plead guilty to all charges. He was sentenced to one year probation, \$31,250 fine, 500 hours of community service. \$60 Victim/witness fee.

(SAAG A. Zaikis)

4/14/99 **Commonwealth v. S. J. Patten, Inc.**
(Tax Prosecution)

COURT/JUDGE: Suffolk Superior/Quinlan

DESCRIPTION: Mario and Susan Teixeira are a married couple who ran S.J. Patten, Inc., a jewelry store on Nantucket Island. They did not file income tax returns for several years and have grossly underreported their taxable sales on their business tax returns. Therefore, the corporation was also charged.

CHARGES: Failure to File Excise Tax Returns (1 Count)

SENTENCE: Defendant plead guilty. Sentenced to \$7,500 fine.

(SAAG A. Zaikis)

5/13/99 **Commonwealth v. Carole Melanson**
(Larceny/Conspiracy Prosecution)

COURT/JUDGE: Suffolk Superior/Barrett

DESCRIPTION: The defendant conspired with John Curtis, the former head of the maintenance department for Star Market, to defraud the corporation. This defendant was a bookkeeper for Melanson and Sons and in that capacity, submitted false records alleging that the company had provided refrigeration equipment. In actuality, no equipment was

delivered. The bulk of the monies received from Star were kicked-back to Curtis.

CHARGES: Larceny Over \$250 (1 Count)
 Conspiracy to Commit Larceny Over \$250 (1 Count)
 Conspiracy to Make False Entry in Corporate Books (1 Count)

SENTENCE: The defendant plead guilty and received a sentence of pre-trial probation with the stipulation of underlying facts and \$5,000 in restitution. \$35.00 Victim/witness fee.

(AAG K. Brekka)

5/13/99 Commonwealth v. Linda Christmas
 (Larceny/Conspiracy Prosecution)

COURT/JUDGE: Suffolk Superior/Barrett
DESCRIPTION: Defendant conspired with Curtis to defraud Star Market Corporation. The defendant was a bookkeeper for Melanson and Sons and in that capacity, submitted false records alleging that the company had provided refrigeration equipment. In actuality, no equipment was delivered. The bulk of the monies received from Star were kicked-back to Curtis.

CHARGES: Larceny Over \$250 (1 Count)
 Conspiracy to Commit Larceny Over \$250 (1 Count)
 Conspiracy to Make False Entry in Corporate Books (1 Count)

SENTENCE: The defendant plead guilty, and after admission to sufficient facts, received a sentence of one year pre-trial probation, and a \$5,000 restitution order. \$35.00 Victim/witness fee.

(AAG K. Brekka)

5/25/99 Commonwealth v. Bill Melanson
 (Larceny/Conspiracy Prosecution)

COURT/JUDGE: Suffolk Superior/Barrett
DESCRIPTION: Defendant conspired with Curtis to defraud Star Market. Defendant was a bookkeeper for Melanson and Sons and in that capacity, submitted false records alleging that the company had provided refrigeration equipment. In actuality, no equipment was delivered. The bulk of the monies received from Star were kicked-back to Curtis.

CHARGES: Larceny Over \$250 (1 Count)
 Conspiracy to Commit Larceny Over \$250 (1 Count)
 Conspiracy to Make False Entry in Corporate Books (1 Count)

SENTENCE: The defendant plead guilty after a jury trial. He received a one year House of Correction sentence, 90 days to serve, the balance suspended for three years probation, and ordered to pay \$8,500 in restitution. \$35.00 Victim/witness fee.

(AAG K. Brekka)

6/21/99

Commonwealth v. Charles Weekes

(Tax Prosecution)

COURT/JUDGE: Suffolk Superior Court/ Donovan

DESCRIPTION: This matter involves a former state resident who used many false New Hampshire addresses to avoid state withholding and taxation. Weekes is Vice President of U.S. and European Sales for Zilog, Inc., a national and international semi-conductor company headquartered in California with a regional office in Chelmsford, Mass.

CHARGES: Willful Attempt to Evade and Defeat Income Taxes (5 Counts)
Willful Making and Subscribing a False income Tax Return (1 Count)
Willful Failure to File State Income Tax Returns (4 Counts)

SENTENCE: The defendant plead guilty, and received a sentence of two years in the House of Correction, suspended for three years probation, with a \$25,000 fine paid forthwith. Payment to DOR of approximately \$112,000 and probation to be supervised until paid in full. All other charges concurrent or filed without change of plea. \$60.00 Victim/witness fee.

(AAG K. Brekka)

6/28/99

Commonwealth v. Robert S. Zawadski

(Larceny/Fraud Prosecution)

COURT/JUDGE: Suffolk Superior/ Donovan

DESCRIPTION: Defendant is a Boston Police officer who is alleged to have submitted false insurance claims alleging fictitious lost wages.

CHARGES: Larceny Over \$250 (2 Counts)
Motor Vehicle Insurance Fraud (2 Counts)
Uttering (2 Counts)
Attempt to Commit a Crime (2 Counts)

SENTENCE: Defendant plead guilty, and on an unagreed upon plea, the defendant was sentenced to two years House of Correction, seven months to serve, balance suspended for two years of probation, and \$10,000 restitution. All other charges filed without change of plea or received concurrent sentence. \$60 Victim/Witness fee.

(AAGs K. Brekka/M. Parks)

FINANCIAL INVESTIGATION DIVISION

The Financial Investigation Division provides the Criminal Bureau with six experienced civilian investigative professionals who investigate and assist in the prosecution of white-collar criminal cases. These investigations include larceny, public corruption, campaign finance violations, securities fraud, bucketing, tax fraud and all other white collar frauds which are referred to the Division. The investigators bring to the Division many years of experience from investigating cases in local, state and federal government as well as private sector venues.

This fiscal year, the Division was comprised of three Certified Fraud Examiners, one Certified Public Accountant, two lawyers and two investigators from the banking and insurance industry.

During FY99, the members of the Division for all or part of the year were: David Baker; Brad Chase, Esq.; Peter Darling, Esq.; Bill Frugoli, CFE; Jim McFadden, CFE; Sallyann Nelligan; Patrick Ormond, CPA; and, Paul Stewart, CFE, the Division's Director.

INVESTIGATIVE RESPONSIBILITIES

The investigators assigned to this Division work closely with Criminal Bureau prosecutors and also Massachusetts State Police assigned to the Criminal Investigation Division. Investigators may also be asked to work on a case by case basis with investigative or audit personnel from referring agencies such as the Securities Division of the Secretary of State's Office (SOS), Board of Bar Overseers (BBO), Criminal Investigations Bureau of the Department of Revenue (CIB), and the Office of the State Auditor (OSA).

All investigators are responsible for designing and implementing investigative plans which assess allegations of criminal conduct. These investigations require extensive review and analysis of business, personal and banking records to document the illegal activities of the white collar

criminal. In addition, investigators conduct interviews of victims, witnesses and targets, and provide summary witness testimony before Superior Court special grand juries and in trial settings. Further, utilizing modern computerized technology, investigators are able to scan a wide array of informational databases to track and profile potential subjects of criminal investigations.

In addition to working active investigative caseloads, each Division investigator is responsible for screening a portion of the hundreds of matters received annually which fail to meet guidelines of a respective division or whose allegations do not rise to the level of a criminal investigation.

The majority of the Division's investigative assignments come from the Bureau's Economic Crimes Division. The Division works closely with the Economic Crimes Division Chief during the screening process and then with the assigned AAG when a matter has been accepted for formal investigation.

Another source of investigative assignments for the Division is the Public Integrity Division. Our primary involvement in Public Integrity Division matters is in the screening and investigation of matters referred from the OSA.

The Division also commits investigative resources to the Special Investigations and Narcotics Division and to the Bureau's investigative efforts of the Central Artery Third Harbor Tunnel Project. Since the Division's inception in 1995, it has also performed investigative assignments for the Bureau's Environmental Crimes Strike Force and the Appellate Division.

ADMINISTRATIVE FUNCTIONS

In addition to our investigative tasks, the Division also performs many administrative duties for the Bureau with respect to cars, seized evidence and the spending of forfeited funds. We are responsible for the assignment, maintenance and reporting on the usage of all Bureau cars. The Division maintains a log of all money seized by the State Police in association with any arrest. The seized money is kept in a safety deposit box and the contents are inventoried on a quarterly basis by Division staff. Additionally, we prepare an accounting of all forfeited funds of the Special Investigations and Narcotics Division which are disbursed in accordance with the Commonwealth's forfeiture laws. The accounting system is designed as a management tool for the Bureau, not only to retrospectively track spending but also to project future needs.

OUTREACH

The staff is an integral part of the Bureau's outreach to referral agencies. We maintain contact with the Chief Investigator at CIB and the BBO's Senior Financial Investigator to update them monthly on the status of all referrals from their respective agencies. CIB and BBO cases are referred through the Economic Crimes Division. Our outreach efforts are designed to complement those of the Chief of the Economic Crimes Division.

TRAINING

Division members have prepared and delivered training sessions to their colleagues through the officewide training program, personnel from outside referral agencies and also to groups such as The Arson Investigators Association, Massachusetts Society of Certified Public Accountants, The Southeastern Massachusetts Fraud Investigators Association, Suffolk University, The Check Fraud Clearinghouse, and local school districts.

Presentations include:

- How to Perform Title Searches of Registered and Recorded Land, and Review Probate Court Records
- Interview and Report Writing Techniques
- Financial Investigative Techniques
- *Investigative Resources for the Financial Investigator*

INTERN PROGRAM

The Division's intern program seeks to provide a valuable one semester training experience for interested students who have a background in accounting, finance, business law or criminal justice. Through the efforts of our intern coordinator, the Division has been provided with a steady stream of talented interns from Boston area schools.

HIGH TECH AND COMPUTER CRIMES DIVISION

The High-Tech and Computer Crimes Division (HT&CC) is charged with the responsibility of investigating or assisting in the investigation of the commission of crimes facilitated through the use of computers, the Internet, or other unusual technology (so-called "high tech") and, where appropriate, prosecuting such offenses. The HT&CC, formally known as the High-Tech Crime Unit of the Special Investigations and Narcotics Division, was raised to Division status within the Criminal Bureau in order to signify its expanded role in assisting all divisions within the Bureau as well as to reflect the Attorney General's priorities to appropriately enforce the Commonwealth's laws on the Internet. The HT&CC has primary original jurisdiction over those offenses which are committed solely through the use of computers including:

1. Unauthorized Computer Access (Hacking); G.L. c. 268, § 120F; and
2. Possession and Dissemination of Child Pornography (including the use of child pornography by child "predators" to lure children for sex; G.L. c. 272, §§ 29, 29B

The HT&CC assists Divisions and Bureaus throughout the Office in the investigation of other crimes facilitated with the use of a computer, the most common examples of which include:

1. Larceny (e-commerce via stolen credit cards and identity theft)
2. Fraud (Internet Auction fraud)
3. Assault (hate e-mail)
4. Internet Gambling
5. Illegal Sales via the Internet (Alcohol, Firearms, prescription drugs)
6. Malicious Destruction of Personal Property (computer data destroyed by viruses)
7. Theft of Trade Secrets
8. Wholesale Pirated Copyrighted Software

DIVISION ORGANIZATION AND OBJECTIVES

The HT&CC Division's structure is unique within the Office of the Attorney General. The HT&CC has a Division Chief, Thos. Gregory Motta, who serves as the full-time prosecutor of the Division and coordinator of the Division's investigations and prosecutions. In FY2000, the Division will be expanded to include two additional full-time attorneys. Currently, as investiga-

tions and prosecutions arise, attorneys from other Divisions are assigned to matters that fall within the purview of the HT&CC Division in order to augment its capabilities or, in the alternative, the HT&CC Division Chief will assist the attorneys in other Divisions as the need arises.

The HT&CC is comprised of three specially trained, full-time investigators: Tpr. Kevin Bibeau, Tpr. David McSweeney and Tpr. Matthew G. Murphy. In addition, Det. Eric Lunberg of the Easton Police Department is detailed full time to the Division for on-going investigations and is similarly experienced in forensic computer examinations as well as on-line investigations. During FY99, Sgt. J.J. McLean of the Medford Police Department served as both Supervisor of Investigations and Technical Advisor to the Division. Although Sgt. McLean has returned to his duties in Medford, he continues to serve as a Technical Advisor to the Division. Currently, State Police Lt. Joseph Flaherty supervises the Division's investigators and assists in investigations. In FY2000, the HT&CC Division will be adding two additional troopers who will be provided special training in On-line Internet investigations as well as forensic computer data recovery and analysis.

INVESTIGATIVE INITIATIVES

A significant portion of the HT&CC Division's time and resources are dedicated to providing direction and counsel to criminal and civil investigators throughout the state and the country. Assistance is provided to:

1. Area prosecutors in the drafting of appropriate language for search warrants to seize and recover evidence stored in computers;
2. Area law enforcement agencies in identifying whether computers will retain evidence of criminal wrong-doing and where in the computer such evidence is most likely to be recovered; and
3. Companies providing Internet access to citizens in the Commonwealth (so-called Internet Service Providers, or ISPs) in order to facilitate assistance to law enforcement in conformity with the Electronic Communications Privacy Act.

The HT&CC also engages in on-going evaluations of new and emerging computer software application and hardware being publicly marketed to law enforcement for use in computer investigations. Moreover, the HT&CC assists the Office of the Attorney General with the drafting of legislation aimed at addressing and resolving issues raised by advances in technology.

INVESTIGATIVE HIGHLIGHTS

In FY99, the HT&CC significantly assisted the Economic Crimes Division of the Bureau with the recovery of evidence relating to the on-going investigation of former officials of the Treasurer's and Receiver General's Offices of the Commonwealth. This assistance included the seizure of numerous computers and the forensic review and recovery of evidence. The task was complicated as some of these computers included unusual databases and unique operating systems devised to service the special needs of the Treasury Office.

At the same time, in FY99, the HT&CC Division continued to be involved in a number of child exploitation cases arising out of the Internet for the dissemination of child pornography and, in some cases, the luring of children by adults for sexual contact. On a regular basis, investigators of the HT&CC Division go "on-line" posing as teenage children in various commercial and non-commercial chat rooms or chat channels. During these investigations, various subjects will contact the investigator and either propose sexual contact outright or begin by attempting to sexually titillate the curiosity of their young prey by sending, via e-mail, sexually explicit images of children engaged in sexual intercourse as a means of breaching inhibitions. In some such cases, these investigations were handed over to officials in the jurisdictions where the offenders resided for prosecution. In at least five of the cases, the offenders were prosecuted by the HT&CC Division resulting in convictions which have yielded varying periods of incarceration, forfeiture of computer equipment, counseling, no-contact with minors conditions and registration in the state DNA database.

Numerous threatening e-mail investigations are conducted by the HT&CC Division. These include "hate" e-mail aimed at members of specific groups or bomb threats. The HT&CC Division has investigated the senders of constitutionally un-protected anti-gay, anti-Jewish or sexually harassing e-mail and, where appropriate have referred matters for civil or criminal enforcement. In a similar type of case in FY99, an employee of a major computer company in the Commonwealth used his company's e-mail service to send sexually harassing e-mails to several women in the company and, ultimately to attempt to extort sexual favors from at least one of the women. That individual was arrested when he appeared at a local hotel for a coerced sexual rendezvous only to learn that the female co-worker was replaced by a Massachusetts State Trooper. The offender has recently plead guilty to the felony charge of Attempted Extortion and is awaiting sentencing.

In FY99, the HT&CC investigated and prosecuted the use of the Internet for the transmission of bomb and death threats including threats transmitted to elected officials of the Commonwealth and threats made by high school students to harm or injure fellow students and/or teachers posted over Internet news groups. At least three such threats were deemed specific and credible enough after the Littleton, Colorado tragedy to merit the assistance of the HT&CC Division in the evaluation and identification of the students posting such threats. More recently, the HT&CC Division investigated a disgruntled Gulf War Veteran who responded to the denial of certain claimed benefits by implicitly threatening to blow up government buildings in the Commonwealth. That individual is awaiting trial.

Perhaps the most challenging of the investigations conducted by the HT&CC during FY99 involve "hacking." Typically, the majority of "hacking" offenders tend to either be disgruntled former employees (usually former IT personnel) or computer literate juveniles. In either instance, the offenders tend to possess a much greater knowledge of computer skills than other offenders and go to greater lengths to destroy evidence, conceal their identities and otherwise cover their tracks. There have been approximately five such investigations conducted by the HT&CC Division in FY99 resulting in two prosecutions by the HT&CC and referral of the others.

In many other instances, the HT&CC Division provides forensic recovery advice relative to the recovery of e-mails of evidentiary significance. This advice has ranged from the recovery of maliciously deleted data for victims of hackers to the recovery of e-mail of suspects engaged in conspiracy to commit murder.

In short, the HT&CC Division is charged with the formidable task of empowering the Commonwealth's law enforcement community with the capability to detect, prosecute and deter crimes committed with new and emerging technologies.

PUBLIC INTEGRITY DIVISION

The Public Integrity Division's mission is to criminally prosecute and convict those who attempt to personally profit at the public's expense, or who in some other manner breach the public's trust or safety, in violation of the criminal laws of the Commonwealth. Towards that end, in FY99, the Public Integrity Division commenced nine criminal prosecutions against public officials and others who violated the public trust and/or safety. During that same period, over 38 criminal prosecutions were resolved. The criminal prosecutions that were initiated this past year ranged from crimes of larceny by police officers to bribery by a Clerk-Magistrate in Middlesex County.

During all or part of FY99, the members of the Division were: Jeremy Silverfine, AAG and Division Chief; Elisabeth Ditomassi, AAG; Audrey I-Wei Huang, AAG; John Grossman, AAG; Andrew Lawlor, AAG; Jonathan Mitchell, AAG; Michael Zullas, AAG; Sheila Connolly and Kelli Murray, support staff.

CRIMINAL CASE HIGHLIGHTS

HIGHLIGHTS OF CASES DISPOSED IN FISCAL YEAR 1999

1. A captain with the Taunton Police Department was found guilty of stealing one or more firearms from the City's gun buy back program. After a four-day trial, a Bristol County jury found the police captain guilty. The Superior Court judge sentenced the captain to a two-year House of Correction term, suspended for a period of two years, with probation and restitution. The Commonwealth had recommended a two year committed sentence.

The evidence indicated that beginning in 1994, the City of Taunton ran several gun buy back programs. During the first gun buy back program, six weapons were missing from the list of weapons which were supposed to have been destroyed by the police. The Commonwealth was able to identify four of the six weapons and connect them to the defendant. The evidence indicated that two of the handguns were given to the captain's daughter and the daughter's then boyfriend.

2. After a six-day jury trial in Middlesex Superior Court, a Middlesex County defense attorney from Manchester-by-the-Sea was found guilty of extorting money from an indigent defendant who had been charged with drug trafficking. The attorney was found

guilty of charges he extorted cash payments from the defendant by threatening that he would not do his job as a court-appointed attorney unless the client paid him \$3,000.

The jury also convicted the attorney of one count of tax evasion, one count of filing a false tax return and one count of larceny over \$250. The larceny charge arose from the attorney's receipt of \$1,500 in cash extorted from family members of the indigent client. The attorney had submitted four bills to the state claiming he had performed work for the client, which falsely certified that he had not received money from anyone else for the work. As a result of the four false bills, the state paid the attorney \$2,250. Under a scheme to evade state income taxes on the extra income he was receiving, the attorney filed a false tax return for 1993 that omitted the extortion money he had received and some \$46,000 in income he had received from private clients. He had only reported on his tax returns the income he received from the state for his public defender work.

The attorney was sentenced to two years committed to the House of Correction, with two years probation on and after his committed term, 200 hours of community service, and \$1,500 restitution. Several weeks after the conviction and subsequent sentencing, the attorney also plead guilty to two additional counts of tax evasion and two counts of false tax returns. He was sentenced to 30 days committed in the House of Corrections to run concurrent with the other committed sentences.

3. A former assistant clerk-magistrate in Middlesex Superior Court plead *nolo contendere* to charges he accepted cash gifts and a vacation from a lawyer and private investigator. The assistant clerk-magistrate had been indicted in Suffolk Superior Court on two counts of accepting illegal gratuities. He was sentenced to one year in the House of Corrections, 60 days to serve, the balance suspended with 300 hours of community service as a condition of his probation.

From 1992 to 1995, the clerk-magistrate routinely received at Christmas and at the time of his spring vacations cash gifts ranging in size from \$100 to \$300 from a former private investigator and a criminal defense lawyer. One cash gift was delivered by a former Middlesex Court Clerk-Magistrate. The criminal defense lawyer also gave the clerk free use of a Pompano Beach, Florida condominium for two one-week periods. As an assistant clerk-magistrate in Middlesex Superior Court, the clerk-magistrate often tracked down motions filed by the defense lawyer or involving the private investigator and then prompted judges to act on the motions. He received the cash payments as gratuities or tokens.

4. A Winchendon woman plead guilty in Worcester Superior Court to charges of steal-

ing \$21,679 from the state by making false representations to the Department of Transitional Assistance (“DTA”). She plead guilty to one count of larceny over \$250 and one count of making false representations. Between 1991 and 1996, the defendant submitted false landlord verification forms to the DTA stating that she had paid rent to a landlord. In actuality, the defendant was living with the father of her child who earned more than \$60,000 a year.

She was sentenced to two years in the House of Corrections, suspended for five years, during which time she will be on probation. In addition, she was ordered to pay \$21,679 restitution and serve 300 hours of community service.

5. A West Roxbury man plead guilty to assaulting a Suffolk Superior Court judge, disrupting court proceedings and resisting arrest. A different Suffolk Superior Court Judge sentenced the West Roxbury man to two years in the House of Corrections, committed, for attacking the judge, along with four years probation for resisting arrest. He was also ordered to undergo drug and alcohol counseling. The charges arose when the defendant attended his cousin’s sentencing in Suffolk Superior Court for unrelated charges. Soon after sentencing, this defendant stormed out of the courtroom yelling profanities. He then re-entered the courtroom seconds later through a private door near the judge’s bench and began charging the judge. Courtroom officers intercepted the defendant before he reached the judge. He then struggled with the court officers and resisted their attempts to handcuff him. No one was injured in the incident.

6. An insurance executive from Beverly who had once managed one of the student health plans at the University of Massachusetts, Amherst, plead guilty in Hampden Superior Court to stealing more than \$600,000 from school accounts established to pay for student health benefits. He had been indicted in 1995 by grand juries in Hampshire County and Essex County on 30 counts of larceny over \$250, six counts of procurement fraud, four counts of making false claims, one count of forgery, one count of uttering a forged instrument and four tax charges. He was sentenced to nine to 11 years in state prison.

The defendant’s theft and other crimes occurred from the insurance company for which he was one of two principals. The company had held a contract with University Health Services at UMASS-Amherst to manage claims payments for the University’s Supplemental Health Benefits Plan, which paid for off-campus medical care for students. Acting on behalf of the insurance company, the defendant created and submitted inflated invoices to UMASS-Amherst to embezzle school funds to operate the insurance agency.

He inflated the invoices by about \$200,000. He used the stolen money to cover his business's overhead expenses. In addition, on two occasions the defendant created fraudulent checks to use school funds to pay for personal expenses, including the monthly rent for his three-bedroom luxury Beverly apartment and the Beverly Golf and Tennis Club. All totaled, about \$633,000 was stolen.

7. Four bail commissioners admitted to their involvement on tax evasion and filing false returns relative to their income earned as bail commissioners. They received suspended sentences and fines. One of the defendants, from Dennisport, plead guilty to six counts of tax evasion and filing a false return. He served as a bail commissioner for Harwich, Dennis, Yarmouth and the State Police. Between 1991 and 1996 he understated his income by \$126,190. He admitted to the Department of Revenue that he had understated his income and lied to his tax preparer. A Suffolk Superior Court judge imposed a two-year House of Correction term suspended for two years, 300 hours of community service, and a \$9,000 fine. The Commonwealth had recommended a two-and-a-half year sentence to the House of Corrections with six months to serve and a \$30,000 fine.

A second defendant, from Woburn, plead guilty to six counts of tax evasion and filing a false tax return. He served as a bail commissioner in the Woburn District Court. He failed to report the \$108,029 in fees he collected between 1991 and 1996. A Suffolk Superior Court judge imposed a sentence of two years to the House of Corrections suspended for two years, 300 hours of community service and a \$13,000 fine. The Commonwealth had recommended a two-and-a-half year sentence to the House of Corrections with six months to serve.

8. A Millbury man who got paid for being a "no-show" park ranger while he was moonlighting as a Special Police Officer in Millbury was sentenced after pleading guilty to illegally earning more than \$4,000 from the Commonwealth. The defendant, who was employed by the Department of Environmental Management as a park ranger at Cochituate and Callahan State Park in Wayland since 1990, plead guilty to one count of stealing from the state by a continuous scheme, one count of making false statements to get paid, and one count of making false claims to the state.

A Boston Municipal Court judge sentenced the defendant to two-and-a-half years in the House of Corrections, suspended, with two years of probation, and ordered him to pay \$4,273.10 in restitution to the state, a \$5,000 fine and to perform 100 hours of community service.

9. A Winthrop probation officer plead guilty to charges that he ran a bookmaking operation in 1995 from his home. The defendant had been indicted in Suffolk County in December of 1996 on two illegal betting charges: possession of betting apparatus and using a telephone for gaming purposes. He also was charged in a separate indictment in Hampden County on an additional charge of using a telephone for gaming purposes which was later consolidated with the Suffolk County charges. The probation officer was assigned to serve as a Family Service Officer in Middlesex Probate and Family Court. A State Police search of his home and safe deposit box yielded extensive gambling records, including betting slips, cuff lists, and wagering sheets that detailed bets on hundreds of sporting events. His safe deposit box contained more than \$100,000 cash. He was sentenced to a two-year suspended sentence followed by two years of probation and was fined \$3,000.

10. Two Southeastern Massachusetts men were sentenced after pleading guilty to trying to cheat on their civil service police examination. The men plead guilty in New Bedford District Court to one count of altering or substituting examination papers. Both men had tried to switch their identities when they took their police exams in April, 1997, to ensure that one of them would score well. They were each sentenced to one year probation and a \$200 fine.

11. A prisoner of a work release program plead guilty in the middle of a jury trial to stealing laptop computers from a state office building. The prisoner was sentenced to an additional two years, committed, from and after the term he was serving.

12. The former head of the Westport Police Department's detectives plead guilty to embezzling \$5,300 from the town's DARE program to pay for a home entertainment center. The former detective was sentenced to two years in the House of Corrections, suspended for two years with probation, and a \$10,000 fine.

HIGHLIGHTS OF CASES INITIATED IN FISCAL YEAR 1999

1. A former New Bedford elementary school principal was indicted for stealing funds from student fundraisers. In 1994, a group of New Bedford elementary school student's parents began to criticize the principal's handling of a fundraising account of the school's library. At the parent's request, the then Superintendent conducted an "audit" of the library account and found no wrongdoing. The parents persisted with their complaints to

the elected School Committee. In April, 1996, the School Committee adopted a policy requiring principals to keep detailed records of student fundraising. Unsatisfied, the parents continued their complaints, and a new Superintendent referred the matter to the police in July, 1996. The police helped one parent swear out a forgery complaint against the principal in the New Bedford District Court in August, 1997. In July, 1998, the local District Attorney's office requested the Attorney General's Office take over the prosecution on the grounds that it had a conflict of interest.

The principal was charged with embezzlement. Over a three-year period, the principal allegedly embezzled over \$20,000 from a school bank account. The money was raised by school children to pay for extra educational activities, and by parents to fund improvements to the school library. The principal also failed to report the receipt of the embezzled funds on her state income tax returns.

2. A Corrections Officer at MCI/Norfolk was indicted for soliciting and receiving a series of payments from the wife of an inmate. The corrections officer was indicted on one count of bribery and one count of delivering articles to an inmate.

INDICTED CASES JULY 1, 1998 TO JUNE 30, 1999

<u>DATE</u>	<u>DEFENDANT'S NAME</u>
9/25/98	Randolph Mogren one count larceny over \$250 one count false written statements one count false claims
10/1/98	Timothy Sousa one count altering/substituting examination papers
10/1/98	Edward Mello one count altering/substituting examination papers
10/22/98	Douglas Whitlow one count forgery one count uttering one count larceny over \$250
12/29/98	Cynthia Mello

4/20/99	one count larceny one count forgery one count larceny three counts false tax returns
4/30/99	William Tuttle one count larceny over \$250
4/30/99	Patricia Romano one count larceny over \$250
5/6/99	Robert Federico five counts perjury
5/26/99	John Lennon one count bribery one count delivering articles to an inmate

CASE CONVICTIONS/DISPOSITIONS JULY 1, 1998 TO JUNE 30, 1999

DATEDEFENDANT'S NAME

6/22/98

Wanda Estes

Found guilty of one count of larceny over \$250 and one count of making false representations, sentenced to two years in the House of Correction, suspended for five years probation, ordered to pay \$21,679 restitution and perform 300 hours of community service.

7/2/98

Glenn Essler

Plead guilty to 30 counts of larceny over \$250; seven counts of procurement fraud; four counts of making false claims; one count of forgery; one count of uttering a forged instrument; one count of filing false tax returns; one count of failure to appear after release on bail; and three counts of failure to file an income tax return. Sentenced to a total of nine to 11 years in state prison.

8/5/98

Paul Cacchiotti

Found not guilty on two counts of attempted extortion. Found guilty on one count of attempted extortion. Sentenced to two years in the House of Correction committed.

Found guilty on one count of larceny over \$250 and one count of tax evasion. Sentenced to one year in the House of Correction to run concurrent. Found guilty of one count of filing false tax return. Sentenced to two years probation from and after his sentence. Ordered to complete 200 hours of community service each year during the probation period. Also ordered to pay restitution to the extortion victim when able. Defendant plead guilty to two counts of false tax returns after trial. Sentenced to 30 days committed to the House of Correction to run concurrent with other committed sentences.

8/12/98

Brian Kelly

Plead guilty to one count of assault on a public employee; one count of disrupting court proceedings; and one count of resisting arrest. Sentenced to two years in the House of Correction, committed, with four years probation; ordered to undergo drug and alcohol counseling.

8/98

Raymond Blanchard

Plead guilty to six counts of tax evasion; and six counts of filing false tax returns. Sentenced to a two year House of Correction term, suspended for two years; 300 hours of community service; and a \$9,000 fine.

8/98

Joseph McCarthy

Plead guilty to six counts of tax evasion; and six counts of filing false tax returns. Sentenced to a two year House of Correction term, suspended for two years; 300 hours of community service; and a \$13,000 fine.

8/98

John Kowalski

Admitted to sufficient facts of four counts of false tax returns. Case continued without a finding for two years and defendant ordered to pay \$3,000 in court costs and perform 300 hours of community service.

8/98

Patrick Toshach

Admitted to sufficient facts of four counts of filing false tax returns. Case continued without a finding for two years and defendant ordered to pay \$2,000 in court costs and perform 100 hours of community service.

8/28/98

William Michael Batson

Nol Pros entered on assault and battery on a minor.

9/2/98**Ruthanne Farnsworth**

Admitted to sufficient facts of six counts of false tax returns; six counts of tax evasion. Case continued without a finding for two and a half years; defendant ordered to pay \$15,000 in court costs and perform 300 hours of community service.

9/16/98**Paul Lo Conte**

Plead guilty to six counts of filing false tax returns; six counts of tax evasion. Sentenced to two years in the House of Correction, suspended for two years; a \$12,000 fine and 300 hours of community service.

9/25/98**Frederick Hamlett**

Plead guilty to two counts of larceny over \$250; one count of creating false corporate records; and procurement fraud. Sentenced to serve six to eight years in state prison; and restitution.

9/25/98**J. Russell Tillman**

Plead guilty to two counts of larceny over \$250; one count of creating false corporate records; and procurement fraud. Sentenced to serve six to eight years in state prison; and restitution.

10/98**Robert Shell**

Plead nolo contendere to two counts of accepting illegal gratuities. Sentenced to one year in the House of Correction, 60 days to serve, the balance suspended with 300 hours of community service as a condition of probation.

10/16/98**Gaetano Morello**

Plead guilty to defrauding the state. Sentenced to 30 days in jail, suspended with one year probation; \$5,000 fine and community service.

11/6/98**Timothy Sousa**

Plead guilty to one count of altering or substituting examination papers. Sentenced to one year probation and a \$200 fine.

11/12/98**David A. Lee**

Found guilty of procurement fraud. Sentenced to two years probation; 500 hours of community service and a \$10,000 fine.

11/30/98

Randolph Mogren

Plead guilty to one count of larceny over \$250; one count of false written statements; and one count of false claims. On the larceny charge, sentenced to two years in the House of Correction, suspended for two years probation; \$4,273 restitution; \$5,000 fine; 100 hours of community service. On the false written statement charge, one year in the House of Correction, suspended for two years to run concurrent with the larceny charge. On the false claims charge, two and a half years in the House of Correction, suspended for two years, \$60 victim witness fee, to run concurrent with the other charges.

12/2/98

Edward Mello

Plead guilty to one count of altering or substituting examination papers. Sentenced to one year probation and a \$200 fine.

12/18/98

Charles Sillari

Plead guilty to one count of possession of betting apparatus; two counts of unlawful use of telephone. Sentenced to two years in the House of Correction, suspended; \$3,000 fine on the possession of betting apparatus charge. On the unlawful telephone use charge, three months in the House of Correction, suspended, with two years probation to run concurrent with the betting apparatus charge.

12/29/98

Brown University

Admitted to submitting inaccurate invoices and payment vouchers to the state. Agreed to pay \$300,170 to the Commonwealth in a civil settlement.

1/25/99

Paul Hicks

Found not guilty on larceny over \$250; and false claims.

1/25/99

Rosemarie Hicks

Found not guilty on larceny over \$250; and false claims.

1/27/99

Stephen Sirabella

Plead guilty to larceny; submitting false claims; procurement fraud; and filing false tax returns. Sentenced to three years probation; \$5,000 fine; and full restitution.

2/1/99

Joseph Rotondi

Plead guilty to three counts of larceny; one count of conflict of interest; three counts of

submitting false claims; one count of procurement fraud; and three counts of filing false tax returns. Sentenced to three years probation; \$5,000 fine; and full restitution.

2/8/99 Sothat Sisouthone

Found guilty of illegal possession of a firearm and conspiracy for illegal possession of a firearm. Sentenced to two years in the House of Correction, one year committed mandatory.

2/8/99 Tan Phuoc Le

Found guilty of illegal possession of a firearm. Sentenced to two years in the House of Correction, one year committed mandatory.

3/4/99 Richard Pimental

Found guilty of larceny of one or more firearms. Sentenced to two years probation.

3/8/99 William Jewer

Found not guilty of larceny over \$250; false claims; larceny of a motor vehicle; forgery assignment of title; false statement of application for title; fraud in motor vehicle insurance claim; fraud by city officer; and false written statements.

4/8/99 John Colton

Found not guilty of interference with a witness; false written reports; and obstruction of justice.

4/26/99 James Bourget

Plead guilty to larceny over \$250. Sentenced to two years to two years and a day, from and after his current committed sentence.

4/27/99 Mark Langevin

Case continued without a finding for six months on assault, and breaking and entering in the daytime.

5/3/99 Anthony Ellison

Placed on pre-trial probation for one year for assault and assault and battery; alcohol and marital counseling for six months.

5/6/99

Lawrence Shetler

Defendant found in default and remains a fugitive on procurement charges.

5/10/99

Mario Lewis

Plead guilty to larceny. Sentenced to two years in the House of Correction, suspended for a two year period of probation and \$10,000 fine.

5/13/99

Patricia Romano

Plead guilty to larceny and uttering charges. Case continued without a finding for six months.

5/13/99

William Tuttle

Plead guilty to larceny and uttering charges. Six months suspended sentence, one year probation; and \$8,176 in restitution.

6/11/99

Francis Noone

Found not guilty on 27 armed robbery and related charges.

SAFE NEIGHBORHOOD INITIATIVE

Established in February, 1993, by the Attorney General's Office, the Suffolk County District Attorney's Office, the Mayor's Office of the City of Boston and the Boston Police Department, the Dorchester Safe Neighborhood Initiative (SNI) celebrated its sixth anniversary in February of 1999. Successful SNI models have also been established in Grove Hall, Brockton, Chelsea, Taunton and the Turners Falls Village of Montague.

The SNI has developed into a truly effective coalition among community residents, state and local government officials, law enforcement personnel and human service providers to solve a variety of community problems. Based on the premise that no one group can resolve all the problems faced by urban neighborhoods, the SNI model works to stem violence and improve the quality of life by developing multi-disciplinary approaches to community issues.

Since those who live in a community know best what problems neighborhoods face and how they can be addressed, residents are vital members of SNI partnerships which revolve around the core principles of coordinated law enforcement, prevention, intervention and treatment and neighborhood revitalization. The richness of the SNI is a direct result of the program components and the individuals involved who collaborate in numerous ways, existing not as discrete entities but as essential pieces of the big picture of community health and safety. Thus, our projects often overlap in ways that significantly enhance the SNIs ability to respond to community needs.

While we worked to nurture new SNI efforts across the Commonwealth, the more mature projects continued to grow and flourish during Fiscal Year 1999. Our model project in Dorchester continues to be led by zealous community leaders who put forth considerable efforts to sustain the peace and well-being of the SNI target area and its residents. Our Grove Hall project has come a long way. By cementing formerly tenuous relationships between community partners and law enforcement officials, the GHSNI enjoys a great deal of success in reaching more and more community residents and addressing pressing issues in that community. In addition to the four-year Byrne grant from the Executive Office of Safety received by the Brockton SNI last year, they have received "Official Recognition" from the Executive Office for Weed and Seed. The grant submission for the Brockton Weed and Seed site is currently in the budget process and funding notifications will happen soon. The Taunton SNI has once again experienced positive results in Fiscal Year 1999. From 1995 to 1998, the City of Taunton's overall crime statistics decreased 33% and the number of juvenile complaints decreased from

1,335 to 751. Our newest SNI effort in Montague gets much of its structure and focus from SNI Prosecutor, Assistant Attorney General Linda DelCastilho, who has done a tremendous job over the last year to move that project forward.

Throughout the year, the SNI had the fortunate opportunity to work with Catherine M. Coles, J.D., Ph.D., of Harvard University's John F. Kennedy School of Government to generate an outcome measurement development process for the SNI. Her work is funded by the National Institute of Justice. Catherine divided her time among four SNI programs in the greater Boston area: Grove Hall, Dorchester, Chelsea, and East Boston. Participation in Catherine's project was very high - citizens, neighborhood development organizations, government partners, police, prosecutors and court representatives all played an active role in cultivating the outcome measurement process.

The exciting conclusion from Catherine's project is that the SNI program is working for communities. Each SNI has a different approach to problems - some are law enforcement driven while others are community driven, but all of the programs are infused with the three core principles: neighborhood revitalization, coordinated law enforcement and prevention, and intervention and treatment. Common themes that emerged as the programs considered the future of the SNI were: the need to institutionalize the Safe Neighborhood Initiative; improve the overall quality of life for each community; increase safety and the perception of safety in the target areas; and revitalize the economy.

STATEWIDE EXPANSION EFFORTS

INNOVATION GRANTS

In Fiscal Year 1998, the Office of the Attorney General awarded SNI Innovation Grants to ten cities across the state. Taunton, New Bedford, Fall River, Lowell, Malden, Somerville, Lawrence, South Boston, Springfield, and Pittsfield were the beneficiaries of this funding. The Attorney General's commitment to youth issues prompted the decision to focus the Innovation Grants on the needs of young people. Agencies in each of the selected cities were asked to develop concept papers detailing how they would creatively utilize funds to provide prevention, intervention and/or treatment services for youth in their communities.

The first to receive an Innovation Grant, the Taunton Department of Human Services, utilized their funds to provide random drug testing and electronic monitoring for offenders at Taunton Juvenile Court as well as providing Spanish language courses for police officers. The

funding allowed for 156 random drug screenings for 93 court involved adults and juveniles, 122 days of electronic monitoring were provided to home confined offenders, and an eight-week course in conversational Spanish was made available to Taunton Police Officers.

The YMCA of Southeastern Massachusetts developed a program called "Youth Night Out" that took place in their child care facility in New Bedford. Youth ages 9-15 were invited to participate in weekly night sessions from 6:00-9:00 p.m. on Wednesdays. Attendance varied from 15 to 30 youngsters each session. As the program developed, one night each month was designated as a special event - in October, there was a Halloween party with a magician and in June, a cookout. The project was successful in providing a safe place for youth from the neighborhood to gather together and take part in fun, multi-cultural activities.

Big Brother/Big Sister of Greater Lowell extended their "ADAM Project", a program to engage at-risk young men in life skills training, violence prevention and leadership development, including Outward Bound excursions. Of the 45 young men enrolled in the program, 30% are first time offenders, 15 % are foster children or DSS involved and 65% are from single parent homes. The program helped the youth with academics, communication skills and community outreach. The YMCA interviews all participants three times a year to gather input about the program and also tracks the students' academic achievements.

Fall River's Innovation Grant was awarded to the YMCA of Greater Fall River to initiate the "Streetwise Players," a 25-member teen performing arts troupe addressing substance abuse. The Troupe is open to all teens between the ages of 13 - 17, with special recruitment efforts targeting low income 13 - 15 year old teens from culturally diverse backgrounds. The plays, followed by teen developed discussion activities, have been presented as a service to 1,000 sixth through eighth grade students. Subjects explored in the plays are: peer pressure, using substances to escape difficult realities, addiction in the home and its effects on the family, substance abuse and driving, and where to find resources for help with substance abuse. In addition to the performing arts troupe, the teens are implementing a community-wide campaign, "Fall River Free" to reach 30,000 youth and their families with information on the dangers of substance abuse. The campaign will use 250 posters, 30,000 flyers, two radio ads and two TV broadcasts to spread their message.

Holy Family Hospital in Lawrence developed a program to address the issue of adolescent dating violence with students at Lawrence High School. Both male and female students participated in the program to learn the signs of an abusive relationship, various types of abusive

behavior, and the effects on children who witness domestic violence. The program ran from October through May, but attendance was a problem from the start. When students did come to class, participation was high, but the same students did not attend regularly. Despite this obstacle, the program ended up educating twice as many students as originally anticipated.

Young women from the Newland Street and Linden Public Housing Developments in Malden were the targets of the Malden YMCA Innovation Grant. The women were involved in a peer intervention program combining peer leadership, adventure-based activities, and art-based learning experiences to foster self-expression, self-esteem, trust, communication, and problem-solving skills. The program aimed to increase adolescent girls' resiliency to substance abuse, interpersonal and dating violence and other related risks facing young women today. The program combines adventure activities such as hiking, cross country skiing, snow shoeing, mountain biking, rock climbing, canoeing and ropes courses with expressive arts activities such as storytelling, journal writing and self portraits. Sixty-eight girls participated and the program was a rousing success.

Springfield's South End Community Center utilized their Innovation Grant to double the capacity of their Community Access Project and train young people to become community leaders. The community center has a three-year plan to develop after school programming and expand their "safe passage" zone which is a coordinated law enforcement effort to create a safe, crime-free area through which residents can go to work and school. A part-time coordinator and part-time community organizer were hired to oversee the program. Reports from area residents indicate that the Community Access Project is a success - there is less graffiti in the neighborhood, out of state cars are less prevalent around the project, strangers are not hanging around as much and children are safer as a result of the After School Program.

One hundred young people were employed with Innovation Grant funding awarded to the South Boston Neighborhood House for their "Rent-a-Kid" youth worker program. In addition to employment opportunities, the program also provided the young people with weekly counseling sessions around issues such as suicide, grief, substance abuse, conflict resolution and stress management. Additionally, the program placed 10 interns in local part-time positions with area businesses.

Youth in Somerville's Mystic Public Housing Development operated the "Teen Choice Club." The suicide of a young man in the development prompted youth to speak up about the lack of productive after school activities in the area, resulting in a club to provide recreational,

educational, leadership development, and self esteem-enhancing activities for youth in the development. The Club is staffed by an adult advisor and three peer leaders. They meet on Tuesdays, Thursdays and Fridays from 6:00 - 9:00 p.m. at the new Mystic Activity Center. So far, a total of 120 youth, ages 11 - 19, have participated in various activities that include: computer literacy workshops, field trips, video screenings, photography training, reading groups, HIV/AIDS prevention efforts and game/movie nights.

In total, the SNI Innovation Grants will assist more than 550 young people across the Commonwealth.

ACCOMPLISHMENTS UNDER SNI CORE COMPONENTS PREVENTION, INTERVENTION AND TREATMENT

SNI JOBS FOR YOUTH PROGRAM

One of the major efforts aimed at prevention and intervention is our Safe Neighborhood Initiative Jobs for Youth Program. The program, which started in 1996, has grown from employing 23 youth in five communities to employing more than 100 young people in 11 communities throughout the state. Massachusetts communities have placed youth issues at the top of their agenda. To embrace this effort, the Office of the Attorney General supported enrichment and employment programs for youth this year.

Eighteen youth from SNI target areas in Grove Hall, Fields Corner and Uphams Corner are employed through Boston Community Centers (BCC). Partnering with local businesses and agencies, BCC places young people in a variety of capacities allowing them to learn a multitude of skills including entrepreneurship, leadership and civic duty. Boston Community Centers recently conducted a survey of current and former SNI Jobs for Youth participants and discovered that youth who have participated in the program are more likely to be in school, have higher grade point averages, and are more likely to secure sustainable employment.

The Old Colony YMCA in Brockton just completed their third year of Jobs for Youth funding. Over the three years, they employed 27 teens between the ages of 14-17. This year, they employed five interns who were placed in various community based agencies. All the teens are currently in high school and four of them have plans for attending college. All of the youth who participated in this program were able to market their new skills to secure jobs in the private sector.

This year marks the fourth year of funding for the Chelsea Jobs for Youth program. Through the Department of Health and Human Services, the city provides positions for seven Chelsea teens at several area businesses and city agencies including: Chelsea Cable TV, the Chelsea YMCA, the Chelsea Public Library, the Chelsea Human Services Collaborative, and Chelsea Neighborhood Housing Services. The teens' responsibilities include community service, office support and clerical assistance. The SNI Jobs for Youth program participants also receive instruction on writing resumes, career exploration, peer leadership, and conflict resolution.

Ten young people are placed in year-round jobs through the Taunton Department of Human Services. The 10 youth workers were assigned to the following human service agencies: the Department of Human Services, the Boys and Girls Club, Taunton High School, Bristol Plymouth Regional Technical High School, the Old Colony YMCA in Taunton, and the Taunton Public Library. The partnerships created from this have been tremendous. Melissa, a graduate of the SNI Jobs for Youth program and now a college student, was hired as a "Youth Supervisor" for the program and notes that, "The Jobs for Youth Program awakened in me a new confidence in my abilities and a sense of pride in my city."

"Buen Trabajo" is the program developed by the Holyoke Youth Alliance for implementation of their SNI Jobs program. This program reinforces literacy by training 12 youth to be teen educators and to read to young children in the waiting room of a large pediatric practice in the city. The Holyoke Youth Alliance reports that 100% of their participants went on to jobs in the private sector, 85% completed the year-long program, and 57% of the students went on to college.

The 1999 Jobs for Youth program in the City of Worcester enjoyed an outstanding year. In only the second year of funding, 14 youth were employed throughout the city. More impressive is that each of the youth employees accumulated 1200 hours of volunteer work. All together, the youth volunteered a total of 16,800 hours throughout the course of the school year. During the course of the summer, four teens from the Worcester program will attend the YMCA International Youth Exchange Program in Scotland. The other 10 youth workers will be attending a week-long leadership development conference in New York.

The city of Lynn collaborates with Girls Inc. to provide a thorough job preparedness program for seven students in Lynn. These seven students are provided quality training through the Girls Inc.'s Career Learning Center. The teens are taught about effective communication, problem solving, computer information and decision making. Upon completion of their training, students

are employed at the Community Minority Cultural Center as well as Lynn Arts, Inc. and Raw Arts, Inc.

Twenty-five young people in New Bedford receive comprehensive job readiness training through UMass Dartmouth's Neighborhood College. Training provided is specific to the needs of area employers who actually pay the salaries of the young people, rather than relying on grant funds. The New Bedford program reports that of those young people who attended this pre-employment training which included a "real-world" internship experience, 80% are now employed.

The Springfield SNI Jobs for Youth program is implemented through the Springfield Southwest Community Health Center. The program is called VISIONZ, which is a six member, peer health education group that utilizes plays, city-wide special events and outreach as its mechanism for disseminating violence prevention and public health information. The peer educators write, direct and star in skits used as teaching tools on such issues as HIV/AIDS, teen pregnancy, self esteem, decision making, and youth violence.

The SNI Jobs for Youth program is a solid demonstration of the Attorney General's commitment to young people and comprehension that prevention is one of the best and least expensive ways for communities to reduce juvenile crime. In addition to reducing juvenile crime, the program also enhances self-esteem, life skills, work ethic and decision-making abilities of young people allowing them the opportunity to make a successful transition into adulthood.

DORCHESTER SNI

Dorchester continues to be Boston's most culturally diverse neighborhood. Now in its sixth year, the Dorchester SNI continues to focus on issues that have consistently plagued the area - truancy and youth violence. The Boston Police Department targets the truancy issue while other subcontracted programs provide enhanced opportunities for young people to effectively use the time when they are not in school through an array of recreational and educational programming. Additionally, community workers strive to empower and comprehensively address the needs of the large and growing Cape Verdean and Vietnamese communities. To supplement these undertakings that are critical to the overall health and well-being of the target area, the Dorchester SNI has also created a strong network of support for other emerging immigrant groups, children who witness violence and the local business community.

The Dorchester SNI Advisory Council continues to meet regularly. A top agenda item again this

year was funding. At the beginning of April, SNI Division Chief Susan Spurlock received word that Dorchester's Executive Office of Public Safety Byrne grant funding would be cut significantly. In response, members of the Dorchester SNI, including representatives from each subcontracted agency and the Attorney General's Office, met with the Director of the EOPS Programs Division, Michael O'Toole; Assistant Director of the Programs Division, Kevin Sullivan; and the EOPS Program Coordinator for the Dorchester Project, Jane Zuroff. The Dorchester community members made presentations about the devastating effects any funding cuts would have on the community. Michael O'Toole committed to making the recommendation to Jane Perlov, the Secretary of Public Safety, that the project *not* be cut but receive level funding. Mr. O'Toole's recommendations were accepted - The Dorchester SNI received level funding of \$250,000 with a dollar for dollar hard cash match.

As mentioned above, there continues to be concern about the violence erupting in the Cape Verdean community. The Dorchester SNI has been trying to address this issue through coordinated law enforcement and community service efforts. The Cape Verdean community is very close-knit and distrustful of many of the efforts of law enforcement officials. This lack of trust and communication between the Cape Verdean community and law enforcement has slowed investigations and the acquisition of solid information about the "riffs" in this community. The Dorchester SNI Advisory Council is working on ways to facilitate better relationships and improve communication to help prevent further violence.

The truancy project with the Grover Cleveland Middle School worked well in identifying chronically truant youth - in fact, it worked so well that the project received more referrals than expected. There has been continued discussion about expanding the project to other police districts to help ensure that youth who live outside of the target area still have access to services.

The Dorchester Safe Neighborhood Initiative continues to work effectively to address quality of life issues identified by the community. Through a productive coalition of community stakeholders, problems are identified, discussed and then plans for improvement are implemented. The Dorchester Safe Neighborhood Initiative continues to set an example for other, newer SNIs throughout the state.

GROVE HALL SNI

The Grove Hall Safe Neighborhood Initiative (GHSNI) has made tremendous strides this year. The success of this project can be attributed to its persistence in addressing issues in a coordinated community and law enforcement partnership effort. During 1999, the GHSNI

received \$250,000 from the Department of Justice, Executive Office for Weed and Seed. The money funded several community-based programs that helped to address needs and concerns identified by the community.

This year, as a part of our Weed and Seed grant, the GHSNI was able to fund several outstanding programs through both the Seed-Mini Grant and the Special Emphasis Initiative grant funds. The Roxbury Multi-Service Center's Community Programs Against Sexual Assault (CPASA) services as many as 35 people per month through this program. CPASA addresses violence prevention education and intervention strategies to empower elders in the community and further reduce incidences of victimization in the Grove Hall community.

Children's Services of Roxbury received a \$9,000 grant from the GHSNI to address the issue of domestic violence by providing education and training to middle and high school students. They worked closely with the Jeremiah Burke High School and the Martin Luther King, Jr. Middle School to provide training on domestic violence, violence prevention, and conflict resolution.

The "WAR" project out of Roxbury Comprehensive Health Center, another GHSNI funded program, reported that 1200 people received service. The WAR project was designed to provide HIV/AIDS outreach, service, and education to women in the sex industry in the Grove Hall area. They also provided information to known "johns" and addicts in the area.

The Youth Development and Early Intervention Program (YDEIP) of the Grove Hall Residents Association and the Franklin Park Development I & II assessed its increased one-to-one academic tutoring. The results have been extremely positive regarding the enrollees' general academic performance. Since the implementation of the tutoring program, not one student has received a failing grade. On average, 25-30 students participate in the program per month.

The Jewish Memorial Hospital and Rehabilitation Center convened a Safe Seniors/Safe Neighborhoods educational seminar and luncheon for seniors. The hugely successful workshop taught seniors how to identify elder abuse, how to recognize and stop fraud against seniors, and provided information about senior health and safety issues.

A significant predictor of future criminal activity, truancy, is another issue that was addressed in our Grove Hall target area this year. Through implementation of the initiative *Opening Doors*, the Boston Urban Youth Foundation (BUYF) has an active case load of 86 young people in its

program. The Foundation is pleased to report that 90% of the young people involved in the program improved their attendance by 35%. BUYF states that 50% of their participants also improved their grades.

COORDINATED LAW ENFORCEMENT

SNI COMMUNITY PROSECUTION

Our community prosecution program is critical to our coordinated law enforcement component. SNI prosecutors at the Superior and District Court levels continued to serve in non-traditional roles, allowing them to provide outstanding service to target communities and perform as even better advocates for the Commonwealth. Attending community meetings and special events, developing joint initiatives with other law enforcement agencies, and utilizing sentencing and probation options not only to penalize offenders but also to rehabilitate them so they do not return to the criminal justice system are just a few of the ways SNI prosecutors work to serve their respective target communities.

AAG Shelley Richmond is a strong testament to the depth of involvement SNI prosecutors have in the community. AAG Richmond consistently looks to the community for impact statements to help in the sentencing phase of many of her cases. As a result, judges often treat cases that would otherwise seem routine much more seriously. The community's input has had a tremendous impact on the residents' sense of participation in the justice system and the direct impact on their neighborhood. There are noticeably fewer street level drug and gang activities in the target area. AAG Richmond has also been cultivating a powerful working relationship with Boston Police detectives to solve several unsolved crimes. Similar efforts were put forth by AAGs Marcia Jackson, Neil Tassel, and Katherine Hatch who work on the Dorchester project, and Glenn MacKinley who works on the Brockton SNI. Prosecution teams are critical to the SNI's efforts to create healthier communities and to demonstrate that community residents should play an active role in the justice process.

Another key element of the SNI's coordinated law enforcement component is community policing. High-ranking police officials are actively involved in SNI Advisory Councils and meet regularly with community groups and individual residents to address concerns. Community policing projects of SNI target areas have demonstrated a strong impact on crime statistics in target communities. In addition to falling crime rates, an unprecedented level of cooperation and collaboration with the police is reported by residents, merchants and social service agencies.

The Grove Hall project is using its coordinated law enforcement approach to address illegal rooming houses and other “hot-spots” in the target area. Through our effective law enforcement intervention, including community impact statements, the Carousel Lounge and an unlicensed lodging house were shut down. The Carousel Lounge was notorious for illegal activity and the illegal rooming house at 146 Stanwood Street was the site of two stabbings in a six-week period prior to the collaboration between the community and law enforcement to close the building.

As part of its coordinated law enforcement efforts, the Brockton SNI executed 75 search warrants, 80% of which have been in the SNI target area. This intense effort resulted in over 187 arrests for violations of the Controlled Substance Act. Additionally, 14 firearms have been seized during the year, resulting in 30 defendants being charged with weapons offenses. There have been approximately 75 narcotics investigations conducted within the city of Brockton, 90% of which were within the SNI target area. These narcotic investigations resulted in 76 arrests. In addition to the drug-related arrests, there were also 28 arrests for sexual conduct for a fee.

Joint investigations with federal agencies are another important piece of our coordinated law enforcement component. A good example of this type of joint investigation is “Operation Scorpion” run out of the Grove Hall project. The Boston Police Department, Area B2, utilizes the combined resources of state and federal agencies including the state police and the Drug Enforcement Agency. The operation will target drug distributors, dealers and buyers.

NEIGHBORHOOD REVITALIZATION

ABANDONED PROPERTY PROJECT

A major part of our neighborhood revitalization efforts throughout the various SNI communities is the Abandoned Property Project. The project aims to use a Receivership Statute enacted in Massachusetts in 1993 to undertake and oversee the rehabilitation of residential properties with persistent, unremedied code violations or properties being used for illicit activities, such as drug dealing. The legislation was originally intended to permit tenants and other occupants of residential properties to seek the appointment of a receiver who would have the independent authority to authorize repairs, after notice and an opportunity to cure was provided to the landlord and creditors of record. The most significant features of the statute are twofold: 1) it provides a limited scope of receivership liability related solely to the work actually undertaken at the property; and 2) the costs and expenses incurred by the receiver become a priority lien, recoverable against

both the landlord and the property prior to any pre-existing liabilities other than outstanding real estate taxes.

Stuart Rossman, the former Chief of the Attorney General's Business and Labor Protection Bureau, successfully implemented this project throughout the state, targeting Dorchester, New Bedford, Roxbury (Grove Hall), Worcester, Orange, Chelsea, Montague, Taunton, Springfield, Brockton and Melrose. Individuals from throughout the Office of the Attorney General participate in the various cities and towns. Teams consisting of AAGs, civil investigators, paralegals and staff are assigned to specific communities. We continue to get support and approval from Housing Court and District Court judges in jurisdictions across the Commonwealth. The Abandoned Property Project was the subject of a Massachusetts Continuing Legal Education Seminar Program held in October, 1998. Working with former Representative Charlotte Golar Richie, we were able to secure a line item in the Housing Bond Bill to set aside monies to be used to fund receiverships. The Attorney General's Office co-sponsored a bill to expand and improve upon procedural elements of the Receivership Statute based upon the knowledge gathered throughout Abandoned Property efforts. The bill was reported favorably out of the Housing and Urban Affairs Committee, but never reached the House of Representatives. We hope to refile again this year.

In addition to the prospect of restoring properties that have been blights in the community, the other exciting aspect of this initiative is that the community is guided through the process by the Attorney General's Office in order to enhance the community's implementation of the necessary procedures on its own. By providing this guidance, the community becomes empowered which is vital to our efforts to increase the sustainability of the project.

CONCLUSION

Fiscal Year 1999 was distinguished by many successes. SNI community partners worked tirelessly to ensure that the SNI projects are continued and sustained with full integrity. We also sought ways to undertake new initiatives to broaden the scope and services of the SNIs throughout Massachusetts and to foster new growth. The SNI continues to be a strong model of how communities and law enforcement can work together effectively to improve the quality of life for community residents throughout the Commonwealth.

SAFE NEIGHBORHOOD INITIATIVE STAFF

Staff members assigned to the SNI as of the end of FY99 are Division Chief Susan Spurlock; Assistant Attorneys General Marcia Jackson, Neil Tassel, Katherine Hatch, Shelley Richmond, Glenn MacKinlay, and Linda DelCastilho; SNI Program Coordinators Sandra McCroom and Marcy Bouley; Administrative Assistant Nancy Tavilla; and Community-Court Liaisons Christina DiIorio-Sterling and Lori Parris.

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

The Special Investigations and Narcotics (SI&N) Division coordinates and prosecutes complex, multi-jurisdictional criminal cases targeting non-traditional organized criminal entities and career felons for prosecution. In addition, the SI&N Division investigates and prosecutes large-scale drug trafficking organizations and individuals or groups involved in the illegal sale or possession of firearms. The Division also proactively investigates traditional organized crime groups for offenses ranging from "murder for hire" plots to extortion networks to gaming enterprises. SI&N further aids in the drafting of narcotics and gang-related legislation and the development and implementation of community education and outreach programs.

The SI&N Division, through its Asset Forfeiture Unit, initiates and pursues civil and criminal forfeiture and nuisance actions of property related to the sale, distribution, and facilitation of drug-related offenses. Funds recovered by the Unit are disbursed in accordance with the Commonwealth's forfeiture laws. A percentage of the amount forfeited is used for community-based drug awareness and education programs.

DIVISION ORGANIZATION AND OBJECTIVES

The Division presently consists of seven attorneys and two full time support staff personnel. Members of the Division for all or part of FY99 were: William F. Bloomer, AAG, Chief; David Breen, AAG; Carole Conley, Support Staff; Eliot Green, AAG; John Grossman, AAG; Joanna Kennifick, Support Staff; Karen Kleiman, AAG; Ramon Melendez, AAG; Gregory Motta, AAG; Lori Parris, AAG; Robert Sikellis, AAG, former Chief; and Karen Wells, AAG.

Approximately one dozen Massachusetts State Troopers are assigned to the SI&N Division within the Attorney General's Office. That unit falls under the direction of Detective Lieutenant

Mark Delaney. Lieutenant Stephen Matthews, second-in-command, and Lieutenants Joseph Flaherty and Frank Matthews, with the assistance of Sergeants Richard Prior and Thomas Coffey, form the central core of the command structure.

Among the general categories of crimes the SI&N Division investigated and/or prosecuted during FY99, were the following: narcotics trafficking and related offenses, extortion, weapons trafficking and related offenses, identification fraud, arson, money laundering, solicitation to commit murder, possession of counterfeit currency, intimidation of witnesses, threats, fraud, habitual criminals, breaking and entering, larceny, receiving stolen property, gaming, and uttering forged instruments.

By way of background, in 1994, the Criminal Bureau's Narcotics and Organized Crime Division merged with the Special Investigations Division to form the unit that is now entitled the Special Investigations and Narcotics Division. Eventually, two subunits -- the Asset Forfeiture and High Technology Crime Units -- emerged to meet the demands placed on law enforcement by these rapidly growing areas of law.

With the change of administrations in January of this year, the Division underwent an organizational restructuring. Though the Asset Forfeiture Unit remains an integral part of SI&N, the High Technology Crime Unit became a separate entity known as "The High-Tech and Computer Crimes Division" under the direction of AAG Gregory Motta. Both divisions continue to work closely with one another in investigating and prosecuting computer crimes as well as organizations that use computers to facilitate a broad array of traditional criminal activities.

The advent of the new administration also ushered in a different approach to dismantling illegal drug operations. The SI&N Division has shifted its previous focus on narcotics "street sweeps" -- investigations targeting small, street-level drug distributors in specific geographic areas -- to identifying, investigating, and prosecuting the large scale organizations that supply these street dealers with illicit contraband.

An effort to broaden the scope of the Division's responsibilities is also underway. The SI&N Division recently pledged its assistance to the Massachusetts State Police Gang Unit, the State Fire Marshall's Office, and the State Police Violent Fugitive Arrest Squad. The primary goal of this initiative is to assist these police agencies in proactive investigations and prosecutions, and to assist in addressing crimes committed in these organizations' respective areas of concern which occur in multiple counties.

INVESTIGATIVE INITIATIVES

ELECTRONIC SURVEILLANCE

A significant weapon that the Division utilizes to penetrate and dismantle complex illegal enterprises is electronic surveillance. Over the past year, troopers assigned to this Division have on numerous occasions equipped themselves with electronic body wires, pursuant to so-called *Blood* warrants, to intercept and record criminal conversations with unsuspecting targets. These recordings have proven invaluable in securing the convictions of narcotics and firearms traffickers.

Since April of 1999, the SI&N Division has executed court authorized wiretap warrants on four cellular telephones. The warrants authorized law enforcement officers to intercept, monitor, and record criminal conversations occurring over these cellular phones. Individuals from two separate but related organizations, utilized these telephones to further extortion activities and to distribute vast quantities of percoctet pills, designer "ecstasy" pills, and hundreds of pounds of marijuana, in and around the Greater Boston area.

During the course of that investigation, members from the Division also applied for and received court permission to install and monitor a "Global Positioning System" (GPS) and a "roving cellular bug" inside a target's motor vehicle. The GPS allows law enforcement officials to calculate the position of a vehicle through a system of satellites, while the roving bug permits officers to intercept and record oral communications within the vehicle by means of a cellular transmission device.

Most noteworthy, in the course of that investigation, members of the SI&N Division received court authorization to conduct electronic surveillance of communications occurring over the target's "Interactive Paging Device" (IPD). An IPD is a portable wireless communication device which has a read-out screen and a full alphabetical and numerical keypad that enables its users to communicate with one another similar to an e-mail system. The wiretap warrant in this investigation authorized law enforcement personnel to intercept and record criminal communications occurring over these Interactive Paging Devices by means of a "clone pager" and a specially designated e-mail site. Based on information obtained from a number of law enforcement sources and the carrier of the IPD itself, it is believed that the wiretap of these communication devices was the first of its kind in the country.

The electronic surveillance, coupled with traditional investigative techniques, pierced these highly secretive organizations and ultimately led to their demise. The SI&N Division will continue to avail itself of this potent investigative tool.

INVESTIGATIVE HIGHLIGHTS

As described above, members of the SI&N Division conducted a two-year investigation into drug trafficking and extortion that included the use of electronic surveillance. The investigation commenced in Middlesex County under the direction of then District Attorney Tom Reilly, and continued and expanded after his election as Attorney General. At the conclusion of the investigation in June of 1999, State Police assigned to the SI&N division executed over 20 search warrants in the Greater Boston area. An additional five search warrants were executed in New Hampshire and Arizona with the assistance of the respective state and local police departments in those states. The participation of law enforcement in this collaborative effort resulted in the seizure of the following contraband and assets: approximately 1,000 pounds of marijuana; thousands of percocet pills; over 1,000 ecstasy pills; several handguns, with at least one bearing obliterated serial numbers; hundreds of steroid pills and needles; approximately \$250,000 in U.S. currency; approximately \$2,700 in counterfeit currency; one dozen motor vehicles; and one powerboat.

As a result, 17 individuals stand charged with a variety of offenses including trafficking in marijuana and percocets, possession of firearms and ammunition, conspiracy, and possession of counterfeit currency. Assistant Attorneys General Karen Wells and William Bloomer presently are assigned to the investigation.

Assistant Attorney General Eliot Green is currently prosecuting a case against three individuals who were arrested by State Police in August of 1998 as a result of an undercover narcotics investigation. During this investigation, State Police assigned to the Attorney General's Office conducted controlled purchases ranging from one to four ounces of cocaine from each of the three defendants. At the conclusion of the investigation, State Police executed search warrants at five locations where nearly four kilograms of cocaine, over \$250,000 in cash, three vehicles, and two motorcycles were seized. The central target of the investigation stands charged with trafficking in over 200 grams of cocaine, which carries a mandatory minimum of 15 years in state prison, while the two remaining individuals each face a mandatory minimum 10 year term of imprisonment for trafficking in over 100 grams of cocaine.

In May of 1999, the Division obtained indictments against two Hampshire County men for running illegal bookmaking operations. These individuals were each charged with possession of betting apparatus, illegal use of a telephone, and two counts of conspiracy. The indictments stemmed from a lengthy investigation into illegal gaming in Hampshire and Hampden counties conducted by the State Police Special Services Section, the Hampden County District Attorney's Office, and the Office of the Attorney General. This investigation, which made extensive use of court-approved wiretaps, has already netted the convictions of several individuals on illegal gaming charges. Assistant Attorneys General John Grossman and Matthew Shea are handling the two remaining prosecutions.

CRIMINAL CASE HIGHLIGHTS

In 1998, the Attorney General's Office agreed to prosecute an individual for narcotics trafficking at the behest of the Drug Enforcement Administration. The defendant in that case engaged in two hand-to-hand sales of over 200 grams of cocaine per transaction with a cooperating informant. In early April of 1999, following a week-long trial before a jury, Assistant Attorney General Lori Parris secured guilty verdicts on both counts. The defendant was sentenced to a minimum mandatory term of 15 years in state prison.

In 1997, then District Attorney Tom Reilly commenced the prosecution of 10 individuals for the gang-related murder of a 17-year-old Hispanic youth in Lowell. William Bloomer, an assistant district attorney at the time, headed the prosecution against 10 members of a street gang called the "Laos Boyz" or "LBZ". On November 20, 1997, the Commonwealth alleged, the defendants went "hunting" for members of rival gangs to attack. After flipping a car onto its side and smashing its windows, and after attacking the family of a member of the rival "Tiny Rascal Gang", the defendants lined up alongside a diner in a darkened alleyway armed with makeshift weapons. Their faces disguised by bandanas and ski masks, the defendants waited in ambush for the victim, who was not a member of any gang, and his two unsuspecting friends. As the three youths walked passed the diner, the defendants attacked the trio with two hammers, a shovel, the "Club" anti-theft device, and boards. The victim was knocked to the ground and smashed repeatedly in the head by the individuals wielding the hammers and shovel. After the attack, the group drove to an eating establishment and ordered food while bragging and celebrating about their accomplishments. The victim died three days later of multiple blunt trauma to the head. Following a month long trial in November and December of 1998 that featured the testimony of three of the participants in the attack, the jury convicted the two hammer wielding assailants of first degree murder. They were sentenced to life without parole. Thereafter, the defendant who struck the victim repeatedly with the shovel pleaded guilty to murder in the second degree and

was sentenced to life in state prison. With the change of administrations in January, Assistant Attorney General Bloomer continued the prosecution of the four remaining gang members in his capacity as a special assistant district attorney. In April and May of 1999, these defendants each plead guilty to the charge of manslaughter and received sentences ranging from five to 14 years in state prison.

In mid-May of 1999, Assistant Attorney General David Breen prosecuted an individual for trafficking in over 200 grams of cocaine and possession with intent to distribute cocaine within 1,000 feet of an elementary school. The Commonwealth proceeded against the defendant in that case under a joint venture theory -- alleging that he stood "guard" over a large quantity of cocaine in a stash pad while his co-conspirators left to consummate deals on the street. At the completion of the nearly two-week trial, a jury returned guilty verdicts on both counts. The Court then sentenced the defendant to a minimum mandatory of 15 years in state prison on the trafficking count with an additional two years from and after the 15-year period of incarceration for the school zone violation.

That same month, Assistant Attorney General Philip McGovern, on assignment from the Economic Crimes Division, tried a case before a jury in Suffolk Superior Court and convicted the defendant of trafficking in over 100 grams of cocaine. The Court sentenced the defendant to a minimum mandatory term of 10 years in prison.

LANDLORD TRAINING PROGRAMS

Under the previous administration, the Division's Asset Forfeiture Unit conducted landlord training seminars. These seminars were designed to educate landlords about their rights and responsibilities with respect to tenants who are utilizing property as a drug distribution site. The SI&N Division will continue to offer these trainings to interested organizations such as Section 8 Housing Administrators.

In conjunction with these landlord training seminars, the Asset Forfeiture Unit distributes manuals for reference. These manuals, which include discussions ranging from proper tenant screening methods to the legal consequences for landlords who fail to evict drug-dealing tenants, have proven highly useful and popular in the past.

LAW ENFORCEMENT SUPPORT

Assistant Attorneys General, State Police Officers and investigators assigned to the SI&N Division also continue to work with and provide technical, legal, and other forms of investigative support and assistance to numerous federal, state, and local law enforcement agencies. These agencies include the Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, United States Customs Service, Drug Enforcement Administration, Internal Revenue Service, United States Postal Service, Department of Corrections, District Attorneys' offices, court house security personnel and various state and local police departments and task forces throughout the Commonwealth and in some circumstances across the country. These joint undertakings include investigations of major money laundering and drug distribution organizations, identification fraud enterprises, and counterfeit currency producers.

Presently, the Division is establishing an ongoing relationship with the State Police Gang Unit, the Violent Fugitive Arrest Squad, and the State Fire Marshal's Office. The goal of the development of these interagency relationships is to enhance law enforcement's effectiveness in (1) dealing with gang intervention and prosecution, (2) capturing and prosecuting violent fugitives from justice, and (3) investigating arson rings and so-called arson-for-hire plots and ensuring successful prosecution.

NON-CASE RELATED INITIATIVES

Members of the Division also participate in a number of training programs to enable them to better serve the law enforcement community and the public in general. In April of 1999 for example, Assistant Attorneys General John Grossman and Eliot Green attended a three-day course on arson investigations and prosecutions. Also, in June of 1999, Assistant Attorney General William Bloomer attended a week-long course in Washington D.C. sponsored by the National Association of Attorneys General which addressed the proliferation of computer crimes and the use of computers to facilitate traditional criminal activity as well as the proposed strategies for dealing with "cyber criminals."

In addition to performing their traditional duties as prosecutors, Assistant Attorneys General assigned to SI&N Division also act as point persons for the office on a variety of topics that require specialized knowledge in certain areas of law. For instance, Assistant Attorney General John Grossman provides advice and assistance to attorneys and police officers across the state in rendition matters. In addition, Assistant Attorney General William Weinreb fields inquiries directed to the Division on matters concerning the Criminal Offender Records Information (CORI) Act.

Similarly, Assistant Attorneys General assigned to SI&N Division provide service and assistance both in and out of the office that exceed the scope of traditional prosecutorial responsibilities. Assistant Attorney General William Bloomer presently serves on a legislative subcommittee that is gathering information and studying various legislative and programmatic issues within the area of gang prevention, intervention, and prosecution. Assistant Attorney General Eliot Green is the Division's Intern Coordinator who supervises and monitors the progress of the legal interns assigned to the SI&N Division.

SUMMARY OF SI&N DIVISION ACTIVITIES

During FY99, the SI&N Division initiated over 80 separate criminal cases. The Division also disposed of approximately 92 criminal cases during this time period.¹ At any given time, the Division generally has 50 prosecutions or more pending in various courts throughout the Commonwealth, over 15 ongoing investigations, and a handful of post trial motions that require written responses and court appearances. Also during FY99, the SI&N Division's Asset Forfeiture Unit initiated 29 separate drug related civil forfeitures.

¹ This figure is based upon an extrapolation of data from January through July of 1999.

FAMILY AND COMMUNITY CRIMES BUREAU

VICTIM COMPENSATION AND ASSISTANCE DIVISION

FAMILY AND COMMUNITY CRIMES BUREAU

The Family and Community Crimes Bureau develops and coordinates policy, programs, legislation and training for law enforcement, educators and other professionals on behalf of the Attorney General in the following areas: family violence, juvenile justice and youth violence prevention, victim rights, and the protection and education of children. The Bureau also houses the Victim Compensation and Assistance Division which reviews and awards claims for compensation filed by victims of violent crimes.

Throughout FY'99, the Family and Community Crimes Bureau continued its efforts to provide training and assistance to law enforcement. In September, the Attorney General hosted the Eighth Annual Domestic Violence Conference titled "Domestic Violence Enforcement: Where Do We Go From Here?" Over 300 police officers from across the state attended the conference. In the Fall, the Bureau consulted with Project Harmony, a non-profit cultural organization which implements training and education programs for law enforcement and criminal justice experts in Russia and the Ukraine. An Assistant Attorney General assigned to the Bureau was a team member from Massachusetts which provided training to multi disciplinary providers in Kiev and Odessa, Ukraine as part of their Domestic Violence Community Partnership Program. In July, 1998, a staff member, along with the Jewish Community Relations Council, Combined Jewish Philanthropies, and others from Massachusetts presented a Domestic Violence Training Program in Haifa, Israel. Training efforts continued as the Attorney General's staff participated in a Hate Crimes Training Seminar for police in Lowell MA, sponsored by the Department of Justice on March 10, 1999. Victim rights and victim compensation training was provided to police officers at Tufts University and Norwood Police academies in March and April 1999 by a member of the staff at a training program for sexual assault detectives. The Bureau continued to respond to issues facing law enforcement and criminal justice professionals by providing a Domestic Violence Update in the *Law Enforcement Newsletter* which was distributed to police departments across the state.

As part of its ongoing efforts on behalf of crime victims, members of the Bureau participated in the Annual Victim's Rights Conference sponsored by the Massachusetts Office of Victim Assistance (MOVA). In addition to attending the conference, Bureau staff members participated on panels at the conference workshops. Additionally, a staff member serves on the Crime Victims Working Group of MOVA, which is reviewing the state of victim services in Massachusetts.

The Office continued its commitment to youth safety and education by publishing its bi-annual *Safe Schools Newsletter*. The newsletter informed school administrators about safety issues and programs and provided an update on pertinent legal issues. In Fall 1998, the Attorney General hosted a conference entitled "Safe Schools: Beyond the Metal Detector" for school administrators and law enforcement officials. It addressed a variety of issues including at-risk youth and effective prevention and intervention strategies. The Bureau published a resource guide for schools and communities, "More Than Child's Play: Preventing Truancy and Promoting Success," and a guide to community based services for truant youth. Bureau staff contributed to the Boston Bar Association's Report on Truancy issued in the summer of 1998. The report outlined specific recommendations to prevent truancy in the Boston Public Schools.

The Bureau actively participated in several organizations throughout the year. The Bureau joined other employers to support "Employers Against Domestic Violence". This organization, under the leadership of the Boston law firm, Mintz, Levin, Cohen, Ferris, Glovsky and Popeo, provides training, education and guidance to employers on protecting victims of domestic violence and responding to their needs.

Assistant Attorneys General continued to represent the Attorney General on, and actively participate in, the work of the Governor's Commission on Domestic Violence. Bureau staff members continue to attend and actively participate in Commission sponsored subcommittee meetings. These subcommittees include the Legislation, Community Education, and Training Subcommittees and the Children's Working Groups. Additionally, Bureau members attend monthly Statewide Prosecutor and Advocate Group meetings. These meetings address domestic violence issues raised by advocates and prosecutors working in this area. Further, members of this organization participate in the planning for the Annual Statewide Conference, scheduled for November 1999.

The Bureau continued to review and draft legislative proposals. Some examples include the information sharing bill, designed to enhance inter-agency communication in criminal proceedings regarding juvenile and youthful offenders. To further protect victims of domestic violence, a proposal was introduced to protect the confidentiality of addresses and telephone number of individuals who obtain abuse prevention orders.

Bureau attorneys were active in the passage of the new gun control law, passed on July 23, 1998 and effective October 21, 1998. The comprehensive statute, An Act Relative to Gun Control in the Commonwealth, made significant changes to the then-existing firearms law. In an

effort to aid police departments in understanding and implementing the provisions of the new act, Bureau staff prepared and distributed to the law enforcement community documents summarizing the law and its major provisions. In addition, the Bureau participated in a seminar on the new firearms law, sponsored by the Massachusetts Chiefs of Police Association.

Bureau staff also participated, along with staff members of other bureaus, in the development of the new sex offender registry law, An Act Improving the Sex Offender Registry and Establishing Civil Commitment and Community Parole Supervision for Life for Sex Offenders. As part of this process, Bureau attorneys considered and analyzed legal issues arising out of the proposed legislation. The staff also reviewed and commented upon related bills sponsored by various members of the Senate and House of Representatives.

The Child Witness to Domestic Violence Project, a collaboration of the Office of the Attorney General and the Child Witness to Violence Project at Boston Medical Center, continued the trainings that were started in January 1998. The goals of the conferences were to raise awareness among multi disciplinary providers of the impact of exposure to domestic violence on children, to increase identification of these children, to enhance the skills of multi disciplinary providers to intervene safely and effectively with them, and to foster collaboration on the community level and knowledge of existing resources. In Fall 1998, four one-day regional trainings were presented in the Bristol, Cape and Islands, Norfolk, and Plymouth counties, completing the goal of providing one in each county throughout the Commonwealth. A total of over 2300 providers from the fields of law enforcement, domestic violence, health, mental health, education, community services, early childhood education, legal services, and child protection participated. Each training was developed and implemented in coordination with the local District Attorney, the Department of Social Services' Domestic Violence Unit, and area programs. Three two-day clinical seminars were presented for providers in Northeastern, Southeastern, and Western Massachusetts. Over 170 mental health providers participated in this advanced course on intervention strategies with children and families exposed to domestic violence.

In January 1999, the Office of the Attorney General and Child Witness to Violence Project at Boston Medical Center issued a Project Report which contained the information gathered on a regional basis from conference participants. This information included the unmet needs of providers in helping families affected by domestic violence within their communities and potential action steps that they could take on a local level. The report was distributed to all members of the Governor's Commission on Domestic Violence, presenters at the conferences, and other providers within the Commonwealth.

The Child Witness to Domestic Violence Project is funded through a federal Violence Against Women Act grant administered through the Executive Office of Public Safety. In October 1998, a proposed Phase II was funded through November 1999, enabling the project to continue its clinical trainings and to expand upon its efforts to give providers guidance within their particular fields. In May 1999, over 60 mental health providers participated in a clinical seminar. The development of specialized trainings for law enforcement and school professionals, to be presented in Fall 1999, was started.

In June 1999, the Project Coordinator participated in and presented the Child Witness to Domestic Violence Project's accomplishments at *Safe from the Start: A National Summit on Children Exposed to Violence*, sponsored by the United States Department of Justice and the United States Department of Health and Human Services.

VICTIM COMPENSATION AND ASSISTANCE DIVISION

The Victim Compensation and Assistance Division provides financial compensation, referrals and other assistance to victims of violent crime. Most significantly, it assists qualifying victims and their families in paying for out-of-pocket medical expenses, lost wages, funeral and burial and other crime-related expenses. Since 1994, the Division has assumed legal and administrative responsibility for receiving, investigating and determining all compensation claims in accordance with the requirements of G. L. C. 258C. Previously, compensation claims were determined through a litigation-based process in the district courts.

Fiscal Year 1999 reflects a general consistency with previous years in expenditures, numbers of claims received and claims processing patterns. Despite the fact that fewer violent crimes were committed in the Commonwealth, and the program operated throughout much of the year with a reduced number of staff, the Division was able to maintain a stable caseload, most likely due to expanded outreach efforts.

The Victim Compensation Program received an Innovations award at the annual Victim Rights Conference at the State House. The staff were honored for programmatic reforms, making the process of applying for compensation less cumbersome.

CLAIMS ACTIVITY

The Victim Compensation and Assistance Division received 1125 claims in FY 99. This figure reflects a slight decrease from the previous year (1139).

Of all of the claimants who were determined eligible during the year, 626 were awarded compensation for crime-related expenses. There were 477 claims reopened this year for compensation of additional expenses. This number reflects a 23% increase over last year's reopenings.

Under G. L. C. 258C, claimants who are not satisfied with decisions made on their claims, either to award or deny compensation, have the opportunity to request an administrative and/or judicial reconsideration of their claim. In 1999, 63 claimants, approximately 5% of all claimants, requested administrative review. Forty one of those claims were reviewed and decisions were affirmed. The remaining 22 were modified or reversed. Only three claimants requested judicial review.

The number of homicide claims increased slightly from 112 last year to 116 this year. Sixteen percent (19) of these homicides were related to domestic violence.

EXPENDITURES

In FY 99, the Commonwealth paid \$2,246,954 in compensation claims to crime victims. This marks a reduction of \$496,203 from last year and the third consecutive year there has been adequate funding to support expenditures.

Although claimants are statutorily able to receive up to \$25,000 for compensable expenses, only 25 claimants received the maximum allowed during FY 99. Compensation for lost wages and loss of support continues to be the category of expense with the highest expenditure (39%). Hospital, medical and dental is the second highest expenditure (31%), and mental health counseling expenses next (13%).

OUTREACH AND TRAINING

Outreach and training remained a primary focus for FY 99. Training was provided to numerous programs including Clinical and Support Options, the Victims of Violence Program, Cambridge Hospital's Community Crisis Response Team, Beth Israel/Deaconess, Behavioral Health Collaborative, Charles River Hospital, Mothers Against Drunk Driving, Lowell General Hospital and Noble Hospital.

Victim Compensation staff provided training to several of the District Attorneys' Victim Witness

Assistance programs and advocates in the Department of Correction's Victim Service Unit. Victim Compensation staff also did presentations for several police departments and police training academies.

With Victim of Crime Act (VOCA) funding, additional outreach materials were printed: 8,000 posters, 50,000 pocket cards, 26,000 applications in English and Spanish and 2,000 calendars for distribution at the Victim Rights Conference.

Letters from the Attorney General, with materials, were sent to all of the police chiefs, district attorneys and victim/witness program directors. A radio public service announcement was produced and distributed throughout the Commonwealth.

AUTOMATION

The Division invested a great deal of time and effort to implement a newly created, automated claims processing system. With one complete year of operation, staff will continue to work to refine the processing of claims.

PROGRAM EVALUATION

An applicant survey is sent to each claimant with decisional letters. The Division received 426 completed surveys from claimants. Surveys were overwhelmingly positive, with more than 90% of claimants agreeing or strongly agreeing that applications are easy to complete, letters easy to understand, victim compensation staff treated them with courtesy and respect, their questions were answered, they were satisfied with the decision on their claim and the amount of time it took to process their claim.

LEGISLATIVE ACTIVITY

A bill to further amend the Victim Compensation Law was filed by Representative John Rogers. This bill would expand certain benefits under G. L. c. 258C. The Division will continue to seek passage of this bill which would assist crime victims to pay for most requested crime-related costs.

GOVERNMENT BUREAU

ADMINISTRATIVE LAW DIVISION

TRIALDIVISION

ENVIRONMENTAL PROTECTION DIVISION

GOVERNMENT BUREAU

The Government Bureau provides representation for the Commonwealth and its agencies and officials in all types of civil litigation, and for employees of the Commonwealth with respect to certain civil claims made against them resulting from the performance of their duties. The Attorney General's environmental enforcement function also falls within the Government Bureau. In addition, the Bureau includes a special unit that focuses on civil cost recovery in the \$10.8 billion Central Artery/Tunnel Project.

A major priority of the Bureau is improving the functions of government. Many of the cases and initiatives discussed below reflect that priority. In addition, bureau attorneys have advised agencies in numerous ways how to reduce accidents and legal errors, thereby eliminating liability and injury to the public. The Bureau also provides general advice and consultation to officials with respect to legal issues arising in connection with their official functions, particularly in instances where such advance consultation may serve to prevent unnecessary litigation. As in previous years, the Bureau in fiscal year 1999 continued and expanded its efforts to develop and maintain close working relationships with agency counsel and to provide them with information and advice on matters of broad common interest. A meeting with all agency general counsel was held in May of 1999.

The Government Bureau consists of an Administrative Law Division, a Trial Division and an Environmental Protection Division. During fiscal year 1999, several attorneys were assigned permanently to work in more than one division, and we continued to assign a sampling of cases from each division to attorneys in the other, so as to broaden the exposure of the attorneys to the full range of cases the divisions handle. In addition, a number of particularly complex and significant cases were handled by teams assigned to multiple divisions. All three divisions initiate affirmative litigation on behalf of state agencies and the Commonwealth and submit briefs *amicus curiae* in cases presenting issues of law affecting the Commonwealth's interests.

The Administrative Law Division defends suits concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief. The division is also responsible for the legal review of all newly enacted town by-laws; the preparation of legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties; and the review of proposed statewide initiative and referendum questions under amendment article 48 of the Massachusetts Constitution to determine whether such questions are of the type that may lawfully appear on the ballot.

The Trial Division defends suits seeking damages or other relief for alleged wrongful acts of government officials or employees, particularly contract-related disputes, real estate matters, torts, civil rights violations, employment disputes and environmental damage claims. The Trial Division also reviews certain contracts, leases, bonds and various conveyancing documents submitted by state agencies for approval as to form.

The Environmental Protection Division represents the Commonwealth's environmental agencies in affirmative litigation to enforce environmental laws and in defensive litigation challenging those agencies' regulatory and enforcement activities. The Environmental Protection Division also plays a key role under the Clean State initiative to ensure that the Commonwealth's own agencies abide by state and federal environmental laws, and in doing so the Division may bring enforcement actions against those agencies where the Attorney General, in his enforcement discretion, deems such action necessary. There is significant overlap between the other divisions of the Government Bureau and the Environmental Protection Division in substantive legal issues addressed in litigation, the nature of the litigation and interactions with agencies. The organization of these divisions within one bureau promotes the sharing of resources and expertise, and the coordination of positions taken in cases. In addition, this organization makes the substantive expertise of the Environmental Protection Division more readily available to other agencies in environmental matters.

Finally, the work of the Central Artery/Tunnel Project ("CA/T Project") Civil Cost Recovery unit, presently made up of an attorney director and support staff, often is performed jointly with the Criminal Bureau or the Business and Labor Protection Bureau. The unit has diverse responsibilities with respect to the CA/T Project in addition to the investigation and prosecution of fraud cases and other cost-recovery matters, including: participation in the activities of the CA/T Project Oversight Coordination Commission; working with CA/T Project personnel and counsel to implement effective cost-containment and anti-fraud measures, including procedures to reduce the incidence and cost of defensive litigation; and the promotion of legislation that would facilitate civil cost-recovery actions by the Commonwealth.

AFFIRMATIVE LITIGATION

The Government Bureau maintained an active docket of affirmative litigation in fiscal year 1999 to assert the public interest and the interests of its state agency clients.

In Commonwealth v. Harvard Pilgrim Health Care, the Attorney General filed suit in state

court challenging the federal Medicare preemption of Massachusetts laws requiring outpatient prescription drug benefits for senior citizens enrolled in Massachusetts health maintenance organizations. In a companion case, Mass. Assoc. of HMO's v. Commissioner of Insurance, the federal court ruled that the Massachusetts laws were preempted. The Attorney General has filed an appeal in the First Circuit Court of Appeals. In Commonwealth v. TLT Construction Co., an action filed on behalf of the Trial Court and the Division of Capital Asset Management to recover damages for the poor indoor air quality arising from the renovation of the exterior of the Suffolk County Courthouse, the Commonwealth received nearly \$1.5 million in partial settlements with the architect and product manufacturer. The remainder of the case is scheduled for trial in October, 1999.

In Attorney General v. McHatton, a quo warranto action challenging whether a candidate elected as a Chelsea City Councillor could take office despite city charter provisions making persons previously convicted of misconduct in office ineligible to serve, the Supreme Judicial Court held that the defendant was barred from taking office.

After extensive discovery and mediation in Commonwealth v. Ruggles Center Joint Venture et al., the Commonwealth received a settlement of more than \$4.5 million in compensation for its losses in connection with the indoor air quality problems that required the Registry of Motor Vehicles to vacate its headquarters at Ruggles Center. As part of the same settlement, Commonwealth employees received an additional million dollars to compensate them for their losses.

In the Electric Mutual Life Insurance Company (EMLICO) litigation, the Supreme Judicial Court denied the Commissioner of Insurance's petition to establish a Massachusetts receivership for EMLICO, a Massachusetts insurer that moved to Bermuda. The Commonwealth has appealed the Superior Court's decision in Commonwealth v. Smith (Robie Properties) that the Massachusetts Highway Department was not entitled to recover the costs of environmental cleanup at a site taken by eminent domain.

In Attorney General v. MHRI, the Commonwealth is seeking to recover proceeds from the development of medical products at the state's biological laboratories. In Commonwealth v. Boston Community Services, Inc., the Attorney General filed suit against a Boston non-profit group for allegedly overcharging more than \$200,000 under state contracts to provide clinical and residential mental health services to clients of the Department of Mental Health, Department of Mental Retardation, Department of Public Health, Department of Social Services, and the Massachusetts Rehabilitation Commission.

The Unisys litigation, in which the Attorney General raised contract and performance issues

arising from a computer system installed for the Secretary of State, was successfully settled.

AMICUS CURIAE BRIEFS

The Attorney General filed an amicus curiae brief in the Supreme Judicial Court in the case of Commonwealth v. Maxim, supporting the enforcement by the District Attorney of a shell fishing regulation for the Town of Bourne. The Court held that the statute authorizing local towns to regulate shell fishing did not authorize them to regulate subsistence shell fishing by Native Americans.

Tuper v. North Adams, SJC. In this case of first impression in which the Attorney General filed an amicus curiae brief, the court decided that, based upon the clear and unambiguous language of G. L. c. 151, §46, a discharged employee could not use an administrative decision by the Department of Employment and Training offensively against his former employer in a subsequent civil action for wrongful termination.

ADMINISTRATIVE LAW DIVISION

The Administrative Law Division has three functions: (1) defense of lawsuits against state officials and agencies concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief; (2) legal review of all newly enacted town by-laws; and (3) preparation of legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties. During fiscal year 1999, significant events occurred in each of these areas.

DEFENSIVE LITIGATION

During fiscal year 1999, the Division opened 1,114 cases and closed 1,391 cases. At the close of the fiscal year, 2,312 cases were pending in the Division. Cases handled by Division attorneys resulted in 24 reported decisions of the Supreme Judicial Court, 14 reported decisions of the Massachusetts Appeals Court, 5 reported decisions of the United States Court of Appeals for the First Circuit, and 10 reported decisions of the United States District Court for the District of Massachusetts. Division attorneys also were involved in many cases in those courts and in state trial courts that resulted in unpublished decisions.

Fiscal year 1999 marked the termination of three 25-year-old consent decrees, in King v.

Greenblatt and Williams v. Lesiak, governing the administration of the Bridgewater Treatment Center for sexually dangerous persons. Early in the fiscal year, the Court of Appeals for the First Circuit upheld the District Court's modification of the decrees to allow the Department of Correction to assume responsibility for the Treatment Center in place of the Department of Mental Health, as provided by a state statute. At the end of the year, after discovery and an evidentiary hearing, the District Court terminated the decrees entirely, finding that the constitutional harm underlying the decrees had been remedied and that the defendant state officials had complied with the decrees in good faith for a reasonable period of time.

This year, the Division again spent significant time and resources defending the sex offender registry statute and other sex offender related litigation. In John Doe, Sex Offender Registry Board No. 972 v. Sex Offender Registry Board, the Supreme Judicial Court held that the Sex Offender Registry Board itself, rather than the Superior Court, may hold the constitutionally required evidentiary hearings before classifying sex offenders' risk of reoffense for purposes of community notification. The court further held that the Board may use the preponderance-of-the-evidence standard in determining an offender's risk of reoffense, rather than the clear-and-convincing evidence standard advocated by the plaintiff offenders. In John Doe, Sex Offender Registry Board No. 5350 v. Sex Offender Registry Board, the Supreme Judicial Court reversed an order of a Single Justice of the Appeals Court refusing to allow the Board to voluntarily dismiss an interlocutory appeal. In a case involving security classification of prisoners, Lyman v. Commissioner of Correction, the Appeals Court upheld as constitutional, under federal and state constitutional provisions concerning self-incrimination, ex post facto laws, equal protection, and double jeopardy, a policy of the Department of Correction requiring a sex offender to admit guilt to crimes for which he was incarcerated as a condition of moving to a lower security classification.

In two other cases brought by prisoners, the Division, along with the Criminal Appeals Division of the Criminal Bureau, successfully defended cases challenging the constitutionality of a statute requiring DNA testing of certain convicted felons. In Landry v. Attorney General, the Supreme Judicial Court held that the involuntary collection of a blood sample under the provisions of the DNA database statute did not constitute an unreasonable search and seizure and therefore vacated a preliminary injunction enjoining the implementation of the statute. In Murphy v. Department of Correction, the Supreme Judicial Court upheld, under the equal protection provisions of the state and federal constitutions, the application of the statute to a prisoner who was originally incarcerated for a covered offense and remained incarcerated, although for an uncovered offense, on the effective date of the statute.

As in prior years, the Division handled many health-care related cases. In Rolland v. Cellucci, nursing home patients with mental retardation seek declaratory and injunctive relief against various state officials, requiring the state to provide community-based services and placements to members of the plaintiff class. At the end of this fiscal year, the United States District Court denied our motion to dismiss, holding that plaintiffs had stated a claim for such relief under the Americans with Disabilities Act and under various provisions of the Medicaid Act.

In other Medicaid cases, the Supreme Judicial Court upheld, in Briggs v. Commonwealth, the Commonwealth's methodology for calculating Medicaid reimbursement for services rendered to certain individuals who are also Medicare beneficiaries and, in Massachusetts Eye and Ear Infirmary v. Commissioner of the Division of Medical Assistance, invalidated regulations of the Division of Medical Assistance governing reimbursement for inpatient, as opposed to outpatient, services. In Haverhill Municipal Hospital v. Commissioner of the Division of Medical Assistance, the Appeals Court held that the Division appropriately denied Medicaid reimbursement for sterilization services because the patient had not executed the required consent form but inappropriately denied reimbursement for labor and delivery services performed at the same time.

In another major health-related case, Philip Morris, Inc. v. Harshbarger, handled by the Division along with attorneys from the Public Protection Bureau, the Court of Appeals for the First Circuit affirmed a preliminary injunction entered by the District Court, enjoining the implementation of the Massachusetts Tobacco Ingredient Disclosure Law on the ground that plaintiffs had a likelihood of success on their claim that the statute effects a "taking" of their property without just compensation in violation of the Fifth Amendment. In yet another health-related case, Veksler v. Board of Registration in Dentistry, the Supreme Judicial Court held that the Board was required to hold a hearing prior to imposing disciplinary sanctions on a dentist, where the dentist did not contest her culpability but did wish to present evidence relevant to the sanction to be imposed by the Board.

In fiscal year 1999 the Division was also involved in several cases involving elections issues. In Hurst v. State Ballot Law Commission, plaintiffs challenged the inclusion of a referendum question on the statewide election ballot on various procedural grounds, all of which were ultimately rejected by the Supreme Judicial Court. First, the court upheld the Commission's conclusion that the positioning on the petition form of the required summary of the challenged law and the names and addresses of the first 10 signers of the referendum petition did not violate the

referendum provisions of the Massachusetts Constitution. Second, the court held that petition forms that bore extraneous pre-printed or hand-stamped information were not "exact copies" of the forms provided by the Secretary of State as required by the applicable statute and constitutional provision; however, the court did not apply that holding to invalidate the petitions at issue in that case. Finally, after remanding the case to the Commission for further evidentiary proceedings, the court affirmed the Commission's decision that the plaintiffs had improperly presented challenges to certain signatures. In another case challenging the same referendum petition on substantive grounds, Miller v. Secretary of the Commonwealth, the Supreme Judicial Court held that the Attorney General correctly determined that the petition was not excluded from the referendum process by constitutional language barring referenda on appropriations for the Commonwealth or its departments, boards, commissions, or institutions. Accordingly, the referendum in question, concerning the Electric Industry Restructuring Act, appeared on the ballot in the November 1998 statewide election.

The Division also reviewed two initiative petitions in fiscal year 1999, approving one and disapproving the other as required by amendment article 48 of the state constitution.

The Division also continued to handle various environmental challenges to the Central Artery/Third Harbor Tunnel Project. In Airport Impact Relief, Inc. v. Wykle, the United States District Court held that the Federal Highway Administration's approval of changes to the project without requiring a Supplemental Environmental Impact Statement was not arbitrary and capricious and that the changes did not violate a federal statute limiting transportation projects affecting public parks. Other environment cases handled by Division attorneys during fiscal year 1999 included Massachusetts Division of Marine Fisheries v. Daley, in which the Court of Appeals for the First Circuit affirmed the District Court's decision setting aside, as unsupported by the administrative record, a federal state-by-state quota for scup fishing that disadvantaged Massachusetts fishermen; Silva v. Director of Division of Marine Fisheries, in which the Appeals Court held that the Division's suspension of plaintiff's lobster permit did not constitute double jeopardy or violate his procedural due process rights; and Baker v. Cox (handled jointly with the Trial Division), in which the United States District Court entered summary judgment for the defendants on plaintiffs' claim that state officials denied their application for a permit to build a pier in retaliation for plaintiffs' opposition to environmental legislation and their litigation against a scientist who negatively reviewed their permit application.

The Division continued to handle many cases involving children and families. In Adoption of Astrid, the Appeals Court held that the trial court's findings of parental unfitness were sup-

ported by clear and convincing evidence, including the father's conviction for child endangerment in connection with the death of the parents' first child, the mother's abandonment of other children, the parents' inability to nurture any of their children; and their failure to participate in any of the proceedings involving Astrid. On the other hand, in *Care and Protection of Ian*, the Appeals Court held that the trial court's findings were stale and did not support its conclusion of current unfitness and that the trial court erroneously placed the burden on the mother to demonstrate her fitness; the court also held that the trial court applied an incorrect legal standard in ordering that visitation with the mother occur only if "therapeutically appropriate." In *L.G.G. v. Department of Social Services*, the Supreme Judicial Court held that the Department of Social Services could not be required, via a writ of mandamus, to commence a care and protection proceeding. In *Mannor v. Mannor*, the Appeals Court held that a Ohio divorce judgment, including child and spousal support orders, was enforceable and could not be overridden by a temporary order of the Massachusetts Probate Court.

During fiscal year 1999, Division attorneys handled many bankruptcy matters on behalf of state agency creditors. Two such matters, involving state taxation, resulted in reported decisions. In *Adams v. Coveney*, the United States Court of Appeals for the First Circuit held that an individual who was the president and chief operating officer of a bankrupt corporation was not personally liable for the corporation's unpaid state taxes, where he authorized his partner, the corporate treasurer and an attorney, to take charge of paying the corporation's taxes. In *Workers' Compensation Trust Fund v. Saunders*, the United States District Court for the District of Massachusetts held that a claim asserted by the state Workers' Compensation Trust Fund to recover sums that the Fund had paid to the debtor's injured employee prior to the debtor's bankruptcy filing was not entitled to priority as a claim for an "excise tax."

Division attorneys also handled a substantial number of appeals from Appellate Tax Board decisions in the state appellate courts, several of which raised constitutional issues. In Commissioner of *Revenue v. Mullins*, the Supreme Judicial Court held that the Commonwealth's Controlled Substances Tax constitutes "punishment" for purposes of the Fifth Amendment's Double Jeopardy Clause and, as a result, cannot be imposed in addition to a criminal sentence. In *Aloha Freightways v. Commissioner of Revenue*, the Supreme Judicial Court upheld a corporate excise tax on an out-of-state common carrier on the grounds that the carrier had sufficient contact with Massachusetts to support the minimum excise tax and that the minimum excise tax statute satisfied Commerce Clause requirements. In *Prudential Insurance Co. of America v. Commissioner of Revenue*, the Supreme Judicial Court upheld the validity, under the equal protection provisions of the state and federal constitutions, of the methodology used by the Commissioner

of Revenue to calculate taxes on insurance premiums of a foreign insurer.

Other tax cases handled by Division attorneys this year included Commissioner of Revenue v. Cargill, in which the Supreme Judicial Court held that a corporation that does no agricultural business in the Commonwealth is nevertheless entitled to an agricultural tax investment credit, based on the value of the corporation's qualifying property in the Commonwealth; Associated Testing Laboratories v. Commissioner of Revenue, in which the Supreme Judicial Court held that certain testing equipment was exempt from the sales and use tax where the testing occurs before the item is sold; A.W. Chesterton Co. v. Commissioner of Revenue, in which the Appeals Court reversed, as unsupported by substantial evidence, an Appellate Tax Board ruling on the timeliness of the Commissioner's assessment of an excise tax; and Farrell Enterprises, Inc. v. Commissioner of Revenue, in which the Appeals Court held that a holding company that filed consolidated returns could not use the individualized net operating loss deduction belonging to one of its subsidiaries when that subsidiary could not use the deduction in a particular tax year.

Several cases dealing with retirement benefits, handled by Division attorneys, resulted in reported decisions during the last year. In Dunn v. Contributory Retirement Appeal Board, involving competing claims to a decedent's pension benefits, the Appeals Court held that the Contributory Retirement Appeal Board ("CRAB") was not bound by the findings of the local retirement board and therefore remanded the matter to the CRAB for a de novo hearing. In Hollstein v. Contributory Retirement Appeal Board, the Appeals Court affirmed a CRAB decision denying plaintiff's claim for interest on improperly withheld retirement deductions, as unauthorized by the applicable statute. In Evans v. Contributory Retirement Appeal Board, the Appeals Court upheld CRAB's ruling that a teacher's summer school wages were not "regular compensation" within the meaning of the retirement statute.

Three employment-related cases handled by Division attorneys in fiscal year 1999 resulted in reported decisions. In Commissioner of the Department of Employment & Training v. Dugan, the Supreme Judicial Court held that the factual findings of a hearing officer in a prior disciplinary proceeding against a former court clerk, which resulted in her discharge, should have been given preclusive effect in a subsequent proceeding before the Department of Employment & Training on the former clerk's application for unemployment compensation. In P & JV of Kingston v. Massachusetts Commission Against Discrimination, the United States District Court dismissed an employer's claim that he was entitled to remove an employment discrimination proceeding from the MCAD to Superior Court immediately after an employee filed her complaint with the MCAD.

Two cases in which the Division represented the State Racing Commission resulted in re-

ported decisions in fiscal year 1999. In Wonderland Greyhound Park, Inc. v. State Racing Commission, the Supreme Judicial Court held that televising of live races constitutes "simulcasting" within the meaning of the applicable statute and that unredeemed winnings from bets placed on such races should therefore be paid over to the State Treasury in accordance with that statute, rather than retained by the racetracks. In Hotchkiss v. State Racing Commission, the Appeals Court reversed a Superior Court decision vacating the Commission's ejection of the plaintiff, a mutuel clerk, from Suffolk Downs based on his pending state and federal indictments for fencing, receiving stolen goods, and other theft-related charges. In so doing, the Appeals Court faulted the Superior Court for failing to accord sufficient deference to the Commission's factual findings and interpretation of its regulatory authority.

Cases in which Division attorneys represented the Alcoholic Beverages Control Commission included Chebacco Liquor Mart, Inc. v. Alcoholic Beverages Control Commission, in which the Supreme Judicial Court upheld the reasonableness, and hence the constitutionality, of a statutory exception to the Sunday closing laws for package stores located in municipalities within ten miles of the New Hampshire or Vermont border. In Fran's Lunch, Inc. v. Alcoholic Beverages Control Commission, the Appeals Court upheld the ABCC's conducting of "sting operations" as a means of enforcing the prohibition on serving liquor to minors. In Massachusetts Food Association v. Sullivan, the United States District Court granted our motion to dismiss plaintiffs' claim that a state statute limiting an entity to three retail liquor licenses violates the federal antitrust laws and denied motions to intervene filed by trade associations of liquor wholesalers and retailers.

Among the insurance-related cases handled by Division attorneys during the past year were DiBiase v. Commissioner of Insurance, in which the Supreme Judicial Court held that a policy holder's constitutional challenge to the legislative conversion of the savings bank life insurance system to a single stock company was barred by the applicable statute of limitations and that the policy holder had no right to any greater notice than that provided by the legislation itself; and Nercessian v. Board of Appeal on Motor Vehicle Liability Policies & Bonds, in which the Appeals Court held that the scope of judicial review over the Board's decisions to uphold motor vehicle insurance premium surcharges under the Safe Driver Insurance Plan is limited to correcting errors of law.

In fiscal year 1999, as in prior years, most of the cases handled by Division attorneys involved appeals from agency decisions under the State Administrative Procedure Act. In addition to many of the cases described above that fall into that category, these cases also included

Cablevision Systems Corporation v. Department of Telecommunications & Energy, in which the Supreme Judicial Court dismissed, for lack of standing, Cablevision's appeal from the Department's order allowing Boston Edison to establish a holding company.

The Division attorneys also handled other significant cases in the federal courts during fiscal year 1999. In National Foreign Trade Council v. Baker, the United States District Court held that a nonprofit organization advocating for open international trade had standing to challenge Massachusetts' "Burma Law," which generally prohibits the Commonwealth from purchasing goods or services from companies or individuals doing business with Burma, and further held that the Burma Law unconstitutionally impinges on the federal government's exclusive authority to regulate foreign affairs. That decision was affirmed by the United States Court of Appeals, which further found that the Burma Law violates the Foreign Commerce and the Supremacy Clauses of the United States Constitution. In Stern v. Supreme Judicial Court for the Commonwealth, in which the United States Attorney sought to enjoin individual district court judges from enforcing a Massachusetts Rule of Professional Conduct against federal prosecutors, the United States District Court upheld the application of the state ethical rule. In Trustees of Boston University v. ASM Communications, the United States District Court held that there is no private right of action to enforce a criminal statute prohibiting the sale of term papers.

MUNICIPAL LAW UNIT

The Attorney General's Office is required by statute to review most legislative actions taken by the more than 300 towns throughout the Commonwealth, consisting mostly of general, zoning, and historic district by-laws. Under G.L. c. 40, § 32, the Attorney General exercises a limited power to disapprove local legislative action if found to be inconsistent with the laws and the Constitution of the Commonwealth. The Attorney General has 90 days from the date on which the by-law amendments are received to complete his review. Under the Home Rule Procedures Act (G.L. c. 43B) the Attorney General is required to render an opinion on every proposed new charter or proposed charter amendment adopted by any city or town in the Commonwealth. These reviews are performed by the attorneys in the Municipal Law Unit within the Administrative Law Division of the Government Bureau, with the assistance, as necessary, of attorneys from the other bureaus of the Attorney General's Office.

During fiscal year 1999, the Municipal Law Unit reviewed 660 general by-laws, of which 568 were

approved (86.1%), 25 were disapproved (3.8%), nine were approved with partial deletion (1.4%), and 58 were returned with a finding that no Attorney General action was required (8.8%); 1,065 zoning by-laws, of which 938 were approved (88.1%), 93 were disapproved (8.7%), 26 were approved with partial deletion (2.4%), and eight were returned with a finding that no Attorney General action was required (0.8%); 160 zoning map amendments, of which 153 were approved (95.6%), five were disapproved (3.1%), and two were approved with partial deletion (1.3%); eight historic district by-laws, of which six were approved (75.0%), one was disapproved, and one was returned with a finding that no Attorney General action was required; and 17 municipal charter matters.

General by-laws pertain to town governance and the exercise of municipal power under the Home Rule Amendment and other powers expressly conferred by the Legislature. The principal subjects of general by-law legislation during the past year included wetlands protection, earth removal, and First Amendment issues.

Zoning by-laws strike the balance between a property owner's right to use and enjoy private property and a municipality's exercise of police power to regulate uses of land for the common good. During fiscal year 1999 the most common subjects of local zoning by-law amendments were adult businesses, telecommunications facilities, growth control, flexible zoning, and open space techniques.

The attorneys in the Municipal Law Unit are often assigned initial assessment of lawsuits in which the legality or constitutionality of state and local laws are challenged and are asked to make a recommendation as to whether the Attorney General should appear and be heard in the matter. By court rule and statute, notice to the Attorney General is required wherever such a challenge is made. In most instances the Attorney General does not intervene, and in these instances the litigation is monitored by Unit attorneys to ascertain whether any municipal law issue of state-wide significance emerges in the case that might warrant later intervention and participation by the Attorney General. In addition to matters currently in litigation.

This has been a busy year for the Municipal Law Unit, which consolidated most administrative and operational functions of the Unit in the Attorney General's Western Massachusetts Office in Springfield. With assistance from volunteer interns, the Municipal Law Unit has well under way its project of collecting and cataloguing by-law endorsement letters issued by the Unit since the time when those letters were first generated on word processors and stored electronically. The objective is to assemble and catalog Unit work product to facilitate our future by-law review functions and to enhance our consistency with past determinations. The final product

will also be a useful tool in personnel training when staff changes occur within the Unit. The Unit has also begun a process for organizing all closed files for archival purposes in ways that later facilitate search and retrieval.

In other areas, there has been a dramatic increase this year in the number of public records requests for by-law endorsement letters. During the fiscal year \$2,340.27 was remitted to the state treasury for searching, copying, and mailing. Unit staff responded to an increased number of letters and telephone calls from local public officials and from the general public relating to municipal law issues. Unit personnel represented the Attorney General this year in over fourteen workshops and seminars conducted for local public officials and municipal attorneys.

OPINIONS

The Attorney General is authorized by G.L. c. 12, §§ 3, 6 and 9, to render formal opinions and legal advice to constitutional officers, agencies and departments, district attorneys, and branches and committees of the Legislature. Formal, published opinions are given primarily to the heads of state agencies and departments. In limited circumstances, less formal legal advice and consultation is also available from the Opinions Coordinator, as is information about the informal consultation process. The questions considered in legal opinions must have an immediate concrete relation to the official duties of the state agency or officer requesting the opinion. Hypothetical or abstract questions, or questions which ask generally about the meaning of a particular statute, lacking a factual underpinning, are not answered.

Formal opinions are not offered on questions raising legal issues that are the subject of litigation or that concern ongoing collective bargaining. Questions relating to the wisdom of legislation or administrative or executive policies are not addressed. Generally, formal opinions will not be issued regarding the interpretation of federal statutes or the constitutionality of enacted legislation.

Formal opinion requests from state agencies that report to a cabinet or executive office must first be sent to the appropriate secretary for his or her consideration. If the secretary believes the question raised is one that requires resolution by the attorney general, the secretary then requests the opinion.

During fiscal year 1999, the Attorney General issued one formal Opinion, addressed to the Secretary of the Commonwealth (Opinion No. 98/99-1). In the Opinion, the Attorney General reviewed

proposed ballot questions transmitted by the Secretary and concluded that, with two exceptions, each of the proposed ballot questions was a question of “public policy” within the meaning of G.L. c. 53, § 19, that could appear on the November 1998 ballot in the form provided in the Opinion. During the same time period, the Attorney General issued 31 letters providing informal advice or declining to give advice. (A copy of this formal opinion is included at the end of this report.)

THE TRIAL DIVISION

The Trial Division handles civil cases brought against the Commonwealth and its officers and employees in torts, real estate, employment, civil rights, contracts and other miscellaneous areas. In almost all of these cases the plaintiffs are seeking money damages, although in some they also seek injunctive or declaratory relief. The Division’s AAGs carry heavy caseloads, and the work of the Division is determined almost entirely by how many cases plaintiffs file; in fiscal year 1999 the Division received 537 new cases and closed 529 cases. Most of the Division’s cases that are not dismissed by the courts are settled, as most civil cases are nationwide. The Division emphasizes early evaluation of cases for settlement, disposition by motion, or more protracted litigation. The Division encourages alternative dispute resolution whenever possible and appropriate. In all instances the Division’s goals are to present strong and effective defenses to these lawsuits consistent with ensuring fair and just results for the complaining parties and the Commonwealth.

TORT CASES

The Division opened 370 new tort cases in fiscal year 1999 and closed 373. The following descriptions offer a sample of the kinds of tort cases which the Division resolved during the year.

- **Deandrade v. State Police** (Bristol Superior) After a two day trial of this case in which a State Police vehicle hit the plaintiff’s vehicle in the rear, the jury rendered a verdict for the defendants, finding that the defendant’s negligence was not the proximate cause of the injury.
- **Gero v. T. L. T. Construction Co. and Commonwealth** (Essex Superior) The plaintiff sued for personal injuries that allegedly occurred in 1992 at Taunton State Hospital. The plaintiff claimed that at the time of the alleged incident he was reporting to a job site for the defendant T. L. T. when he tripped and injured himself on a duct embankment in a maintenance tunnel. At the end of the second day of trial, the case settled through a payment made by the contractor.

- **Sarao v. MDC** (Middlesex Superior) After a three day trial, a jury rendered a verdict for the Commonwealth in a case in which the plaintiff suffered a depressed skull fracture after tripping over a rope that crossed a walkway at the Waltham Skating Rink.

Most tort cases do not go to trial, but are either disposed of in pre-trial proceedings or are settled. The following cases are examples of Division tort cases disposed of without trial in fiscal year 1999.

- **Dever v. Commonwealth et al** (Suffolk Superior) The plaintiff alleged that two troopers assaulted and falsely arrested her while she was on a photography assignment at the State House. The court granted the Commonwealth's motion for summary judgment, finding that there was insufficient evidence to show that the Commonwealth was negligent in training or supervising the troopers.
- **Knight v. Commonwealth** (Appeals Court) The plaintiff settled a property damage claim stemming from a motor vehicle accident during the presentment stage. He then brought suit for personal injury. The Appeals Court held that the personal injury claim was barred by G.L. c. 258, § 5 which provides that a public employer cannot be subject to multiple claims stemming from "the same subject matter."
- **Linda McNeil et al v. State Laboratory Institute** (Suffolk Superior) The Commonwealth settled a case brought by parents of a boy whose blood was tested at a Commonwealth facility. The test failed to detect the baby's hypothyroidism. A retest of the blood sample four months later showed a positive test result, but the test was performed after the baby had developed serious symptoms.
- **Michelle Murray et al v. EOCD et al.**, Essex Housing Court. The Commonwealth contributed to the settlement of this lead paint case which the plaintiff had brought on behalf of two daughters against the Commonwealth under a federal housing program. The plaintiff had retained several experts who were prepared to testify concerning the extent to which the children had been poisoned.
- **Nieves v. Commonwealth et al** (U. S. D. C.) The Commonwealth settled this case in which a Worcester County inmate sued for damages after a correctional officer was convicted and sentenced to three years in a federal penitentiary for strapping plaintiff into

a chair and pouring scalding water on him.

- **Smith v. Commonwealth et al** (Plymouth Superior) Prior to a hearing on the Commonwealth's summary judgment motion, the defendants settled this wrongful death action brought by the estate of a Plymouth County inmate who died after being snagged by a forage feeder that he was cleaning. The Commonwealth contributed \$10,000 towards a settlement of \$75,000.

REAL ESTATE CASES

The Trial Division handles many different kinds of real estate cases. The cases with the largest potential exposure to the Commonwealth and the most complexity often involve the taking of land by eminent domain where landowners are entitled to jury trials in cases where they are not satisfied with the award the Commonwealth has made to them in the land taking process. The Division opened 70 cases in fiscal year 1999 and closed 89. The following descriptions offer a sample of the kinds of real estate cases which the Division resolved in fiscal year 1999.

- **Anderson v. MHD** (Plymouth Superior) The plaintiff owned a commercial building in Marshfield at the time the Highway Department widened Route 139. The Department acquired a strip of land which the plaintiff owned, paying the plaintiff \$23,000. The plaintiff claimed that he was entitled to \$250,000 because he had to move parking spaces, reconfigure his parking lot, and could not expand his building. After a three day trial, the jury reached a verdict which awarded the plaintiff \$42,000.
- **Colbert v. Commonwealth** (Middlesex Superior) The plaintiff sued the Commonwealth after the Metropolitan District Commission had paid the plaintiff \$20,000 when it took a two-acre parcel of land which the plaintiff owned in Arlington. The Commonwealth had the property appraised again in preparation for trial and that appraisal valued the property at \$4,300. The plaintiff's expert testified to damages in the amount of \$205,000. The jury reached a verdict of \$11,900.
- **Glavickas v. Commonwealth** (Worcester Superior) This suit involved a taking on Route 20 in Worcester. On the day of trial the plaintiff reduced his demand of \$68,000 to \$17,500 and the case settled.
- **Jaffe v. Commonwealth** (Middlesex Superior) The plaintiff brought this suit after the Highway Department took interests in land on which plaintiff operated an auto tire

business. The Department made this taking to facilitate the Route 85 improvement project in Marlborough. The plaintiff demanded an additional payment of \$50,000, plus interest, due to the takings and the serious disruption of his business during construction. The Commonwealth had paid the plaintiff \$6,000, and the case settled for an additional \$16,500.

- **Marketplace Center v. Commonwealth** (Suffolk Superior) After a two day trial, the jury awarded the plaintiff \$312,200 in damages, excluding interest, in this case involving the taking of interests in land located in Boston for the purpose of constructing the Central Artery. The Highway Department's appraiser testified that the plaintiff's damages were no more than \$92,000; the plaintiff's appraiser testified that damages were \$394,000.
- **Rite Media, Inc. v. Massachusetts Highway Department et al** (SJC) Plaintiff, a billboard owner, sued the Commonwealth for damages it allegedly incurred as a consequence of the taking of land on which the billboard stood. The plaintiff leased the land and argued that the billboard was real property that had been taken by eminent domain with the underlying land. The Commonwealth argued that the billboard was personal property and that the plaintiff was only entitled to its leasehold interest for which it suffered no damage. The court, in a 4-2 decision, affirmed a lower court ruling and held that a lessee's billboard, subject to removal by the lessee, is personal property as a matter of law which was not taken in the eminent domain proceeding, and that the plaintiff had not been damaged by the taking of the leasehold.
- **Zora Enterprises, Inc. v. Commonwealth** (Appeals Court) The Court affirmed the grant of summary judgment for the Commonwealth in this case where Zora claimed a regulatory taking due to the delay in providing an administrative hearing on a wetlands permit application. The court reasoned that such delays commonly occur and do not constitute a regulatory taking and that nothing in the record indicated that the delay was either unreasonable or extraordinary.

EMPLOYMENT CASES

The Division opened 29 new employment cases in fiscal year 1999. The following descriptions offer a sample of the kinds of employment cases which the Division resolved during the year.

- **Damery v. Commonwealth** (Norfolk Superior) After a three-day trial, a jury handed down a verdict in favor of the plaintiff, a state trooper, who claimed that his removal from the State Police SWAT team was in retaliation for a whistleblower letter the plaintiff sent to his supervisor regarding safety concerns.
- **Hwang v. Roxbury Community College** (Suffolk Superior) A jury returned a verdict in favor of the College in this employment discrimination case. The plaintiff, a Chinese-American woman whose contract as an administrator in the Math and Science Division had not been renewed, had sued the College, which has a predominantly African-American administration, for discriminating against her on the basis of her race and national origin as well as for retaliating for complaining about the allegedly discriminatory actions of an African-American faculty member who ultimately succeeded her as the administrator.
- **Monahan v. Commonwealth** (Suffolk Superior) After a three-week trial, the jury returned a verdict in favor of the plaintiff on a claim under the whistleblower statute and awarded plaintiff \$250,000 for emotional distress and \$900,000 for economic loss. The court found for the individual State Police defendants on plaintiff's claims for violation of his First Amendment rights.
- **Peguero v. DMR et al** (Suffolk Superior) The plaintiffs in this class action suit alleged race-based disparate impact and disparate treatment with respect to layoffs at the Fernald State School due to privatization. After a three week trial, the jury returned a verdict for the Department as well as the individual defendants.
- **Sinai v. Department of Social Services** (Suffolk Superior) The court granted the Department's motion for summary judgment dismissing the plaintiff's claims that he was discriminated against on the basis of his national origin and age because he was denied interviews with the Department for social worker positions.
- **Skillman v. Administrative Office of the Trial Court** (U.S.D.C.) The court affirmed the trial court's motion to dismiss plaintiff's claims for failure to prosecute. The

plaintiff alleged that she was discriminated against on the basis of race and sex when she was fired from her position as a file clerk at the Newton District Court.

CIVIL RIGHTS CASES

Civil rights cases, defended in both the Trial Division and the Administrative Law Division, present myriad legal problems and can subject the Commonwealth to significant financial liability. Civil rights damage awards are not limited by statute, and successful litigants may recover interest, costs and attorneys fees. The Trial Division opened 19 new civil rights cases in fiscal year 1999. The following descriptions offer a sample of the kinds of civil rights cases which the Division resolved during the year.

- **Davis v. Rennie et al.** (U. S. District Court and First Circuit Court of Appeals) The plaintiff, a client of the Department of Mental Health, brought this suit against eight mental health workers, a nurse, two former commissioners of the Department and a former chief operating officer of Westborough State Hospital (the latter three being referred to as the Supervisors). The plaintiff alleged that his civil rights were violated when he was physically restrained by several mental health workers. The plaintiff also contended that one of the health workers struck the plaintiff in the head and the other workers and the nurse failed to prevent or stop it. The plaintiff alleged that the Supervisors had been deliberately indifferent to the plaintiff's rights by allowing the hiring of the mental health worker who allegedly assaulted the plaintiff and who was a convicted felon. Assistant Attorneys General represented all of the defendants except for the mental health worker who had allegedly assaulted the plaintiff and the nurse. After a four week trial, a federal jury reached a defendants' verdict in favor of the Supervisors and two of the mental health workers, but found that five of the mental health workers (including the mental health worker who had allegedly assaulted the plaintiff) and the nurse had violated the plaintiff's civil rights, and the jury assessed compensatory and punitive damages against these defendants. The Commonwealth is appealing the judgment on behalf of the nurse and the four mental health workers who were not involved in the assault.

- **Hynes v. Commonwealth et al** (Suffolk Superior) The court awarded summary judgment to two defendant social workers on claims of federal civil rights violations stemming from the placement of the plaintiff with her uncle in 1982. Plaintiff claimed that after the placement her uncle sexually abused her. The court held that the social workers were entitled to qualified immunity as they did not violate any "clearly established" right of the plaintiff of which the defendants should have had knowledge.

- **Judge v. City of Lowell, et al** (First Circuit) The court upheld the dismissal of an equal protection claim against police officers and a state medical examiner stemming from allegations that had plaintiff not been black, the defendants would have investigated her brother's suspicious death with more care and she would have been treated differently. The court wrote a major decision on the pleading standard necessary to support a civil rights claim.
- **Kelley v. Downey** (U. S. D. C.) The plaintiff alleged that the State Police mistakenly arrested him for operating under the influence when he had actually suffered a stroke. He was held at the station for several hours before being transported to the hospital. The plaintiff asserted that the delay in treatment resulted in permanent left side paralysis. Plaintiff brought suit for civil rights and ADA violations against five troopers, the Town of Norwell, and the Commonwealth. After a ten day trial, the jury rendered a verdict for all of the defendants.
- **Meehan v. Trial Court and Chief Justice for Administration & Management** (U. S. D. C.) Plaintiff challenged an order of the Administrative Office of the Trial Court which barred the plaintiff indefinitely from the Worcester County Courthouse and its buildings and grounds after he had engaged in a campaign of letters, newspaper advertisements, leafletting, and demonstrations against the probate judge who had denied him legal custody of his child and limited his visitation. The case was settled for reasonable attorney's fees after a substitute order was fashioned which merely barred plaintiff from entering the probate judge's courtroom.

CONTRACTS CASES

The Trial Division opened 45 new contracts cases and closed 43 during fiscal year 1999. The Division defended a number of cases involving state contracts during the year, including construction contracts, leases entered into by state agencies, and contracts for the purchase of goods and services. The following descriptions offer a sample of the cases resolved during the year.

- **Acme Construction Co v. TLT Construction Co. v. Commonwealth** (Suffolk Superior) After mediation, the parties settled a series of claims arising out of the rehabilitation of the Suffolk County Courthouse. The Commonwealth paid Acme \$100,000 in settlement of

plaintiff's claims which amounted to approximately \$300,000.

- **Commonwealth v. Ruggles Center Joint Venture et al** (Suffolk Superior) After an extensive mediation, the defendants settled this multi-party litigation arising out of the air quality problems at the Registry of Motor Vehicles office at Ruggles Center by paying the Commonwealth approximately \$4.5 million.
- **Maxymillian v. Commonwealth v. Conrail** (Suffolk Superior) The court granted the Commonwealth's motion for summary judgment on a claim for \$125,000 in additional costs arising out of the removal of a ledge on a bridge repair project over Conrail tracks.
- **Mui v. Salem State College** (Essex Superior) The plaintiff, a college student suspended for one semester, obtained an injunction against his suspension, pending a determination of his claims for violation of due process, contract and defamation. The plaintiff did not proceed with his case until the College informed him that he could not graduate until his suspension was served. The plaintiff then moved for an injunction to compel the College to let him graduate. The court denied the injunction, finding that the plaintiff would be unlikely to succeed in his claim and had waited too long to litigate it.
- **New England Independent Truckers Association, Inc. v. International Brotherhood of Teamsters et al** (U. S. D. C.) The court granted the Commonwealth's motion to dismiss this case involving various claims under the Labor Management Relations Act arising out of the provision of health and pension benefits to truckers on the Central Artery Project.
- **Pierce v. Massport v. DCPO et al** (Suffolk Superior) The plaintiff was injured during a fall on the roof of the State Transportation Building. A jury entered verdicts for all defendants. Massport then sought contractual indemnification from DCPO for its attorney fees under a contractual provision in which DCPO agreed "to hold the Authority harmless from any such claims and to defend the Authority from any claims from third parties resulting from any such defects. . ." The court, after a bench trial, agreed with the Commonwealth's position that this open-ended pledge of the Commonwealth's credit violated Amended Article 62, section 1 of the Massachusetts Constitution and was therefore unenforceable against DCPO.

- **SCC/Kullman Industries, Inc. v. Commonwealth** (Suffolk Superior) The plaintiff sought approximately \$4.5 million in damages incurred when the Commonwealth suspended work for several months on the construction of modular buildings for the Middlesex Community College due to fiscal problems. After several days of mediation, the Commonwealth settled the case for approximately \$1.8 million.
- **T Equipment v. Commonwealth** (Suffolk Superior) After a five day trial, the jury returned a verdict for the Commonwealth on several claims arising during the rehabilitation of the McCormack Building garage. The claims primarily involved the installation of a cathodic protection system designed to prevent corrosion of the concrete. The plaintiff sought to recover more than \$150,000 for extra costs incurred in the installation of the system.

MISCELLANEOUS MATTERS

The Division handles a number of cases that do not fit neatly into the categories listed above. The Division opened 52 and closed 24 of these cases in fiscal year 1999. The cases which were closed during the year included the following:

- **Azubuko v. Attorney General** (SJC for Suffolk County) The court dismissed a chronic pro se litigant's petition for a writ of mandamus seeking review of an injunction "precluding him from filing any new action without prior written approval of the Civil Regional Administrative Justice of the Suffolk County Superior Court." In entering the injunction, the lower court found that the plaintiff repeatedly filed the same claims against the same or related parties. The court ruled that mandamus is not the proper vehicle to seek appellate review of an injunction issued by the Superior Court.
- **Clemente v. State Board of Retirement** (Plymouth District Court) The court affirmed the Board's decision which revoked plaintiff's state pension benefits based upon plaintiff's participation in a criminal scheme to defraud the Commonwealth by stealing police promotional examinations, giving or selling them to other police officers, and breaking into state offices to alter test scores so that police officers could obtain promotions and salary increases.
- **Cramar v. DET** (Appeals Court) Plaintiff voluntarily dismissed its appeal of a DET ruling which found that individuals who worked for plaintiff, a home inspection company, were employees and not independent contractors for the purposes of the unemployment insurance

fund.

ABANDONED HOUSING PROJECT.

Several members of the Trial Division have been actively involved in the Attorney General's Abandoned Housing Project. This past year, Assistant Attorneys General have been successful in having the courts appoint receivers in Brockton and Boston, while the project's work continues in these and other cities with respect to other properties. The project is designed to assist local community groups in choosing and appointing their own people to take over abandoned houses which, due to the absentee owner's indifference, has created a health, safety and crime hazard for the community. The Assistant Attorney General's role consists of assisting the community groups by petitioning the respective court in the name of the Attorney General for an order permitting the community to appoint their receiver and take charge of the blighted property, for the benefit of the neighborhood. Once the receiver is appointed, the community itself (and its receiver) takes over the actual repair and rehabilitation.

ENVIRONMENTAL PROTECTION DIVISION

The Environmental Protection Division (EPD) serves as litigation counsel on environmental issues for various state agencies, particularly those within the Executive Office of Environmental Affairs. EPD handles the Commonwealth's civil litigation to enforce environmental protection programs established by state statutes and regulations, including laws governing air pollution, water pollution, water supply, waterways, wetlands, hazardous and solid waste. EPD also plays a key role under the Clean State Initiative to ensure that the Commonwealth's own agencies abide by state and federal environmental agencies, and in doing so the Division may bring enforcement actions against those agencies in court where the Attorney General, in his enforcement discretion, deems action necessary. Based on the Attorney General's broad authority to protect the environment of the Commonwealth, EPD initiates and intervenes in state and federal litigation, and participates in administrative proceedings before federal agencies on significant environmental issues. EPD defends lawsuits challenging the actions of state environmental agencies and the legality of state environmental laws.

During fiscal year 1999, EPD handled enforcement proceedings leading to judgments requiring future payments to the Commonwealth of \$3,269,416. These are figures for penalties and cost recovery awarded in fiscal 1999, whether or not actually paid in fiscal 1999. Actual payments received by EPD, in fiscal year 1999, were \$2,817,539 for civil penalties and \$1,886,688 for hazardous material cost recovery, for a total of \$4,704,228. Other cases resulted in court judgments requiring private parties to undertake costly cleanups of environmental problems for which they were legally responsible -- a savings of millions of dollars to the Commonwealth. In fiscal year 1999, the Division opened 45 new cases or matters and closed 145 cases or matters.

STATE ENFORCEMENT AND COST RECOVERY LITIGATION

One of the most important functions of EPD is to bring litigation to enforce state and federal statutes. In the past fiscal year EPD handled numerous major enforcement cases including the following:

AIR POLLUTION

Significant air pollution matters during the fiscal year included Commonwealth v. Borden & Remington Corporation. The defendants, a Fall River Company and one of its owners, agreed to pay \$375,000 in civil penalties for operating without air permits, under-reporting emissions of volatile

organic chemicals, failing to install a wastewater pretreatment system for naphthalene, discharging heated water from its industrial processes into Mount Hope Bay without a permit, and violating hazardous waste management regulations. The defendants agreed to pay an additional \$100,000 to the Massachusetts Environmental Trust to be used for a water-related program to benefit development in Fall River. They also agreed to conduct comprehensive environmental auditing of their facilities.

In Commonwealth v. Bay State Sterling, Inc., a Westborough company agreed to pay a \$850,000 civil penalty to settle the Commonwealth's allegations that it had violated state air pollution and hazardous waste laws. The consent judgment in the case required the company to come into full compliance and to implement an environmental mitigation package that includes conducting an environmental audit and reducing or eliminating the use of eleven toxic chemicals.

The final judgment entered in Commonwealth v. Churchill Coatings Corporation required a Massachusetts company that pre-stains and pre-paints wood siding for use in the building industry to pay a \$150,000 civil penalty and to reduce over time its overall emissions of volatile organic compounds. The company failed to obtain from DEP all of the air pollution permits required for its two facilities in Worcester and Palmer. This was the third in a series of woodcoater cases designed to encourage members of the Massachusetts woodcoating industry to adopt new materials and processes to reduce their emissions of volatile organic compounds.

In Commonwealth v. Boston Edison Company, the first enforcement matter based on a company's Continuous Emissions Monitoring System (CEMS), Boston Edison agreed to pay a civil penalty of \$205,000 for violations of its air permit at its Mystic Power Station in Everett. The CEMS data revealed that the plant had substantially exceeded permit limits for nitrous oxides and carbon monoxide.

We brought an action in Attorney General v. Massachusetts Department of Highways, against a state agency, state contractors, and other parties for environmental violations relating to demolition of 150 Causeway Street in Boston for the Central Artery Project. The suit alleges unlawful asbestos abatement practices in violation of the Massachusetts Clean Air Act and disposal of asbestos at an unapproved site in violation of the Solid Waste Disposal Act.

In Attorney General v. Executive Office of Transportation and Construction, we filed suit against two state agencies alleging violations of Department of Environmental Protection regulations that require the completion of various transit improvement projects as mitigation for the air quality impacts of the Central Artery Project.

We obtained a judgment in Commonwealth v. Consolidated Smelting and Refining Corporation, in order to prevent additional contamination. The judgment permanently enjoins the defendant from operating its smelting equipment without Department of Environmental Protection approval, emitting lead and cadmium pollution in violation of DEP regulations, or reactivating or dismantling its contaminated equipment except pursuant to OSHA regulations.

HAZARDOUS MATERIALS

EPD brings lawsuits against responsible parties to remediate conditions caused by oil or hazardous materials, including litigation to recover costs incurred by the Commonwealth when it undertakes cleanup actions. In addition, EPD brings enforcement actions to require proper management, storage and disposal of hazardous wastes and to collect penalties for violations. In the last fiscal year, EPD handled the following major hazardous waste cases.

Together with the Department of Justice, the federal Environmental Protection Agency, the state Department of Environmental Protection, the City of Pittsfield and other federal and state agencies, we reached an agreement-in-principle in September of 1998 with the General Electric Company regarding the clean up of PCB contamination at the GE plant and elsewhere in Pittsfield, and in the Housatonic River. Under the agreement, GE will also pay \$15 million for the restoration of damaged natural resources, undertake various other natural resource restoration or enhancement projects, and provide brownfields economic redevelopment benefits for the City of Pittsfield worth several million dollars. Since September of 1998, the office has been involved in extensive negotiations to effectuate the agreement-in-principle through the filing of a federal consent decree.

In Commonwealth v. PQ Corporation, the U.S. District Court approved a consent decree concerning the matter involving the Nyanza Superfund Site in Ashland. Together with the federal government, we sought recovery of cleanup costs and natural resources damages from a group of operators at the site. The decree requires the parties to pay \$8 million of which approximately \$1.4 million will be paid to the Commonwealth in reimbursement of cleanup costs. The Commonwealth trustee for natural resources will be paid \$230,000 for injury to groundwater at the site.

We filed a complaint against, and entered into a settlement with, the MBTA in Attorney General v. MBTA regarding asbestos and oil contamination at an abandoned power plant in South Boston. The

consent judgment requires that the contamination at the site be abated and the building demolished in accordance with a set schedule.

In Commonwealth v. City of Waltham & Mantakara, we settled an action charging the defendants with failing to report a large spill of fuel oil at the Waltham High School. About 16,000 gallons reached wetlands behind the school, substantially damaging the vegetation and wildlife. The City will assess and clean up the site, remedy the environmental damage, audit the school department's environmental compliance, and implement an environmental management system for the school department. In addition, the City and a school official will pay civil penalties.

In Commonwealth v. Edward Lyons, Jr., the Attorney General successfully enforced a Suffolk Superior Court final judgment and collected \$25,000 owed for response costs incurred by DEP to clean up a site in Roxbury.

In Commonwealth v. Sak Recycling, the defendants agreed to pay a \$50,000 civil penalty in settlement of the Commonwealth's allegations regarding hazardous waste violations at a site in South Boston.

WATER POLLUTION/WATER SUPPLY

In Commonwealth v. Perini Corporation, we settled an action against a Central Artery contractor involving unlawful discharge of a grouting material into the Fort Point Channel. The contractor, Perini/Kiewit/Cashman, is constructing a portion of the Interstate-93 northbound tunnel that will run along Atlantic Avenue and underneath the South Station subway station. The complaint alleged that soon after grouting began, some of the waste grout was allowed to enter a system of sedimentation tanks that ultimately discharge into the Fort Point Channel. Under the terms of the settlement, Perini will pay a \$40,000 civil penalty. The contractor also agreed to have a qualified environmental or civil engineer inspect on a daily basis discharge points to the Boston Harbor.

The Town of Marshfield entered into a consent judgment in Commonwealth v. Town of Marshfield that resolves certain allegations that it violated the state Clean Water Act by discharging sewage into groundwater and the South River. The consent judgment requires the Town to install a wastewater treatment plant at its high school complex that will help protect groundwater that feeds into nearby municipal water supply wells. Since the filing of the Commonwealth's lawsuit, the town has also

disconnected a pipe at another school site that discharged sewage directly into the South River and replaced the septic system at that site, and has brought enforcement actions against town businesses to bring their failed sewage disposal systems into compliance with the septic system regulations known as Title 5.

We filed a settlement agreement and agreement for judgment in Attorney General v. Adjutant General, Massachusetts National Guard for the Guard's violations of the Public Drinking Water Act at Massachusetts Military Reservation (MMR) on Cape Cod. Despite violation notices from the Department of Environmental Protection and an administrative consent order, the Guard had failed to purchase a parcel of land around its primary drinking water well at MMR so as to protect the well from contamination. Pursuant to the judgment, the Guard has filed legislation to acquire the parcel or take it by eminent domain and has begun negotiations with the owner to purchase the land.

We settled an action against three construction companies in Commonwealth v. Kajima Engineering and Construction Company, in connection with a fish kill in Quincy. While working on an approved Army Corps of Engineers flood control project, the defendants diverted water from the Town River during rainbow smelt spawning season, an action specifically prohibited by the Department of Environmental Protection. The defendants' actions allegedly caused the destruction of millions of rainbow smelt eggs in what is one of the most productive runs for this valuable sport and commercial fish. Under the settlement, the defendants agreed to pay \$75,000 to the state Natural Resources Damages Fund for compensation for injured, killed or damaged fish or fish spawn. The defendants also paid a \$50,000 civil penalty for violations of the Massachusetts Wetlands Protection Act and Clean Water Act.

After a trial in Commonwealth v. Three M Homes Corporation, the court found an owner of a mobile home park in contempt for failing to comply with a preliminary injunction that required the defendant, among other things, to pump out three times per week the failed septic system at the Heritage Village Mobile Home Park in Warren. The injunction was entered in an effort to avoid further breakouts of raw or under-treated sewage, which the park's residents have suffered with for years.

We notified the Department of Justice (pursuant to 22 U.S.C. sec. 1365), in Commonwealth v. Veterans Affairs Medical Center/West Roxbury, of our intent to file suit against the West Roxbury VA for federal Clean Water Act violations. Following our notice, we represented MWRA in the negotiations that resulted in the VA's achieving compliance with discharge limits

for inter alia, formaldehyde, silver and mercury.

WETLANDS

Judgment was entered against the defendants in Commonwealth v. Triton Construction Corporation for \$35,000 in civil penalties for wetlands violations at their residential subdivision in Southborough. During construction, the defendants failed to use necessary siltation and erosion control measures at the site, causing wetlands damage. Before judgment was entered, the defendants were required to install appropriate siltation control measures. In addition to the civil penalty payment, the judgment required the defendants to restore the damaged wetlands.

We settled an action against homeowners in Dover in Commonwealth v. McCormack, who allegedly cut wetlands vegetation, altered a stream bed, and filled approximately an acre of wetlands on their property with soil and woodchips, all without a permit. Under the terms of the settlement, the defendants will restore the altered wetlands and pay a civil penalty of \$12,000.

SOLID WASTE

We filed a complaint in Commonwealth v. Hub Construction and Maintenance Co., Inc., for dumping of solid waste on the defendant's property abutting Striats Pond in Hull, an area of critical environmental concern, in violation of the Solid Waste Disposal Act. The court granted a temporary restraining order enjoining the defendant from accepting, processing, or disposing of solid waste on the property. An agreed-upon preliminary injunction was entered in late January.

PESTICIDES

In August 1998, we notified 64 Massachusetts pest control companies of our concerns that their yellow pages advertising, which includes claims of safety or environmental harmlessness, violates the Massachusetts Consumer Protection Act, G.L. c. 93A. We then met with the pest control companies to discuss our concerns. We are negotiating assurances of discontinuance with the alleged violaters in this joint Department of Food and Agriculture/Attorney General's Office project that we hope will result in nearly universal voluntary compliance with respect to advertising by pesticide applicators.

CLEAN STATE INITIATIVE

The Attorney General continues to exercise his enforcement discretion to bring actions against agencies and authorities. EPD began a number of enforcement actions against state agencies and authorities this year. They have involved ongoing harm to the environment, failure to comply with the terms of administrative consent orders, failure to meet Clean State-ordered deadlines and matters that failed to make the Clean State list at all.

Pursuant to his authority under G.L. c. 12, §11D, the Attorney General sent to the Legislature an annual report on the Clean State Initiative. The report discussed the successes of the Clean State Initiative in the previous year, such as the concerted effort to address the Commonwealth's underground storage tanks. It also discussed the environmental problems that state agencies and authorities have failed to correct, the cleanup deadlines that have been missed and the numerous problems originally ranked as "priorities" that have been relegated to lesser status. The report pointed out that the list of problems requiring remediation had grown by over 50% in four years and is expected to increase dramatically as environmental audits of state facilities are completed. The report noted that the professional auditing that was being done of state agency compliance, which was started in response to recommendations made by the Attorney General in 1995, comes extremely late in the program and that agencies and authorities will therefore have little time to deal with these problems before the June 30, 2000 deadline for the resolution of all matters.

The report also criticized the lack of long-range planning and the failure to adopt specific action plans for resolving the problems. It documented the failure expeditiously to develop and match cost estimates for each problem with existing funding, and pointed out that over 40% of the matters do not have funding identified. The report concluded that the year 2000 goal will be difficult to reach without a renewed commitment by the Administration and the agencies to Clean State. Lastly, it urged agencies and authorities to develop environmental management systems that will enable them to stay in compliance once they have achieved it.

MASSACHUSETTS MILITARY RESERVATION

While the Massachusetts Military Reservation ("MMR") on the Upper Cape is well known as one of the Commonwealth's worst environmental disasters, it is also a tremendously valuable state resource. Because of the Cape's growing population and demand for drinking water, and because much of the Upper Cape's aquifer has been damaged by past military activities, it has become clear that the groundwater under Camp Edwards -- the relatively undeveloped northern portion of the base -- is critical to the Upper Cape's future. Though the ongoing EPA-mandated

study of Camp Edwards groundwater has revealed some explosives contamination, this groundwater is the best remaining option for supplying additional water to the Upper Cape. With some 14,000 acres of open space (the largest undeveloped parcel of state land on the Cape), Camp Edwards also has unique value as wildlife habitat and a buffer to increasing development.

The Office of the Attorney General has continued to provide Cape citizens and officials with advice on legal issues relating to land use at Camp Edwards, as they plan for the best future use of the land. The Office provided substantial input into the Community Working Group's Master Plan for the future use of the base, and has also given technical assistance to legislators who have been drafting legislation to protect and develop drinking water supplies at Camp Edwards.

This past winter, the Attorney General entered into a Memorandum of Agreement with the Air Force and other federal and state agencies to form a Natural Resource Trustee Council for MMR. This Council will conduct an assessment of damages to natural resources caused by contamination from MMR, and will seek to restore or replace these resources. A central part of the Council's mission will be to replace water supplies lost or damaged by MMR contamination. The Office has, so far, succeeded in obtaining funding from the Air Force for the Council and will continue to press the Air Force to fund a thorough natural resource damage assessment.

DEFENSIVE CASES

One of the critical functions of the Attorney General's Office is the defense of lawsuits challenging the regulatory and enforcement actions of state environmental officials and agencies. These cases involve numerous challenges to state permitting decisions, as well as challenges to the legality of state environmental regulations.

The court upheld DEP's decision in American Reclamation Corporation v. Department of Environmental Protection, to deny plaintiff ("Amrec") a determination of beneficial use for a product called LANLOC-7, a mixture of petroleum-contaminated soil, asphalt and clay, for use as final landfill cover. The court affirmed that Amrec was not entitled to an adjudicatory hearing on DEP's denial and upheld DEP's decision on the grounds that Amrec did not meet its burden of showing that LANLOC's use would cause no adverse impact.

The case of Water Works Laboratories Inc. v. DEP involved a challenge to DEP's decision to decertify this laboratory company from performing analyses of public water supplies.

DEP decertified the lab for one year for submitting falsified data to support the lab's application. We successfully defeated the plaintiff's motion for a preliminary injunction. The company subsequently dismissed its suit with prejudice.

In Quirk v. Department of Environmental Protection, the owner of a large automobile dealership challenges DEP's issuance of a permit to the Town of Quincy and a private developer for a joint development of a golf course and recreational complex on land in Quincy formerly used as a landfill. The permit allows the developers to test soil excavated from the Central Artery before using it to cover the former landfill. The plaintiff complains that the traffic and construction impact associated with this large project has damaged his business.

The Supreme Judicial Court issued a decision in General Electric v. Department of Environmental Protection, regarding GE's efforts to obtain certain documents from the Department of Environmental Protection. While the Court upheld the lower court ruling that DEP had not waived its ability to withhold certain documents by sharing these documents with the federal government, it denied DEP's ability to withhold documents based solely on the attorney work product privilege, holding that that privilege had been abrogated by the enactment of the state public records law.

In East Ashland Street Realty Trust v. DEP, we achieved the dismissal of a party's appeal of the assessment of an administrative penalty based on the plaintiff's failure to comply with the procedural requirements of the Administrative Penalties Act.

In Burkhard Corporation v. Rojo, the plaintiffs, proponents of a hotel development in Arlington, sued several residents for defamation based on comments made by the residents in connection with an appeal of a wetlands permit for the project. We filed an amicus brief in support of defendants' special motion to dismiss pursuant to G.L. c. 231, § 59H. The Attorney General's brief supported the residents' argument that the defamation action should be dismissed as it was a SLAPP (strategic lawsuit against public participation) suit. Subsequent to our filing the brief, the parties to the litigation settled the action.

Litigation concerning the right of a developer to construct a landfill in the Town of Douglas was declared moot by the Supreme Judicial Court in Douglas Environmental Associates v. Department of Environmental Protection, et al., after the site was taken pursuant to chapter 221 of the Acts of 1998. Because the question remains relevant to the valuation of the site, the Court

nevertheless reviewed and endorsed the Superior Court's decision that the developer would have been entitled to a permit.

NEW LEGISLATION - BROWNFIELDS

The Attorney General's legislative efforts focused on securing passage of a brownfields bill to spur clean ups and redevelopment, especially in areas of economic need. The Attorney General worked closely with members of the Joint Committee on Natural Resources and Agriculture, the House and Senate Committees on Ways and Means, and an appointed Conference Committee to secure passage of the Brownfields Act (St. 1998, c. 206), which was signed into law on August 5, 1998. Since that time, the Attorney General has worked to implement the new law, including promulgating regulations for a new brownfields covenant not to sue program that was mandated by the Legislature at the recommendation of the Attorney General. We also continued to push for brownfields development opportunities at locations across the Commonwealth. For example, pursuant to a consent judgment we negotiated, we oversaw the sale of property owned by a defunct rustproofing company in Medford. DEP had removed cyanide-contaminated soil from the site in the 1980s and the property has been vacant since. This property then sold for \$549,000, with the sale proceeds split among DEP, the City of Medford, and a mortgagee who took the lead the marketing the property. The property was purchased by an autobody repair business that plans also to rent space to other businesses.

NATIONAL AIR POLLUTION ISSUES

The Office of the Attorney General is deeply involved in many Clean Air Act issues of national importance.

Ozone & Fine Particulate NAAQS

In American Trucking Association v. Environmental Protection Agency, the Court of Appeals for the D.C. Circuit issued a ruling overturning EPA national ambient air quality standards for ozone and fine particulates. Because we believe that EPA's tougher standards are needed to protect public health, Massachusetts is an intervenor in that case in support of EPA's actions. EPA, joined by Massachusetts, and New Jersey have filed Petitions for Rehearing, With Suggestion for Rehearing In Banc.

Interstate Air Pollution Transport

In Petition to Reduce Emissions from Ohio River Valley Power Plants, EPA issued its technical findings on the petitions of 8 states, including Massachusetts, for reductions in omissions of nitrogen oxides by power plants and other large industrial sources in upwind States. On Massachusetts' petition, EPA found that power plants in West Virginia and Ohio were contributing significantly to violations of the new ozone standard in Massachusetts. Because EPA had already proposed to revoke the old standard in Massachusetts, it declined to make a finding regarding contributions to violations of the standard in Eastern Massachusetts, but it found that sources in West Virginia were contributing to violations of the old standard in Western Massachusetts. EPA also established a default remedy that will take effect by May, 2000, if the States in which the target sources are located do not propose acceptable action plans sooner.

We intervened with other Northeastern states in State of Michigan v. Environmental Protection Agency, in defense of EPA's rule calling upon 23 States to revise their Clean Air Act section 126 implementation plans to reduce emissions of nitrogen oxides, which react in the atmosphere in the summer to form smog. The D. C. Circuit Court of Appeals has stayed the rule pending review; the case will be argued to the Court in September, 1999.

Low Emission Vehicle Requirements

In American Automobile Manufacturers Assn. v. Department of Environmental Protection, the Court of Appeals for the First Circuit issued a ruling in our appeal of a District Court judgment invalidating a rule requiring the automobile manufacturers to produce and deliver zero emissions vehicles (i.e., electric cars) in 1998-2000. The Court referred some key questions to the federal Environmental Protection Agency based on primary jurisdiction. We filed written comments with EPA concerning these questions.

We filed a brief amicus curiae in Ayers v. Environmental Protection Agency, in support of a petition contesting EPA regulations establishing a national low emission vehicle program. We argued that the NLEV program has diverted northeastern states from the effort to adopt the cleaner California program, and has thereby resulted in dirtier air in the Northeast even if it will lead to cleaner air somewhere else. After we filed our brief, we were informed that the petitioners had tentatively settled the case for commitments by EPA to promote development of "alternative technology vehicles."

CENTRAL ARTERY/TUNNEL PROJECT CIVIL COST RECOVERY

The Central Artery/Tunnel Project Civil Cost Recovery unit was established in the Government Bureau in December 1997, as a part of enhanced state oversight efforts on the multi-billion dollar Central Artery/Tunnel Project ("CA/T Project"). Earlier that year, the Legislature had provided dedicated funds for the Attorney General, the State Auditor, and the Inspector General to supplement their ongoing activities with respect to the CA/T Project, and to coordinate those activities through the CA/T Project Oversight Coordination Commission ("the Commission"). The Attorney General has asked the Legislature to renew this dedicated funding, as the CA/T Project now proceeds in its peak construction period.

The CA/T Project Civil Cost Recovery unit in the Government Bureau is presently made up of an attorney director and support staff. Its work often is performed jointly with the Criminal Bureau and the Business and Labor Protection Bureau.

The unit director investigates allegations of wrongdoing on the CA/T Project; pursues civil cost recovery actions; works with Criminal Bureau and Business and Labor Protection Bureau attorneys on criminal matters; coordinates CA/T Project activities within the Office; participates in the activities of the Commission; proposes cost-containment and anti-fraud measures to the CA/T Project; and takes part in drafting and promoting state False Claims Act legislation.

THE CENTRAL ARTERY/TUNNEL PROJECT

The CA/T Project, which is now being run by the Massachusetts Turnpike Authority, has been described as the largest, most complex, and technologically most challenging highway project in the history of the United States. Among other things, the Project will replace Boston's deteriorating and inadequate elevated Central Artery (part of Interstate 93) with an eight-lane underground expressway, will extend the Massachusetts Turnpike (Interstate 90) to Logan Airport via the Ted Williams Tunnel under Boston Harbor, and will create 27 acres of open space in the heart of the city. The Project is designed to improve traffic flow and traffic safety in one of the country's oldest and most congested cities, utilizing a number of state-of-the-art engineering and construction techniques.

The estimated total cost of the CA/T Project, the time anticipated for its completion, and the portion of the total costs to be paid by the Commonwealth have grown substantially over the past decade. In 1989, CA/T Project management estimated that construction would be completed in

1998 at a cost of \$4.4 billion. Project management now targets completion in 2004, at a cost of \$10.8 billion, and this figure has been criticized as overly optimistic. The federal government previously had assumed responsibility for approximately 90 percent of the Project's costs, but a new federal funding formula requires the Commonwealth to pay a larger share of the costs. All of these factors make effective oversight, criminal enforcement, and cost recovery activities even more critical for Massachusetts taxpayers.

FISCAL YEAR 1999 CA/T PROJECT OFFICE ACTIVITIES

Over the past several years, the Attorney General has engaged in numerous investigations, civil actions, and criminal prosecutions to protect the public interest in the CA/T Project. The CA/T Project Civil Cost Recovery unit in the Government Bureau allows for enhanced coordination of activities within the Attorney General's Office, and a more focused relationship with CA/T Project management and with others involved with the Project outside the Office.

As in the past, the range of matters in the Office relating to the CA/T Project during fiscal year 1999 has been diverse. Several matters reported by informants are under investigation. The Office has prosecuted a procurement fraud matter (the defendant is now a fugitive), and has resolved allegations of improper billing. The Administrative Law Division has defended the decisions of agencies and agency officials in matters including the Blue Line MBTA station and the adjacent East Boston roadways and parks, and the use of excavation materials to cap and close landfills. The Environmental Protection Division ("EPD"), among other things, has brought actions against other state agencies and private businesses for alleged violations of environmental requirements. The Trial Division has defended the Commonwealth in a number of contract and tort actions arising out of the CA/T Project, including a challenge to a requirement that contractors contribute to union benefit funds, and several contractor claims for additional payments. In eminent domain cases, the Trial Division has saved the CA/T Project more than \$37 million during the past year, and more than \$109 million to date, in inflated compensation claims brought in connection with property takings for the Project.

In the Business and Labor Protection Bureau, the Fair Labor and Business Practices Division has criminally prosecuted a number of businesses and individuals for violating the prevailing wage laws, and has advised Project personnel and employers about the governing laws and recent amendments. The Insurance Fraud Division likewise has prosecuted several cases of worker's compensation fraud, an area in which the Office has taken a "zero tolerance" approach in order to deter such offenses from occurring once the CA/T Project's construction activities begin to wind down.

OVERSIGHT COORDINATION COMMISSION

The Attorney General, the State Auditor, and the Inspector General make up the CA/T Project Oversight Coordination Commission, a body charged by the Legislature with responsibility for coordinating oversight efforts among the three offices. Senior staff from each office, including the director of the Government Bureau's CA/T Project Civil Cost Recovery unit, meet monthly to discuss activities and plans, consistent with each office's confidentiality requirements. The Commission invites legislators to attend special meetings that are held quarterly.

The Commission is soliciting detailed information from other public construction "mega-projects" (costing more than \$1 billion) throughout the country regarding anti-fraud and cost-containment measures that they are employing. This survey, prepared with input from each of the Commission member offices, is intended to generate information that can be put to use on the CA/T Project.

OTHER ANTI-FRAUD AND COST CONTAINMENT MEASURES

The Attorney General's Office has established a toll-free 24-hour telephone "hotline" to help identify fraud, waste, and abuse on the CA/T Project. The Attorney General's Big Dig Fraud Hotline -- 1-888-TIP-BGDG (1-888-847-2434) -- is answered by staff during business hours and by voicemail at all other times.

Through June 1999, the Hotline has logged more than 150 calls. Calls that can be better addressed by the Project itself, or by another state officer such as the State Auditor or the Inspector General, are referred accordingly. All calls to the hotline are confidential.

The unit also works with Project management to encourage the implementation of measures that will tend to reduce the incidence of fraud and abuse, and to reduce the incidence and cost of defensive litigation.

FALSE CLAIMS ACT LEGISLATION

An important objective of the CA/T Project Civil Cost Recovery unit is the enactment of state False Claims Act legislation. The False Claims Act would significantly enhance the ability of the Commonwealth to recover state funds that are obtained improperly through the submission of false claims or false statements to the Commonwealth, to its agencies or contractors, and to

state authorities like the MBTA and the Turnpike Authority. The legislation would be of special significance with regard to the extraordinarily costly CA/T Project, which involves billions of dollars and thousands of personnel.

The False Claims Act would authorize the Commonwealth to recover treble damages, civil penalties, costs, and attorney's fees from defendants found to be liable for submitting false claims and false statements for funds. The statute also would authorize the Attorney General to compel the production of documents, testimony, and interrogatory responses before a case is litigated, in order to determine whether allegations warrant further action. A key provision of the legislation would meaningfully encourage individuals to come forward with information about fraud, by allowing them to share in the Commonwealth's recovery and by protecting them from retribution by their employers.

During 1998, the Senate passed a similar bill, but the legislation died in the House at the end of the session. A new bill was introduced in the 1999 legislative session, incorporating several changes designed to facilitate the its enactment and implementation. Attorney General Tom Reilly testified in support of this bill before the Joint Committee on the Judiciary, on May 25, 1999.

PUBLIC PROTECTION BUREAU

CIVIL INVESTIGATIONS DIVISION

CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION

CONSUMER PROTECTION AND ANTITRUST DIVISION

PUBLIC CHARITIES DIVISION

CHIEF PROSECUTOR

REGULATED INDUSTRIES DIVISION

PUBLIC PROTECTION BUREAU

The Public Protection Bureau manages and oversees civil and criminal affirmative litigation on behalf of the Commonwealth and its citizens, the development of policy, legislative and regulatory proposals, and personnel for five divisions: Consumer Protection and Antitrust Division, Regulated Industries Division, Civil Rights and Civil Liberties Division, Public Charities Division and Civil Investigation Division. In addition, the Bureau has an office of the Chief Prosecutor, which brings criminal actions in appropriate cases. The divisions and the chief prosecutor's office also conduct investigations and publish reports in areas of interest arising out of their activities. The Bureau also includes the Consumer Complaint and Information Section and oversees the Local Consumer Aid Fund, which provides grants to local community groups to mediate and resolve consumer complaints at the local level.

The Bureau has an office of the Legislative Liaison, which coordinates testimony for hearings before the Legislature on issues of concern to the Bureau. This past year, the Bureau testified on a variety of legislative items, including: (1) medical records confidentiality; (2) access for individuals with disabilities; (3) establishment of a registry of abusive home care providers; (4) health warnings on the advertising of alcoholic beverages; (5) health insurance benefits for domestic partners of public sector employees; (6) electronic shelf pricing; (7) community reinvestment by insurance companies; (8) health club industry practices; (9) telemarketing fraud; (10) banning assault weapons; and (11) automatic teller machine surcharges. The Legislative Liaison also monitors legislation that impacts the work of Bureau.

Bureau personnel also coordinate and staff the Attorney General's Student Conflict Resolution Experts (SCORE) Program, a nationally-recognized peer mediation program created to reduce violence in schools and foster safer learning environments for students. The SCORE program provides grants for the development of school mediation programs using trained student mediators to resolve violent and potentially violent conflicts among their peers. The SCORE program forges partnerships between educators and mediators to establish quality student-centered mediation programs in the Commonwealth's schools to prevent disputes from escalating into violence. In addition, Bureau staff oversee a Conflict Intervention Team (CIT) of specially trained community mediators, who mobilize on a moment's notice to provide emergency mediation service to schools in crisis or on the verge of crisis.

Bureau personnel engaged in two historic battles this year over tobacco and handgun regula-

tion. The Tobacco Unit of Consumer Protection and Antitrust Division settled a multi-billion dollar cost-recovery case against the tobacco industry. This settlement will result in benefits to Massachusetts citizens throughout the foreseeable future. The Bureau also defended a legal challenge to regulations it had issued to prevent the sale of unsafe handguns. The Attorney General's authority to issue such regulations was recently upheld by the Supreme Judicial Court.

The Public Protection Bureau continued its charge of coordinating efforts and taking the lead in the areas of elder issues and health care. The Bureau continued its work with the Attorney General's Home Care and Home Health Care Task Force, working to ensure that the laws, regulations and business practices of the home care and home health care industries in Massachusetts are standardized to ensure the delivery of quality, reliable care to home health and home care patients. This working group is comprised of representatives of consumer advocacy groups, the home care and home health care industries, government agencies, parents with disabled children and others who require home health and home care services. As a result of the task force's work, a comprehensive legislative package was passed to (1) amend the Criminal Offender Record Information (CORI) statute for home health care and home care employees and volunteers; (2) provide home health care and home care employers with immunity for sharing information regarding former employees; (3) establish a registry of abusive home health workers; and (4) establish procedures for reporting and investigating allegations of abuse, neglect, mistreatment and misappropriation of home care consumers' property. In addition, the Bureau represented the Attorney General on the Nursing Homes Admission Contract Task Force, created to address findings that some nursing facility admission contracts failed to comply with regulations promulgated by the Attorney General and the federal government. The Bureau also assisted the Department of Public Health in amending its patient abuse regulations and will assist with training nursing facility staff in the upcoming year.

The Bureau oversees the Attorney General's Community Benefits Guidelines for both hospitals and HMOs. This initiative was staffed by members of the Regulated Industries Division, the Consumer Protection and Antitrust Division and the Public Charities Division. Members of the Consumer Protection and Antitrust Division and the Public Charities Division oversee reporting under the hospital Guidelines. A member of the Regulated Industries Division oversees both reporting under the HMO Guidelines and the Attorney General's Community Benefits Advisory Task Force, convened in June 1998 for the purpose of advancing the goals of the Community Benefits Guidelines.

The Bureau furthered its priority in the guardianship area by continuing to participate as a

member of the Massachusetts Guardianship Task Force and the Committee on Guardianship Reform. As a Massachusetts Guardianship Task Force member, the Bureau testified before the Legislature in support of legislation to establish a public guardianship commission and reform the guardianship statutes. The Bureau also assisted the Committee on Guardianship Reform, which includes the Attorney General, probate judges, elder and disabled persons advocates and private bar attorneys, on drafting and filing in the Legislature Article 5 of the Uniform Probate Code to revise the state guardianship laws.

Bureau staff continued to participate in the steering committee of the Inter-Agency Task Force on Long-Term Care Financing. This statewide Task Force is a bipartisan effort led by the Attorney General and the Governor to develop strategies to increase the private financing options for nursing home and other long-term care, and to provide financial security to elders while easing the burden on Medicaid. This past year, Bureau staff played a lead role in drafting major revisions to the Division of Insurance's long-term care insurance and life insurance regulations, which expand private options for covering the costs of long-term care. These revised regulations are set to be promulgated early in the next fiscal year. In the coming year, the Task Force will focus on designing consumer education and disclosure materials.

The Attorney General's Elder Hotline (1-888-AG-ELDER), a state-wide toll-free hotline, handled over 5,000 calls from elders and their families. The hotline provides information, mediation services, and referrals for senior citizens and their families on a wide range of elder issues. The Bureau also has an internal task force of Elder Law Advocates comprised of Assistant Attorneys General and office Investigators in areas of elder law, including long term care issues, protective services, financial exploitation of elders, and home health care services. These advocates work in conjunction with the Elder Hotline to address specific elder protection concerns.

The Bureau continued its multi-faceted approach to combating home contractor fraud. Following its June 1998 law enforcement conference, Bureau personnel successfully prosecuted several fraudulent contractors, and provided assistance to police and assistant district attorneys on how best to approach this type of case. The Bureau also continued its efforts to educate consumer and elder groups about how to avoid home contracting fraud.

The Bureau continues to be actively involved with consumer issues. In recognition of the emerging problem of identity fraud, Bureau personnel drafted legislation criminalizing identity fraud. This bill became law in March of 1999. The Bureau also continued its participation with

the American Association of Retired Persons (AARP) in various initiatives, including serving on the Senior Health Care Coalition, a consortium of consumer groups that has worked with the Division of Medical Assistance and Executive Office of Elder Affairs on drafting the MassHealth Senior Care Options (SCO) proposal for dually eligible senior citizens to the Health Care Financing Administration. The Bureau also increased its efforts over the past year to prevent telemarketing fraud, through consumer education targeted at elders and increased investigative coordination with federal, state and Canadian law enforcement agencies.

The Public Protection Bureau also has a liaison to the lesbian and gay community who serves as a point of intake and outreach on lesbian and gay issues. The liaison convenes quarterly meetings with an advisory group of lesbian and gay law enforcement advocates to discuss issues and concerns of mutual interest. The Attorney General's gay liaison also coordinates testimony for legislative hearings on gay issues and serves as a member of the Attorney General's Workforce Diversity Committee, which was created to promote dialogue and identify strategies for addressing workplace diversity issues.

CIVIL INVESTIGATION DIVISION

The Civil Investigation Division conducts investigations primarily for divisions within the Public Protection and Government Bureaus. In addition, CID also investigates cases or matters within the Family and Community Crimes and Business and Labor Protection Bureaus and, on occasion, for the Executive Bureau, or in conjunction with the Criminal Bureau.

The major duties of Division investigators are: locating and interviewing victims, witnesses, subjects and others; obtaining and reviewing documentary evidence from numerous sources including individuals, corporations, and federal, state, county and municipal agencies; conducting surveillance, background checks and asset checks; analyzing financial records and performing other forensic accounting functions; and, testifying before the Grand Jury and at trial.

Investigators worked closely with other state attorneys general's offices, district attorneys, local and state police departments, the U. S. Attorney's Office, the U.S. Postal Inspection Service, the Federal Bureau of Investigation and the Federal Trade Commission.

In fiscal year 1999, the Division initiated 389 investigations in the following major areas:

PUBLIC PROTECTION

CONSUMER PROTECTION AND ANTITRUST

Investigators continued to perform their traditional role by assisting the office in bringing G.L. c. 93A enforcement actions against businesses and individuals in major consumer areas such as: automobile sales and repair, debt collection and credit repair services, billing schemes, travel services, health spas, retail sales, computer scams, advance fee loan scams, asset search firms, immigration services and employment schemes. Areas also included numerous issues affecting the elderly and vulnerable populations, such as the unauthorized practice of law, mortgage lending, investment and home improvement scams.

The Division also initiated several investigations and surveys to determine compliance with existing laws and regulations pertaining to numerous consumer areas. Some were multi-state and nationwide and included areas such as fraudulent sweepstakes promotions, telemarketing scams and the sale of tobacco to underage consumers.

CIVIL RIGHTS/LIBERTIES

The Division investigated "hate crimes," allegations of police misconduct and other violations of the Massachusetts Civil Rights Act. Investigations were also conducted into allegations of discriminatory housing and employment practices, as well as investigations to determine compliance with the rules and regulations established by the Americans with Disabilities Act and the Architectural Access Board. Division staff interviewed victims, witnesses and, where appropriate, subjects of such investigations. Investigators obtained and reviewed police reports, court documents and other available evidence.

PUBLIC CHARITIES

The Division investigated individuals associated with organizations who raised funds from the public in violation of Massachusetts law. Investigators interviewed victims, usually business people, who made donations to a charity based on the representations of a solicitor. In some instances, solicitors posed as law enforcement or other public officials or otherwise misrepresented themselves or the charity's purpose. Investigators worked with other law enforcement personnel in locating "couriers" who picked up donations. The Division's financial investigators reviewed and audited books, records and financial reports of many non-profit organizations.

REGULATED INDUSTRIES

Investigators continued to work with PPB and RID attorneys to review and investigate businesses and organizations that withheld employees contributions for health insurance premiums, but failed to actually purchase the health insurance coverage. Other cases investigated included unlawful sales practices also known as "churning," and the sale of fraudulent or costly life and health insurance policies.

BUREAU PROSECUTOR

Investigators worked with the Bureau Prosecutor on numerous cases which resulted in indictments and convictions against individuals for violations of the Commonwealth's criminal laws. Cases included larceny against the elderly and vulnerable by financial advisers, attorneys, home improvement contractors and auto dealers. Cases also involved investigations relative to the unlicensed practice of medical professions, health care fraud, telemarketing fraud, illegal chari-

table fundraisers and embezzlement from non-profit organizations.

GOVERNMENT BUREAU

ENVIRONMENTAL PROTECTION

The Division's role in EPD cases primarily involved locating and identifying assets of potentially responsible parties liable for paying costs incurred by the Commonwealth in the clean-up of polluted or hazardous waste sites. Investigators also located former employees and officers of defunct companies responsible in part for such violations, and reviewed, evaluated and analyzed financial documents and prepared ability to pay analyses.

TRIAL

The Division played a major role in tort actions filed against the Commonwealth by investigating allegations of abuse, mistreatment and deaths of individuals in state care; alleged wrongful termination of state employees; and, personal injuries and other damages which occurred on state-owned property and/or in accidents on state roads or involving state cars. The Division also investigated cases involving contract disputes and eminent domain proceedings.

CRIMINAL BUREAU

SAFE NEIGHBORHOOD INITIATIVE (SNI)

The Division continued its assistance to the office's Abandoned Properties project by conducting research on target properties, primarily to determine the status of ownership and existence of encumbrances of the buildings, and, also in some instances, assisted in inspecting properties scheduled for renovation.

BUSINESS & LABOR PROTECTION BUREAU

INSURANCE FRAUD DIVISION

In conjunction with the protocols established by the Attorney General's Task Force to Reduce Waste, Fraud and Abuse in the Workers' Compensation System, the Division continued to

investigate allegations that state employees or employees of self-insured companies were fraudulently receiving workers' compensation benefits or other insurance benefits.

Investigators worked with the Insurance Fraud Bureau of Massachusetts in a joint effort to investigate instances of premium avoidance by employers attempting to defraud insurers of premiums owed for workers' compensation coverage.

Investigators also participated in the efforts to reform the disability pension system.

STATISTICS

The Division opened 389 investigations in Fiscal Year 1999, with 344 investigations ongoing as of June 30, 1999. Case distribution by division and/or bureau is as follows:

<u>DIVISION/BUREAU</u>	<u>OPENED</u>	<u>ONGOING AS</u>
	<u>DURING FY '99</u>	<u>OF 6/30/99</u>
Consumer Protection/Antitrust	48	64
Civil Rights	16	12
Public Charities	2	6
Regulated Industries	3	5
PPB/Criminal	24	32
Government	7	7
Environmental Protection	11	19
Trial	278	195
Insurance Fraud	0	4
TOTAL	389	344

CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION

THE MASSACHUSETTS CIVIL RIGHTS ACT

The Civil Rights and Civil Liberties Division continues to enforce aggressively the Massachusetts Civil Rights Act (MCRA). The MCRA authorizes the Attorney General to seek injunctive relief when the exercise of a person's civil rights is interfered with by threats, intimidation, or coercion based on that individual's race, color, national origin, ethnic background, gender, sexual orientation, disability, age, or religious affiliation. A violation of a civil rights injunctive order constitutes a criminal offense, punishable by a maximum of ten years in a state prison if the victim suffers bodily injury, or up to two and a half years in a correctional facility if no bodily injury results.

In fiscal year 1999, the Division's mission to deter and prevent hate crimes resulted in the issuance of seven preliminary injunctions by the Superior Court against seventeen defendants, where it was alleged that the defendants had interfered with the rights of forty two residents of Massachusetts on the basis of their race, sexual orientation, gender, religion, and national origin. In addition, a number of in-depth civil rights investigations of possible MCRA violations were conducted by the Division.

GENDER BIAS

The Division has continued its efforts to protect women from hate motivated violence in dating relationships. The Division prevailed in its first landmark MCRA case involving allegations of civil rights violations on the basis of gender in 1994. In December 1998, in Commonwealth v McGrath, a preliminary MCRA injunction was obtained from the Worcester County Superior Court against a twenty seven year old Hopedale man for his alleged nine year history of violence and abuse against women. This is the third gender bias MCRA case in Massachusetts, all brought by the Division. The defendant is alleged to have repeatedly physically and sexually abused his female victims, and taunted them with vulgar and demeaning obscenities, reflecting animus against women as a class. One of the alleged victims was thirteen years old when she met the defendant. The preliminary injunction prohibits the defendant from engaging in gender based threats or violence against three women specifically named in the Division's court complaint as well as with any other woman with whom he may have a dating relationship with in the future.

RACIAL, NATIONAL ORIGIN, AND RELIGIOUS BIAS

A striking example of the Division's strong response to racial violence is the MCRA case titled Commonwealth v. McPherson. In this case, the Division obtained a preliminary civil rights injunction from the Suffolk County Superior Court against three defendants for several alleged race based brutal attacks on a fifteen year-old Somalian youth in the Charlestown section of Boston. In a series of incidents that occurred in a six month period, the defendants allegedly beat, intimidated, and threatened the Somalian youth while yelling racial slurs. The victim suffered substantial physical injuries from these attacks that occurred in the victim's own neighborhood with one incident happening on the stairwell leading to his apartment. The injunction contained strict language which prohibits the defendant, or anyone acting on their behalf, from knowingly engaging in further race or national origin based harassment, threats, or violence against the victim or any other person, and from knowingly approaching within fifty feet of the victim's apartment building.

In Commonwealth v. Quinn, the Division entered into an agreement with a juvenile defendant, where he agreed to participate in an Anti-Defamation League Youth Diversion Program that included four weeks of workshops on civil rights, multiculturalism, and diversity and ten hours of service in a community setting. In this case the defendant, along with three unidentified white males, allegedly drove near one adult and three teenage religious Orthodox Jews wearing traditional religious garb, while they walked to synagogue during the holiday of Passover. The defendant allegedly yelled out profanities and made gestures from his car and then pulled up adjacent to the victims, shouting more profanities, while a passenger threw a lit cigarette directly at two of the victims before driving off.

ANTI-GAY BIAS

In fiscal year 1999, the Division continued to obtain injunctive relief against gay bashers, demonstrating its continued commitment to combating hate crimes directed at individuals based on their actual or perceived sexual orientation. In December 1998, in Commonwealth v. Archer, the Division obtained a preliminary injunction from the Bristol County Superior Court, prohibiting sixteen year old juvenile defendant from threatening, intimidating, or harassing the victim or anyone else due to their perceived or actual sexual orientation. In this case the juvenile defendant allegedly threw a large rock at the seventeen year old victim's head, which knocked the victim to the ground. The defendant is alleged to have then kicked the victim while yelling anti-gay epithets. The attack left the victim with a broken nose and a concussion. Prior to the attack,

the defendant told two friends that he hated gay people and that they should be beaten up. In addition to the charges brought by the Division, the defendant was convicted on criminal civil rights charges.

In addition, the Division has engaged in a number of in-depth investigations of other possible hate crimes against individuals because of their actual or perceived sexual orientation.

ANTI-ASIAN BIAS

In fiscal year 1999, the Division obtained two preliminary injunctions against ten alleged perpetrators, and conducted three additional in-depth investigations into matters involving alleged hate crimes targeting members of the Asian-American community. In Commonwealth v. Lauretano, the Division obtained a preliminary injunction from the Norfolk County Superior Court against four female teenagers who allegedly attacked a Chinese American woman in North Quincy. The victim, a thirty seven year-old woman who moved to the United States from Hong Kong ten years ago, suffered cuts, bruises and dizziness when one night while driving home through North Quincy, four teenaged females allegedly began banging on the trunk of her car. When the victim stepped out of her vehicle to see what was happening the teenagers allegedly launched an unprovoked physical and verbal attack on her, while disparaging her Asian ancestry. The preliminary prohibits the youths from having any contact with the alleged victim for two years. In addition, the injunction prohibits the defendants from assaulting, threatening, intimidating or coercing any person in Massachusetts on the basis of race or national origin.

Another case in which the Division enforced the MCRA to protect members of the Asian-American community occurred in Commonwealth v. Aguiar. In this case the Division obtained preliminary injunctions from the Bristol County Superior Court against three adults and three teenagers who allegedly attacked a group of about thirty Asian-American youths, between the ages of six and eighteen years old, a majority of whom were Cambodian Americans, who were playing in the yard of St. Luke's church, located in Fall River,. The defendants allegedly shouted anti-Asian epithets and threw large rocks, bricks, sticks and table legs at the children in the youth group. In this particularly egregious attack, several of the defendants allegedly waved baseball bats, while others in the group shouted, "Go back to your own country!" At least two people were stuck by bricks and rocks thrown during the attack. The injunction bars the defendants, and anyone acting on their behalf, from harassing, threatening, intimidating or attacking the victims or any person based on his or her race or color and prohibits them from entering the property of the church where the alleged attack occurred.

In addition, the Division engaged in extensive outreach and education efforts to various communities in Massachusetts with large numbers of Asian-American residents, with particular focus on Quincy, Malden, Lowell, Revere, Fall River and Boston. These efforts were led by the Division's liaison to the Asian-American community in Massachusetts. The Division's liaison spoke at many different venues including at numerous community meetings. In addition, the Division's liaison participated in panel discussions and conducted a workshop regarding anti-Asian hate crimes and civil rights. One of the panel discussions aired on a South /Shore Cable television program involved a collaborative effort involving the Attorney General's Office, the Governor's Task Force on Hate Crimes, the Boston Police Department's Community Disorders Unit, the Plymouth County District Attorney's Office, the Anti-Defamation League, and the Fenway Community Health Center. Another workshop, conducted by the Division's liaison at the annual Coalition for Asian Pacific American Youth Symposium, focused on educating youth students from twenty five high schools across the state.

CIVIL RIGHTS IN THE SCHOOLS

The Division has continued to focus on ensuring the civil rights of students attending schools in the Commonwealth. In fiscal year 1999, the Division swiftly responded to more than eight allegations of hate or bias-motivated conduct by youngsters which occurred within the Massachusetts school system. With each of these complaints, the Division conducted investigations and worked with the schools to resolve the conflicts and prevent future recurrence.

The Division provided educational trainings to students, teachers, and administrators on hate crimes and discrimination as well as sexual, racial, national origin and religious harassment in the schools. In April 1999, the Division Chief led a workshop at a Title IX Conference for education teams from the Boston area and Middlesex County schools, sponsored by the Office for Civil Rights of the U.S. Department of Education and Project Alliance of the Middlesex County District Attorneys Office. The workshop focused on how schools can create comprehensive civil rights and anti-harassment policies and programs and develop partnerships with law enforcement to address hate crimes effectively.

In 1998, the Civil Rights Division drafted a brochure titled "Erasing Hate - A Guide to your Civil Rights in School," for middle and high school students. In fiscal year 1999, the Division updated and revised the brochure and then mailed approximately 100,000 copies of the revised edition to school superintendents, principals, community service organizations and civil rights advocacy groups throughout the Commonwealth. The brochure defines and describes hate

crimes and what constitutes unlawful harassment in school, informs students about their civil rights, and provides them information about the resources available to help them if they believe their civil rights have been violated.

NATIONAL CIVIL RIGHTS IN SCHOOLS GUIDE

On January 18, 1999, the Office announced the publication of a practical, comprehensive national guide aimed at helping school officials in Massachusetts and across the country protect students from hate crimes and harassment. The guide, titled "Protecting Students from Harassment and Hate Crime- A Guide For Schools," is a joint publication of the National Association of Attorneys General ("NAAG") and the Office of Civil Rights, U.S. Department of Education ("OCR"). It was developed and drafted as part of a national project initiated by the Civil Rights Division. The Chief of the Division served as national co-chair for this project. The guide was endorsed by the National School Boards Association. The goal of the guide is to help school districts throughout the country develop policies and practices to identify, investigate and eliminate instances in which hate crimes and harassment based on race, color, national origin, sex, sexual orientation, and disability, create or contribute to a hostile learning environment for students in violation of federal laws. The guide provides school administrators and other officials with step-by-step assistance on how to develop comprehensive civil rights policies, practices and programs to protect students' civil rights. The guide includes the Division's "Erasing Hate" brochure in its Appendix.

MASSACHUSETTS HATE CRIMES TASK FORCE

Working closely with the Division, Attorney General Tom Reilly, along with United States Attorney Donald Stern, jointly decided to expand the Massachusetts Hate Crimes Task Force to include a broad spectrum of community members with vast experience in hate crimes prevention, victim assistance, community relations, and human and civil rights advocacy, including numerous nationally recognized experts in these areas. The first session of this newly expanded Task Force will be held on July 14, 1999. It is anticipated that the expanded Task Force will develop a comprehensive plan to address and prevent hate crimes most effectively in the Commonwealth. First organized in 1994, the Hate Crimes Task Force has been limited to federal, state and local prosecutors and other law enforcement officers. Over the past five years, the Task Force, headed by the Division Chief, has helped law enforcement officials to more effectively coordinate enforcement activities, and share information and expertise in combating and prosecuting hate crimes in the Commonwealth.

NATIONAL WORKING GROUP ON HATE CRIMES TRAINING FOR STATE AND LOCAL LAW ENFORCEMENT

In fiscal year 1999, the National Working Group on State and Local Law Enforcement Hate Crimes Training, established by Attorney General Janet Reno in July of 1997, finalized and published four model hate crime training curricula for law enforcement throughout the country: for patrol officers and responding officers; for investigating officers and detectives; for multi-level law enforcement professionals; and a fourth curricula for law enforcement managers. The Division Chief is one of the four national co-chairs of the National Working Group. The Working Group includes representatives from the U.S. Department of Justice the U.S. Department of the Treasury, the International Association of Directors of Law Enforcement Standards and Training, the International Association of Directors of Law Enforcement Standards and Training, the International Association of Chiefs of Police and the National Association of Attorneys General. The Division Chief played a leading role in developing, designing and drafting the new national hate crime training program for state and local law enforcement officials. The four hate crime training curriculum incorporate the best policies, procedures, practices and materials used to train law enforcement officers.

In the fall of 1998, the DOJ and NAAG sponsored, and the Working Group held three day regional hate crime train-the-trainer programs to instruct experienced law enforcement and civil rights trainers throughout the United States on how to deliver these state-of-the-art hate crime training curricula. The Division Chief served as a national trainer at two of the three regional train-the trainer program sites.

CIVIL RIGHTS AND POLICE

In a collaborative effort to promote civil rights, assist the police, and provide departments with technical assistance, the Division continues to offer and provide civil rights training to law enforcement covering issues of hate crimes identification, response and prosecution, civil liability, sexual harassment, and racial and cultural awareness.

The Division continues to investigate allegations of police misconduct. It is also regularly consulted by police departments to assist them in their internal civil rights investigations. The Division has closely worked with departments to ensure that appropriate remedial steps are taken when credible evidence is found which substantiates civil rights complaints. For example, the Division worked closely with one Department to develop and implement new procedures to

address effectively the concerns raised regarding strip searches of persons who are arrested and placed into custody.

In addition, on April 12, 1999, the Attorney General, with the assistance of the Division, drafted and sent a letter to the Senate and House Chairs of the Joint Committee on Public Safety expressing strong support for the goals of Senate 1180, An Act Providing For the Collection Of Data Relative to Traffic Stops. The bill requires the collection and analysis of data to determine whether racial profiling is used by law enforcement when making routine traffic stops in Massachusetts. The letter expressed the Attorney General's strong commitment to having his office play an integral role in addressing the concerns about the use of racial profiling by law enforcement in the Commonwealth.

HOUSING DISCRIMINATION

The Division continues to enforce effectively the state's fair housing laws which prohibit discrimination on the basis of race, color, national origin, religion, sex, sexual orientation, familial status, marital status, source of income (receipt of housing subsidy), age, or disability.

In fiscal year 1999, the Division fought discrimination in housing by filing ten new civil actions in Superior Court. These cases involved allegations of discrimination based on race, familial status, gender, and disability as well as for retaliation. Eleven pending housing discrimination cases were favorably resolved through court approved consent agreements during this period. Settlements included broad prohibitory and affirmative relief provisions, as well as significant compensatory damages to the complainants. Collectively, complainants in the eleven favorably resolved cases received over one hundred fifty five thousand (\$155,000.00) dollars in monetary damages. In addition, two thousand five hundred (\$2500.00) dollars to the local consumer aid fund to be used to educate consumers about discrimination.

Through these and other housing discrimination cases, the Division hopes to modify landlord and Realtor practices, to educate tenants about the right to fair treatment in the housing market, and to increase the availability of safe, affordable housing for families with young children.

An important case reflecting the Division's commitment to curtail discriminatory housing practices is its successful suit in Commonwealth v Davenport Realty Trust. The realty company, one of the largest on Cape Cod, allegedly discriminated and retaliated against a tenant by evicting her because she provided foster care services to a mentally disabled man as part of the state's

foster care program. The Division entered into a settlement approved by the Barnstable County Superior Court which includes comprehensive prohibitory and affirmative injunctive relief as well as a very substantial monetary award for the two complainants. The consent judgement prohibits the defendants from discriminating against or refusing to make reasonable accommodations for persons with disabilities and from retaliating against individuals who file discrimination complaints. In addition, the affirmative injunctive relief requires the defendant to report certain information to the Division about its compliance with the consent judgement as well as ensures the intensive fair housing training of all of the defendant's employees, supervisors and managers who deal with rental housing.

In Commonwealth v. Schachter, the Division entered into a comprehensive consent judgement, approved by the Middlesex County Superior Court, which awards thirteen thousand dollars to the complainant and prohibits an Everett landlord from refusing to rent an apartment to a person because the person is pregnant or has a child less than six years of age. The judgment also requires the defendant to have all twenty- three units in his six rental properties inspected by a licensed inspector and to delead or abate the units found to contain dangerous levels of lead. The defendant allegedly agreed to rent an apartment to a prospective tenant and accepted a deposit from her. Upon learning from another that the prospective tenant was pregnant the landlord allegedly informed her that the apartment might contain lead pain and subsequently refused to rent the apartment to her.

In Commonwealth v. Echo Hill Townhouse Condominium Trust, the Division obtained a Final Judgement by consent from the Hampshire County Superior Court in a suit against the Echo Hill Townhouse Condominium Trust and Congate Enterprises, its management company, for allegedly rejecting a prospective female buyer because she had young children. The Housing Discrimination Project intervened in the case on behalf of the complainant. The bylaws of the Condominium Association's Trust allegedly contained an unlawful provision that restricted occupants of the condominium development to people over the age of fifty. The provisions attempted to establish a housing community for the elderly in violation of the state's anti-discrimination law. The final judgement ordered the Condominium Trust to remove the provision from its bylaws and prohibits it from continuing to refuse to rent or sell units to families with children in the future. In December 1998 the Trust removed the provision. The defendants provided the complainant \$40,000.00 in settlement of her claims.

In Commonwealth v Neptune Towers, the Division closely monitored compliance with the comprehensive model agreement entered into with the owners and managers of a 330-unit

federally subsidized apartment complex located in Lynn, and approved by the Middlesex County Superior Court and the United States Department of Housing and Urban Development in August 1997. The court complaint had alleged race and national origin discrimination by the defendant. In fiscal year 1999, the agreement's affirmative outreach, advertising and marketing provisions significantly enhanced housing opportunities for African-American and Hispanic families at the complex. A number of blacks and Hispanic families applied for and have been placed into the apartment complex as a result of the judgement by consent. In addition, the Division conducted fair housing training of the defendant's staff and contacted numerous community agencies to notify them of housing opportunities at the complex.

EMPLOYMENT DISCRIMINATION

Since fiscal year 1996, the Employment Discrimination Project in the Civil Rights Division has focused its efforts on addressing allegations of systemic employment discrimination practices in the Commonwealth. The Project investigates allegations of discrimination or harassment (race, sex, ethnicity, national origin, age, sexual orientation) in order to determine whether a particular employer or industry is engaged in a pattern and practice of discrimination, affecting substantial numbers of Massachusetts employees.

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

From the effective date of the Agreement in 1997 through fiscal year 1999, the Division continues to have a significant impact on employment practices at the Massachusetts Bay Transportation Authority (MBTA). In February of 1997, the Division entered into an historic, court enforceable agreement with the MBTA and twenty-six of twenty-seven of its labor unions to end years of alleged violations of state and federal fair employment laws and to protect employees from future discrimination, harassment and retaliatory conduct. The comprehensive agreement mandated significant changes in policies and practices at the MBTA, and required new systems to govern the identification, investigation, monitoring and response to allegations of discrimination, harassment and retaliation at the MBTA. In 1999, the Division continued ongoing monitoring of the MBTA's compliance with the Agreement, responded to numerous complaints from MBTA employees, engaged in special reviews to determine if there was compliance with particular provisions of the Agreement, and investigated possible breaches. Some of the Division's fiscal year 1999 efforts include the following:

(A) Review and analysis of MBTA's lengthy quarterly reports which are required to document its compliance with each provision of the Agreement;

(B) An extensive audit of the Authority's Department of Organizational Diversity, which is charged under the agreement to investigate and resolve complaints of discrimination, harassment and retaliation filed by employees, identifying compliance issues and problems; and

(C) Extensive review of all the MBTA's job posting sites to determine whether the Authority had complied with its obligation to post job vacancies and employees' rights under the agreement at all these sites. A number of areas of non-compliance were identified and immediate corrective action by the MBTA was undertaken.

SUPREME COURT AMICUS BRIEFS

The Division filed a Brief of Amici-Curiae in the United States Supreme Court, on behalf of Massachusetts and eleven other states in Wright v. Universal Maritime Corp., on the important question of whether an arbitration clause in a collective bargaining contract barred union employees from filing discrimination claims under federal and state law in court. The Division argued that union employees should not be denied the right to bring their discrimination claims in court rather than being required to arbitrate them, asserting that discrimination claims should be litigated in a public judicial forum and not in a private arbitral forum, beyond the reach of public scrutiny. The United States Supreme Court issued its decision in Wright on November 16, 1998 and held that for an arbitration clause in a collective bargaining agreement to waive employees right to a judicial forum for statutory discrimination claims, it must clearly and unmistakably waive the right. The Court left for another day the question of whether an arbitration clause is ever enforceable to preclude a court hearing on discrimination claims in the collective bargaining context.

The Division, on behalf of Massachusetts and seven other states, also filed an Amicus Brief in the United States Supreme Court in Vaughn Murphy v United Parcel Services, Inc. This case presented an extremely important issue regarding the appropriate standard for determining whether a person has a "disability" within the meaning of the Americans with Disability Act ("ADA"). The Division argued that a disability should be evaluated based on the underlying medical condition of the employee (i.e., diabetes, heart condition, epilepsy, severe hypertension) without considering the ameliorative effects of medication, prosthetic devices or other forms of assistance. On June 22, 1999, the Supreme Court held, however, that ameliorative measures must be taken in consideration when making the threshold determination of whether a person is disabled. The decision may deny the protection of the ADA to people suffering from serious medical conditions which are currently controlled.

Commonwealth v. Bull HN Information Systems, Inc.**Age Discrimination Claim Under Federal law**

In a ground-breaking decision in Commonwealth v. Bull HN Information Systems, Inc., the United States District Court denied the defendant's motion to dismiss and held that the Commonwealth has parens patriae power to enforce federal anti-discrimination laws in federal court. The district court also found that the Commonwealth could proceed with its federal age discrimination claims. In fiscal year 1997, the Division's Employment Discrimination Project, along with the EEOC, had filed this precedent setting age discrimination in employment case alleging that Bull HN, a large electronics company, violated the federal Older Workers' Benefits Protection Act ("OWBPA") and the federal Age Discrimination in Employment Act ("ADEA"), when laying off its workers aged forty and older. This is the first ever joint enforcement effort of federal employment discrimination law in the United States between a state attorney general and the EEOC.

The suit alleged that Bull HN violated federal law by requiring laid-off employees over forty years of age to sign a waiver of rights in order to receive severance benefits. Further, it alleged that in violation of OWBPA, Bull HN failed to provide statutory mandated information to laid off employees which would enable them to assess whether or not they were victims of age discrimination when terminated. This waiver agreement also provided that in exchange for receiving severance benefits, an employee gave up the ability to sue for any current or prior claims arising out of the employee's employment. It further provided that if an employee who executed a waiver later brought or maintained any claim covered by the agreement, he or she would be required to return all severance paid and would have to indemnify the employer for all attorneys fees, costs and expenses associated with defending the complaint or claim.

In its motion to dismiss, Bull HN raised a number of objections to the Attorney General's participation in the action, many of which presented issues of first impression in the First Circuit and even the federal courts. With issues of standing now resolved, the Division continues to actively litigate the age discrimination issues in this case, with the assistance of EEOC.

Age Discrimination Case Under State Law

In addition to challenging Bull HN's employment practices in federal court under federal

law, the Division pursued an action in the Massachusetts Commission Against Discrimination under state law, alleging that Bull HN engaged in a pattern of age discrimination when terminating its employees pursuant to an ongoing reduction of its workforce. On January 13, 1999 the parties entered into a detailed settlement agreement, in which Bull HN agreed to establish or revise policies and procedures to ensure the protection of their employees from age discrimination. The Agreement will remain in effect for four years, and policies and procedures for five years. Some of the provisions of the agreement include the following:

A requirement that Bull HN give notice of future job vacancies to its former employees who were laid off pursuant to a reduction of workforce and the right to file a complaint if the former employee is not rehired, and believes that he or she has been discriminated against; that seniority be the tie-breaking factor when Bull HN is faced with a close decision concerning rehiring or termination amongst employees who are substantially equally qualified; extensive training of personnel decision-makers on age discrimination law and the requirements of the Agreement; and additional review by senior level management when a decision is made to terminate an employee forty years of age or older to ensure that age is not a factor in the decision.

CIVIL RIGHTS INITIATIVES WITH THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

NAAG'S NATIONAL CIVIL RIGHTS WORKING GROUP

The Division Chief continues to serve as national chair of the National Association of Attorneys General's ("NAAG") Civil Rights Working Group consisting of representatives of state Attorneys General offices from throughout the country. The Working Group's goal is to enhance the cooperative relationship between the states and the U.S. Department of Justice in civil rights enforcement. Pursuant to the NAAG-DOJ Memorandum of Understanding on Affirmative Civil Rights Enforcement, executed in 1995, five NAAG-DOJ civil rights task forces have been established under the umbrella of NAAG's Civil Rights Working Group. Among other things, these task forces are intended to formulate and implement joint enforcement initiatives in five substantial areas: bias-related crimes; housing discrimination; mortgage lending discrimination; discrimination in public accommodations based on disabilities; and, most recently, employment discrimination. Division staff play a key role in each of the national task forces to address national policy and enforcement issues in these areas.

For the past six years since 1994, including in fiscal year 1999, the Division has taken a leading role in initiating and organizing NAAAG's annual Civil Rights Conferences attended by representatives of state attorneys general offices, the Civil Rights Division of the U.S. Department of Justice, United States Attorneys Offices and most recently, the EEOC, to share expertise and to enhance national, regional and state civil rights enforcement efforts.

DISABILITY RIGHTS

ENSURING EQUAL ACCESS TO PRIVATE BUSINESSES

The Disability Rights Project of the Civil Rights Division continued its extensive efforts to protect the rights of individuals with disabilities throughout the Commonwealth. For example, the Project reached an agreement with Starwood Hotels and Resorts Worldwide, Inc., which will significantly improve access for people with disabilities at the company's eleven Massachusetts hotels, including the Boston Park Plaza. The settlement agreement resolved allegations of noncompliance with state and federal disability access requirements at the chain's hotels. Under the terms of the agreement, Starwood will, over the next several years, increase to five percent the number of accessible guest rooms at each of its Massachusetts hotels, raising to almost 200 the total number of its accessible rooms. Starwood will also survey each of the hotels, and will develop a remedial plan and time frame for addressing all identified access problems to ensure that meeting rooms, restrooms, restaurants, health clubs and outdoor areas are more accessible to people with disabilities.

In a landmark action, the Massachusetts Attorneys General's Office, along with the U.S. Department of Justice and the attorneys general offices of Arizona, California, Florida, Illinois, Kansas, Minnesota, Pennsylvania and West Virginia, combined their efforts in a first-time ever joint federal/state ADA compliance investigation and enforcement action against Wendy's International Inc., a fast food chain. The matter arose out of Wendy's belief that it was upholding the Americans with Disabilities Act ("ADA") by offering separate but equal access to customers in wheelchairs. However, the Disability Rights Project, along with the Department of Justice and other state attorneys general offices, concluded that "separate but equal" is just as illegal under the ADA as it is in racial segregation matters. As a result, Wendy's entered into a major settlement agreement to widen or eliminate the queue or maze system in its almost 1,700 fast-food restaurants nationwide. The queue barriers in which customers stand in a snaking line to order food are too narrow to accommodate wheelchairs, forcing disabled customers to wait nearby until they are noticed by restaurant employees. In addition, Wendy's agreed to modify its archi-

tectural plans to eliminate the problem in future restaurants. The company also agreed to pay the joint federal/state Task Force \$50,000 and will pay a total of \$12,000 in damages to five individuals or groups who filed complaints with the DOJ or state attorneys general regarding accessibility at the fast-food chain.

PROTECTING FAIR HOUSING RIGHTS OF INDIVIDUALS WITH DISABILITIES

The Project continues to safeguard the right of individuals with disabilities to live in the communities of their choice. For example, the Disability Rights Project of the Division assisted a nursing home (Pelham House) in Newton which was encountering neighborhood opposition to its renewal of a special permit. The facility claimed that the city's unwillingness to renew the permit was violative of the residents' fair housing rights, while the city questioned whether the facility had been operating properly. Project staff did a presentation on the Fair Housing Act and Title II of the ADA to Newton's Land Use Committee. A three-part working group, composed of representatives of the city, the neighbors and the Project was established. After a very long evening of discussions/negotiations between the groups, people reached an agreement which would provide Pelham House with the special permit it needed to continue functioning, and establish safeguards and a process for redressing future concerns of the neighbors. The Land Use Committee (which had previously voted unanimously to reject the special permit application) and the Board of Alderman approved the settlement package and granted the special permit.

The Project also obtained a settlement in a fair housing dispute in Lawrence. It grew out of Lawrence's refusal to remove a piece of property from its demolition list, despite there being a developer willing and able to develop the building into a residence for individuals with mental disabilities. The Project explained to the City the fair housing implications of its actions and commenced negotiations with the city to resolve the matter. According to the terms of the settlement, the City of Lawrence agreed to provide \$67,000 in community development funds to help the developer purchase an alternative property, to be used for a community residence, and a special employment training project.

COMMUNITY EDUCATION

Consistent with the strong emphasis upon community education, the Project has emphasized programs to increase people's understanding of and compliance with disability rights laws.

Advisory To Dentists and Dental Hygienists

The Disability Rights Project issued an Advisory in August, 1998 to apprise all dentists and dental hygienists in the Commonwealth of their obligations under state and federal law not to discriminate against individuals infected with the human immunodeficiency virus (HIV). The Advisory stated that any practice or policy of denying treatment, providing disparate treatment, and/or assessing a surcharge to any patient who is HIV-positive, regardless of whether that person is symptomatic for HIV/AIDS violates both state and federal law.

The Advisory also explained the 1998 United States Supreme Court ruling of Bragdon v. Abbott which held that a person's HIV infection constitutes a "disability" within the meaning of the ADA. Therefore, the affected person would be entitled to complete protection under the ADA in areas of employment, public services and places of public accommodation (including a dental or medical office). The Bragdon decision specifically involved a provider of dental care; however, the same principle of non-discrimination also applies to other providers of medical care and related health care services.

CONSUMER PROTECTION AND ANTITRUST DIVISION

THE WORK OF THE DIVISION

CPAD carries out the Attorney General's authority under the state Consumer Protection Act and the state and federal antitrust laws. The division also acts pursuant to a broad grant of authority and responsibility found in General Laws chapter 12, section 10, which directs that the Attorney General "shall take cognizance of all violations of law...affecting the general welfare of the people...and shall institute...such criminal or civil proceedings before the appropriate state and federal courts...as he may deem to be for the public interest..." At any given time, the division is likely to be handling 250 separate matters, roughly a dozen of which relate to antitrust law.

CPAD is also active in the legislative arena, working with all sectors of the public to draft bills that will protect consumers without placing undue burdens on businesses. The division engages in other forms of advocacy as well, filing formal comments in administrative proceedings, at both the state and federal levels. The division provides information to the public through written publications on a variety of consumer topics, and makes speakers available to both

consumer and business groups for educational purposes.

Three specialized units also fall under the responsibility of the division's Chief. These are the Consumer Complaint and Information Section (CCIS), the Local Consumer Programs (LCPs), and the Mediation Services Department (MSD).

RELIEF OBTAINED THROUGH CPAD CASES

Consumer Restitution:	\$ 1,668,725
Civil Penalties, Attorney Fees, Costs:	\$2,565,500
Local Consumer Aid Fund:	\$127,500
Other:	\$8 billion over next 25 years plus \$323 million every year thereafter paid by Tobacco industry to Commonwealth
	\$250 million to establish anti-smoking foundation
	\$1.45 billion for anti-smok- ing public education
	\$158,333 to DPH Health Protection Fund
	\$30,000 grant to publish consumer brochures in several languages
	Return of unfairly collected debt monies from hundreds of Massachusetts residents

SIGNIFICANT CASES AND PROJECTS

Brief descriptions of several significant matters handled by the Consumer Protection and Antitrust Division between July 1, 1998 and June 30, 1999 are set out below.

ANTITRUST

Microsoft: The Division contributed to the preparation of the government's case in a significant way, by conducting essential legal research and assisting in the preparation of expert witnesses. The suit involves claims by the federal government and several states that software manufacturer Microsoft engaged in illegal efforts to preclude competition in computer related products and services.

Toys R Us: This case, filed jointly by several states to halt a major retailer's efforts to keep warehouse and club chains from competing in the sale of toys, has produced settlements with each of the defendants, retailer Toys R Us, and toy manufacturers Mattel, Little Tykes, and Hasbro. The proposed joint settlement, which has been submitted to a federal court for approval, would require the donation of tens of thousands of toys to the Toys for Tots program.

Disposable Contact Lens Litigation: Massachusetts has been very active in litigating with other states this federal antitrust action, based on allegations that eye care providers have made concerted efforts to restrict competition in the retail sale of contact lenses.

Joint health care venture by Harvard-Pilgrim Health Care, Baystate Health System, and Health New England: An examination of potential anticompetitive effects of a proposed health care joint venture in western Massachusetts led to an agreement on July 13, 1998 requiring prior notice to the Attorney General of any future acquisitions or exclusive contracting arrangements.

CONSUMER CREDIT

First Alliance Mortgage Company: Suit was brought on October 30, 1998 against this California mortgage lender for charging up to 23 points for loans made to Massachusetts citizens.

United Companies Lending Corporation: The Division obtained a Consent Judgment on October 21, 1998 in this case against a Louisiana mortgage lender, based upon its practice of charging Massachusetts borrowers excessive fees and points for mortgage loans. The judgment orders the company to pay over \$500,000 in restitution to Massachusetts consumers and a \$146,500 civil penalty to the Commonwealth. In a related matter, in which UCLC challenged the Attorney General mortgage lending regulations that prohibit the charging of unconscionable fees, a federal judge upheld the regulations as valid law.

Commonwealth Capital Funding Corporation: The Division obtained a Judgment on August 17, 1998 against this company, which operated a phony first time home buyer program, and took thousands of dollars from would be homeowners in Massachusetts. The judgment orders the principals of the company to pay \$828,000 in restitution to consumers, and a \$1,435,000 civil penalty and \$22,000 in attorney fees to the Commonwealth.

National Affordable Housing Coalition, Inc: This consumer protection action against a Nevada company that charged consumers \$500 to attend a sales presentation it called a "seminar" and falsely promised that consumers could obtain mortgage loans and purchase their dream homes within 7 to 10 days regardless of their credit history has nearly concluded, with a ruling July 9, 1998 that the company was acting as an unlicensed mortgage broker in Massachusetts.

First North American Bank: The Division led a national effort to prosecute retailers who violated the rules of bankruptcy and tried to collect from consumers debts that were discharged by the federal bankruptcy court. This subsidiary of Circuit City, which issued the retailer's store credit card, settled the claims of Massachusetts and 29 other states by agreeing on November 19, 1998 to repay to consumers any debts unfairly collected (100 in Massachusetts), and paying a \$40,000 civil penalty to the Commonwealth.

May Department Stores Company: another in the series of national investigations of retailers unfairly collecting debts that were discharged through personal bankruptcy proceedings, this case resulted on November 2, 1998 in reimbursement of 1200 Massachusetts consumers for moneys unlawfully collected, and payment of a \$280,000 civil penalty to the Commonwealth.

General Electric Capital Corporation and Montgomery Ward: another in the series of national investigations of retailers unfairly collecting debts that were discharged through personal bankruptcy proceedings, this case resulted on August 7, 1998 in reimbursement of about 430 Massachusetts consumers for moneys unlawfully collected, and payment of a \$153,000 civil penalty to the Commonwealth.

Filene's: The Division obtained a Consent Judgment on January 25, 1999 against Filene's for unfair debt collection practices, including phoning at unreasonable times and using profane language. The judgment that requires the retailer to pay a \$245,000 civil penalty.

National Credit Systems: Suit was filed July 24, 1998 against this New York debt collection agency for attempting to collect debts from Massachusetts residents without a Massachusetts license.

University Student Services: The Division joined a multistate effort to halt the deceptive marketing by a New Jersey company of a charge card to college bound students, which the company falsely represented was a means of payment required or endorsed by numerous schools. In a July 8, 1998 agreement, the Commonwealth obtained \$5225 in refunds for over 200 Massachusetts consumers.

Credit Repair Firms: In a sweep of local companies taking in advance fees and making false claims to consumers of their ability to wipe clean their credit histories, the Division sued Second Federal Credit, Credit Repair Network, New England Financial, and Allied Credit Services, along with their principals on July 27, 1998, and obtained immediate court orders halting their practices.

HANDGUN REGULATION

American Shooting Sports Council v. Attorney General: In a June 30, 1999 decision, the Supreme Judicial Court upheld the legal authority of the Attorney General to issue a set of consumer protection regulations, which declare the sale of unsafe handguns to be an unfair or deceptive trade practice. The regulations require that handguns sold in Massachusetts meet certain manufacturing standards, and have adequate childproof features to protect children from accidental harm.

HEALTH CARE

Horizon Healthcare: Litigation was filed October 6, 1998 against the operators of the Greenery Rehabilitation Center in Brighton, alleging that the nursing home provided substandard care to brain injured patients, which has led to serious harm or death in more than one resident of the home.

SmithKline Beecham Consumer Healthcare: The Division participated in a multistate investigation of this drug manufacturer, for the misleading advertisement of its smoking cessation products Nicoderm and Nicorette. Under the resulting December 10, 1998 agreement, the company will no longer suggest that using its products will guarantee success in quitting the smoking habit. The manufacturer also paid the Commonwealth \$50,000 for the cost of its investigation, and contributed \$158,333 to the Health Protection Fund of the Department of Public Health.

OTHER CONSUMER PROTECTION MATTERS

United Parcel Service; Airborne Freight Corp.: An investigation of delivery services that took inadequate precautions against delivering alcohol without a Massachusetts license, and delivering it to minors in Massachusetts, has produced agreements dated June 23, 1999 under which two such companies will alter their practices and contribute \$2500 to the Local Consumer Aid Fund.

Travel Opportunities: This multistate investigation of a Florida travel company's deceptive marketing practices resulted on December 7, 1998 in a settlement whereby the company is to follow strict rules about its advertising, pay back injured consumers, and pay a \$25,000 civil penalty to Massachusetts.

JCK Group d/b/a Tower Cleaning Systems: A suit was filed on September 3, 1998 against this company for claiming to sell lucrative franchises for commercial cleaning services, taking in thousands of dollars from small entrepreneurs, and then failing to provide the income producing cleaning accounts promised. A Consent Judgment entered the same day by the court ordered the company out of Massachusetts for 2 years, and ordered it to pay \$100,000 in restitution to affected Massachusetts purchasers, as well as a \$5000 civil penalty to the Commonwealth.

Medical Weight Loss Center: The Division obtained a Consent Judgment on November 6, 1998 in this case against the operator of a weight loss clinic. Among other things, the suit alleged that the clinic was prescribing a dangerous medication without adequate medical supervision. Under the judgment, the operator must pay \$15,000 in restitution to affected consumers.

Walter Long: Suit was filed by the Division on December 7, 1998 against a man posing as a licensed real estate and mortgage broker, taking deposits and fees for unavailable apartments and mortgages, and failing to make refunds to consumers of any moneys paid.

Home Shopping Channel: A Consent Judgment entered March 19, 1999 in this case prohibits the Home Shopping Channel from selling mace illegally in Massachusetts, and orders payment of a \$10,000 civil penalty to the Commonwealth.

Super Bowl: Massachusetts consumers who purchased travel packages from one of several ticket brokers or travel companies that were to include tickets to the 1997 SuperBowl were disappointed to find that no tickets were in fact provided. This suit resulted in a March 23, 1999 judgment that returned \$70,500 to consumers who had made such purchases from National Travel Vacations, Sports World Tours, Harvey Zuckerberg, Carlyle Industries, Ticket to Travel, National Travel, Inc., and Saugus Center Travel. The court also ordered payment of a \$2000 civil penalty.

Bottle Bill Litigation: This case was filed December 9, 1998 against six container redemption centers that were refunding 4 cents per container rather than 5 cents, as prescribed by statute.

United Buyers Service of Massachusetts, Inc.: This suit against a buying club, based upon allegations of high pressure sales practices and misrepresentations to consumers, concluded on December 15, 1998 with a court order voiding all contracts with Massachusetts consumers; cancelling any debts owed by those consumers to the buying club; and ordering payment of \$150,000 in restitution to consumers and a \$100,000 civil penalty.

Nestle: The Division participated in a multistate investigation of "Nestle Magic," which consisted of a chocolate shell encasing a small plastic Disney toy. In response, Nestle recalled the product, and contributed \$125,000 to the Local Consumer Aid Fund, pursuant to a March 11, 1999 agreement.

Union Travel and Tours: On March 3, 1999, the Division sued the owner of a travel agency who claimed falsely that she could arrange for consumers to obtain divorces from the Dominican Republic. The suit seeks return of the consumers' money, having been charged \$500 apiece for this phony service.

Guillermo Recinos; Rebecca Jereidini: This suit, brought under the Massachusetts Consumer Protection Act and the federal Americans with Disabilities Act, alleged that a dentist refused to treat HIV positive patients. An April 20, 1999 Consent Judgment prohibited the dentist from discriminating against HIV positive patients and required payment of a \$20,000 civil penalty by the dentist and the co-owner of his practice.

J.J. O'Brien Movers: A judgment obtained April 13, 1999 against this moving and storage company bars it from operating a warehouse without a license, and orders it to make full restitution to consumers whose belongings have been lost or stolen while in the company's care. The mover must also pay a \$4000 civil penalty to the Commonwealth.

Cynthia and Christopher DesBrisay: This couple was sued on May 4, 1999 for taking deposits for works for art from numerous consumers, and failing either to deliver the purchased items or refund the money paid for them.

Matthew Gaeta: On March 18, 1999 this operator of several gas stations settled the Commonwealth's allegations that he claimed to sell Citgo brand gas, when in fact he was selling unbranded gasoline to consumers, with payment of a \$50,000 civil penalty.

Consumer Publications Translation Project: This office received a \$30,000 grant on October 7, 1998 to fund the translation, printing, and publication of five consumer protection brochures written by the attorneys of this division into eight different languages spoken in various Massachusetts communities.

RECOVERING PUBLIC FUNDS

U.S. v. Baker & Taylor: On July 14, 1998, the Commonwealth intervened in federal litigation filed by the U.S. Department of Justice to recover overcharges of public schools and libraries by this national book wholesaler. While discounts of 40% off list price were promised, actual discounts of only 10% to 25% were reflected in the bills paid by various public entities.

TOBACCO CONTROL

Suit Against Tobacco Manufacturers: The massive, complex litigation against the tobacco industry, in which the Attorney General sought to recover the costs incurred by the Commonwealth in caring for residents suffering from smoking related illnesses, came to a close on December 3, 1998 with a ground-breaking settlement. Massachusetts will receive over \$8 billion dollars from the tobacco companies over the next 25 years, and an additional \$323 million every year thereafter as a result of this litigation. The Consent Judgment entered by the court also prohibits cigarette advertising aimed at children, outdoor advertising, and tobacco company sponsorship of events where a significant number of children are likely to be in attendance. The judgment restricts the distribution of free cigarette samples to adult-only venues. It also provides for the creation of a national charitable foundation, the purpose of which is to reduce teen smoking; the tobacco industry will fund this foundation with \$250 million over the next 10 years. The tobacco industry will also pay \$1.45 billion over the next 5 years to fund a national public education fund aimed at educating consumers about the harmful effects of tobacco use.

Philip Morris v. AG: the Attorney General continues to defend against this federal suit brought by the tobacco companies challenging the Massachusetts statute requiring disclosure of the ingredients in tobacco products.

Regulations to prohibit the advertising of tobacco products near schools, parks, and playgrounds, to require certain health warnings on packaging, and to prohibit certain practices that promote smoking in children, were issued by the Attorney General's Office after holding public hearings and accepting written comments.

CONSUMER COMPLAINT AND INFORMATION SECTION

The Attorney General's Consumer Complaint and Information Section ("CCIS") provides services to individual consumers by responding to thousands of consumer complaints and requests for information on consumer issues and referrals on the Attorney General's consumer "hotline"; through a voluntary mediation program aimed at resolving consumer complaints against businesses which obtains refunds and other savings for individual consumers; by educating the public through developing and distributing educational materials and participating in consumer education initiatives; by responding to public records requests; and by identifying potential trends of unfair or deceptive trade practices for further investigation or possible prosecution by the Consumer Protection and Antitrust Division.

For the period July 1, 1998, through June 30, 1998, CCIS received and responded to 18,005 written complaints and other correspondence; responded to 122,717 telephone calls to the Attorney General's consumer hotline; provided mediation services immediately upon receiving telephone calls to 72 consumers experiencing highly time sensitive or particularly egregious consumer disputes; mailed consumer educational brochures or pamphlets to 5,728 consumers; recorded 5,138 consumer complaints in our computerized complaint tracking system; mediated 2,040 consumer complaints, recovering \$733,685 in refunds or other savings for individual consumers, representing an increase of \$155,418 from Fiscal Year 1998; responded to 672 public records requests; and identified 10 companies for further investigation or prosecution by the Consumer Protection and Antitrust Division.

Some of the highlights of CCIS's mediation efforts during Fiscal Year 1999 include complaints involving a computer training school which closed leaving its students with thousands of dollars in student loans and no education. Working with the federal government and student loan guaranty agencies, CCIS was successful in obtaining complete loan discharges for the 55 students who filed complaints. CCIS also mediated complaints involving a travel agency where one of the employees allegedly received thousands of dollars from consumers for trips and then never booked the trips. Through mediation, CCIS was successful in obtaining full refunds for all of the consumers who could provide proof of purchase. Lastly, CCIS mediated complaints involving a furniture store which changed ownership. Allegedly, the previous owner accepted thousands of dollars in deposits for furniture before selling his business and disappearing. As a result of CCIS's mediation efforts, the new owner agreed to offer merchandise credits to all 47 consumers who filed complaints.

In addition to resolving complaints through its mediation service, CCIS continued a strong focus on preventative consumer education initiatives. CCIS staff organized activities and community outreach for the National Consumer Protection Weeks in October 1998 and February 1999. As part of these outreaches, the Section developed a brochure with a compendium of consumer credit information called the Attorney General's Guide to Credit and an interactive computerized quiz on consumer credit. CCIS staff also participated in consumer outreach events at the "Big E" Eastern States Exposition and at the annual Massachusetts Council on Aging conference.

In addition to these outreach events, CCIS partnered with the Quincy police department on an educational initiative aimed at decreasing victims of telemarketing fraud. As part of the initiative, the CCIS Director spoke to various groups of seniors on the topic, giving tips on how to avoid victimization. CCIS staff also partnered with the Massachusetts Consumers Coalition in their effort to examine and address the growing problem of seniors and credit debt. CCIS helped develop and test a survey that will allow the Coalition to further study this issue. Lastly, CCIS staff provided trainings on consumer topics to the freshman legislators elected in the fall of 1998, as well as to area high schools, colleges, and senior citizen groups.

LOCAL CONSUMER PROGRAMS

Nineteen Local Consumer Programs, located in communities around the state, are associated with CPAD. These programs receive grant monies and direction from this office, pursuant to G.L. c. 12, section 11G. In addition to fielding consumer complaints received directly from the public and from CCIS, offering mediation services, and distributing Attorney General publications to citizens, these programs feed complaint data to this office, for use in evaluating potential division cases. The office liaison to the LCPs is on call to provide advice as needed, and conducts monthly training sessions for program directors. Settlements of CPAD cases often include designation of a specified dollar amount of the recovery for the Local Consumer Aid Fund.

MEDIATION SERVICES DEPARTMENT

MSD oversees three programs: the Student Conflict Resolution Experts (SCORE) Program, the Conflict Intervention Team (CIT), and the Face-to-Face Mediation Program (FTFMP).

FACE-TO FACE MEDIATION PROGRAM (FTFMP)

The Face-to-Face Mediation Program began in 1983 in an effort to broaden the continuum of services provided by the OAG for the resolution of consumer disputes. The FTFMPs offer consumers and tenants a quick, convenient, non-adversarial, and effective option to resolve their disputes. FTFMP users can schedule a mediation session at their convenience and, with the help of trained volunteer mediators, air their differences and negotiate a mutually acceptable resolution. Cases are referred to FTFMPs by the courts, police, community agencies and local consumer programs. Today there are nine FTFMPs in Worcester, Somerville, Haverhill, Lowell, Hyannis, Fitchburg, Brockton, Springfield and Greenfield.

In FY 99, the Face-to-Face programs responded to 4,856 referrals to mediation, resolved 136 complaints by phone and conducted 2,190 mediation sessions with 82% resulting in a voluntary mediated agreement. A total of \$1,031,25 in dollars and \$196,827 in services was returned to consumers, businesses, landlords and tenants served by the FTFMPs.

In FY 99, programs in Hyannis, Lowell and Brockton received ongoing consultation and technical assistance to enhance mediation and case-flow procedures. Annual site-visit evaluations were conducted with programs in Fitchburg, Brockton, Worcester, Springfield, Haverhill, Lowell, Greenfield and Hyannis. Site-visits enable MSD to evaluate individual program performance, assess field operations and identify areas for improvement. During the site visit, volunteer mediators are observed while mediating, and questionnaires are administered to program and referral sources.

STUDENT CONFLICT RESOLUTION EXPERTS (SCORE)

SCORE is a comprehensive school-based student mediation program that prevents youth violence by teaching young people more constructive responses to conflicts. Since its inception in 1989, SCORE has: trained 3,960 student mediators; mediated 13,803 student conflicts; resolved 13,425 conflicts; and achieved a 97% success rate.

The SCORE program model is unique because it links schools, government and community mediation centers. In the SCORE program model, a full-time adult SCORE coordinator is hired and supervised by a local community mediation program with SCORE grant funds. The school provides mediation program space and refers student disputes to be mediated.

In FY 99, 26 SCORE programs operated in 16 Massachusetts communities: Worcester (Burncoat Sr HS), Somerville (Somerville HS), Boston (Cleveland MS, Curley MS, English HS, Boston HS, Brighton HS, East Boston HS), Lynn (Lynn Classical HS, Lynn English HS, Lynn Technical HS), Springfield (Chestnut MS), Dartmouth (Dartmouth HS), Taunton (Taunton HS), Fall River (Durfee HS), Malden (Malden HS), Medford (Medford HS), Wakefield (NE Metro Tech HS), Lowell (Lowell HS), Pittsfield (Reid MS, Herberg MS), Holyoke (Holyoke HS, Dean Tech HS), Quincy (Quincy HS), and Greenfield (Greenfield MS, Greenfield HS).

In FY 99, SCORE programs conducted 2,693 peer mediations and successfully resolved 98% of the student disputes referred to mediation.

Annual site-visit evaluations were held at 23 of the 26 SCORE programs during the last quarter of the school year (April-June) to assess program operations, identify areas needing improvement, troubleshoot problems, and interact with local school officials. During these annual visits, questionnaires are administered to SCORE coordinators, school principals, student mediators, and SCORE grant recipients. Informal site visits are also conducted during the year.

TRAINING GRANTS

In FY 99, \$212,000 of the funds allocated to SCORE from settlement monies were used to help schools to start-up or enhance existing peer mediation programs and to promote quality peer mediation training. Twenty-nine SCORE Training Grants were awarded for the 1998-99 school year to schools in: Arlington (Arlington HS), Boston (Boston Latin Academy, Boston Latin School, Timilty MS, Snowden HS), Lexington (Lexington HS), Medfield (Medfield HS), Mattapoisett (Old Rochester JHS), Swansea (Case JHS), Foxborough (Foxborough HS), Gloucester (Gloucester HS), Lowell (Robinson MS, Rogers MS, Sullivan MS), Peabody, (Higgins MS), Winthrop (Winthrop HS), Newton (Newton South HS), West Springfield (West Springfield JHS), Stoughton (Stoughton HS), Braintree (East MS), Framingham (combined grant to Framingham HS, Fuller MS and Walsh MS) South Deerfield (Frontier Regional HS), Hadley (Hopkins Academy), Rochester (Old Colony Regional Technical HS), North Reading (North Reading HS), Beverly (Beverly HS), Fitchburg (Montachusett Technical HS), Westford (Nashoba Valley Technical HS), and Provincetown (Provincetown HS).

CONFLICT INTERVENTION TEAM (CIT)

The Conflict Intervention Team was initiated in academic year 1992-1993 in response to large-scale outbreaks of violence at several schools in Greater Boston. The OAG sponsors CIT

in collaboration with the Massachusetts Department of Education and the Massachusetts Association of Mediation Programs/Practitioners. The CIT is comprised of a team of specially trained community mediators that can mobilize quickly to provide emergency mediation services to schools in crisis or on the verge of a crisis. CIT is able to respond to schools anywhere in the state with a team that reflects the diversity of the students involved in the conflict. In most instances, MSD staff oversees CIT mediators during an intervention.

CIT conducted two interventions during the 98-99 school year, one in Quincy and one in Chelsea. In each instance, OAG staff and a team of community mediators conducted interviews with students to identify the sources of the conflict. Mediations were set up among the students involved in the conflict. All but one mediation resulted in an agreement.

FY 99 was the first year of a three-year \$150,000 grant from the Hewlett Foundation to support CIT enhancement and replication. The Hewlett funds are administered by the CIT's partner, the Massachusetts Association of Mediation Programs/Practitioners. A part-time CIT program administrator, Xavier Velasco Suarez, was hired with Hewlett funds and works at the OAG under the supervision of the Mediation Services Department.

TRAININGS

MSD staff led nine SCORE trainings and trained 133 of the 445 student mediators trained in FY 99. MSD staff also helped conduct two CIT mediator trainings, in Hyannis, MA and Las Vegas, NV. Other trainings conducted by MSD included: a three-day "Introduction to Mediation Skills" training for 20 OAG staff; a two-day Train-the-Trainers Institute for new peer mediation trainers; a three-day Advanced Mediation Skills training for discrimination complaint mediators in the Federal Aviation Administration; and a 3½ day Basic Mediation Skills training for discrimination complaint mediators in the Federal Law Enforcement Training Center.

PUBLIC EVENTS, CONFERENCES, WORKSHOPS

During the year, MSD staff participated in public events in Springfield at the citywide peer mediators' swearing-in ceremony, in Worcester to celebrate SCORE's tenth anniversary, and in Quincy at a SCORE grant award ceremony.

MSD staff delivered eleven SCORE and CIT workshops at OAG, state and national conferences in: Boston, Cambridge, Lowell, Hyannis, Springfield, Brockton, Dighton, Amherst, and

Holyoke, MA; and Phoenix, Arizona. There were six SCORE and CIT presentations delivered in Boston, Marlboro, and Wakefield, MA; and Loudonville and Rochester, New York.

COMMUNITY OUTREACH

Outreach projects in FY 99 included the Permanency Mediation Coalition, the Supreme Judicial Court Standing Committee on Dispute Resolution, the 1999 MAMPP Conference Committee, the Massachusetts Violence Prevention Task Force, the Mediation Week 1999 Committee, the Host Committee for the CREnet (Conflict Resolution Education Network) 1999 conference, and as a Board member of the Massachusetts Association of Mediation Programs/Practitioners.

Additional outreach activities in FY99 included: a comprehensive statewide mailing of the Ten-year SCORE Report to school superintendents, principals, coordinators, grant recipients, mayors, school committees, state senators and representatives and local newspapers; a statewide and nationwide mailing on CIT; and publication of two articles on SCORE in News in School Health (September 1998), published by the MA Dept. of Public Health, and The Fourth R (July 1998), published by the Conflict Research Education Network. Newspaper articles on SCORE programs and press releases announcing SCORE Training Grant awards appeared in the Salem Evening News, Berkshire Eagle, Dartmouth Chronicle, Greenfield Recorder, Springfield Union-News, Worcester Telegram and Gazette, Patriot Ledger, Lynn Daily Item and Nation's Cities Weekly.

DIVISION OF PUBLIC CHARITIES

The Attorney General represents the public interest in the proper solicitation and use of charitable funds and is authorized to "enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c.12, sec. 8. The Division of Public Charities was established to carry out the Attorney General's responsibilities in this area.

More than 38,579 charities are registered with the Division, as well as 285 fundraisers presently soliciting donations on behalf of charities in Massachusetts. A public charity is an entity which is non-profit, whose purpose is charitable, and which benefits a portion of the public; in addition to philanthropic organizations, examples of public charities include nonprofit hospitals, schools, social service providers, and cultural organizations. As well as registering and obtaining financial reporting by charities and fundraisers, the Attorney General is the defendant in all proceedings brought to wind up the affairs of a public charity or to change the terms of a charitable trust.

Beyond enforcement of laws requiring annual reporting by public charities operating in the Commonwealth, the Division focused its activities during the last fiscal year in three primary areas: enforcement litigation to address deception and fraud in charitable fundraising; estate and trust actions to ensure that charitable trust funds are appropriately administered and applied; and corporate governance and oversight initiatives to ensure that charitable governing boards are carrying out their fiduciary duties of due care and loyalty.

Recognizing that charities provide vital services in our communities, enjoy certain benefits due to their tax-exempt status, and assume certain obligations as a result of these benefits, the Division has been involved in a number of initiatives over the past year intended to strengthen the charitable sector at large. These efforts have included the Division's annual report on charitable fundraising, published during the Fall giving season, the Kellogg Healthcare Conversion Information Project, and proposed legislation in two key areas--(i) charitable fundraising and (ii) acquisitions of nonprofit health care providers by for-profit companies.

SOLICITATION OF CHARITABLE FUNDS

The Attorney General takes affirmative legal action against charities and professional fundraisers for unfair or deceptive solicitation practices and to enforce their fiduciary duties with

respect to funds raised. In addition to injunctive relief, the Attorney General may seek restitution of funds intended by the public to benefit a specific charity, or particular charitable purpose, along with penalties and fees.

Following are examples of deceptive charitable solicitation cases in which the Division was involved in the last fiscal year:

Commonwealth v. Baystate Assistance Programs; Veterans for the Homeless; Commonwealth Alliance d/b/a Veterans Aid Program; Steven M. Materas; Paul A. Kouri; Joseph J. Petillo. In December, 1998 the Attorney General filed a fundraising fraud action against these defendants, which include professional fundraisers, charities and their officers, for allegedly misleading donors to believe that their contributions would benefit homeless shelters and veteran outreach centers when such was not the case. The Division also obtained initial orders under which the Division attached defendants' real property and \$340,000 of their liquid assets while the case is pending.

Commonwealth v. William Twohig d/b/a United States Charitable Publications, American Veteran's Relief Fund, Inc., Disabled Peace Officers Association, Inc. This deceptive solicitation action, which the Division had filed in 1997, was part of a federal and multi state sweep of telemarketing fraud. The defendants in the Massachusetts case included a Las Vegas fundraising company and two client charities, one in California and the other based in Texas. That same year the Commonwealth had obtained a consent judgment against one charity, the California-based Disabled Peace Officers Association, Inc. and a \$500,000 default judgment against the fundraiser, William Twohig.

In August, 1998 a final judgment was obtained against the remaining defendant, Texas-based American Veterans Relief Fund, banning it from further fundraising in the Commonwealth until a \$48,000 penalty is paid.

Commonwealth v. Allan C. Hill Productions, Inc. et al. The Division had brought this case in 1997 against fourteen telemarketing companies for failure to account for charitable funds raised in Massachusetts as required under c. 68, Section 24(c). Consent judgments had been entered against four of the defendants.

In August, 1998, the Division successfully opposed one defendant's motion to dismiss.

Defaults have entered against four other defendants. Litigation is proceeding against the remaining six defendants.

Commonwealth v. Ranick Enterprises, Inc; Bellcamp Enterprises; Everready Enterprises; US Charitable Publications; NE Charitable Services; Eastern Mass. Veterans Programs; George Campbell; Help Hospitalized Children's fund; Regular American Veterans; Foundation for Disable Firefighters; American Veterans Wish Foundation. In 1997 the Division had brought suit against a multi state fundraising operation for allegedly defrauding Massachusetts donors of millions of dollars in charitable contributions. In August, 1998, the Division obtained a final judgment against one of the charities, Texas-based Help Hospitalized Children's Fund, enjoining it from soliciting Massachusetts residents until it has paid \$30,000 in restitution to Children's Hospital in Boston. In September and October, 1998, the Division obtained default judgments against five of the fundraising defendants and recovered \$40,000 from the insurance bond company that had issued them solicitor bonds.

Commonwealth v. International Union of Police Associations, Vietnam Veterans of America, Massachusetts State Council, Inc., American Trade and Convention Publications, Inc., Robert James Drake Marketing; George Campbell. This enforcement action was originally filed in 1996 against several professional fundraisers and their charity clients for deceptive solicitation of charitable funds in the Commonwealth. In December, 1998, the Division obtained a consent judgment banning professional solicitor Robert James Drake, Inc. from charitable fundraising in the Commonwealth. In June, 1999, the Division obtained a default judgment granting \$500,000 in penalties and permanently banning solicitor George Campbell, the remaining defendant, from further charitable fundraising in the Commonwealth.

Commonwealth v. M&M Advertising Associates, Inc., John E. MacNeil, Hugh M. Mayher, et. al. In January 1998, the Division had filed a contempt action against one of the fundraiser defendants, which resulted in payments to the Attorney General's Local Consumer Aid Fund in the amount of \$4,500. The penalties were part of a judgment previously obtained by the Division in a suit alleging that the defendants conducted deceptive charity campaigns for high school sports associations and a publication for senior citizens. After notice of the Attorney General's intent to file a second contempt complaint against the defendant for non-payment of a money judgment, the fundraiser paid another \$8,000 in February, 1999.

Commonwealth v. Robert Aaron In June, 1998 the Attorney General had filed a contempt complaint against a Hyde Park telemarketer for allegedly continuing to raise charitable funds in Massachusetts in violation of a 1994 consent judgment entered in a deceptive solicitation suit. The defendant was found in contempt and ordered to pay a fine.

Commonwealth v. Twentieth Century Promotions, Inc., Lloyd Morse, Mission of the Heart In March, 1999, the Division brought an enforcement action against a fundraiser and his charity client for falsely claiming to be fundraising on behalf of Ronald McDonald House and several local libraries. The Division obtained consent judgments ordering the fundraiser and charity to pay restitution to Ronald McDonald House in Boston and ordering the charity to dissolve.

Commonwealth v. Cancer Fund of America and Medical Assistance. The Division brought this deceptive solicitation case against Cancer Fund of America, a Tennessee charity, and Medical Assistance, its Massachusetts fundraiser, in March, 1999. The case alleges that Massachusetts donors were misled to believe that 100% of their contributions would benefit cancer patients in central Massachusetts who were in need of special foods, medicines, and hospice care, that the charity provided little or no care to cancer patients in central Massachusetts, and that it provided no funding to hospices. The complaint also alleges that the charity failed to monitor statements made by the professional fundraiser in accordance with commitments the charity had made in documents filed with the Attorney General.

Commonwealth v. East West Concert Productions; Southeastern Productions, Inc.; Statewide Promotions; Joseph Moses; Police Alliance of Boston. This multi-defendant deceptive fundraising litigation concluded in October, 1998 with court approval of consent judgments in which professional fundraiser Statewide Promotions and its client, the Police Alliance of Boston, agreed to a ban on all future charitable fundraising activity and also paid \$7,500 in restitution to the Attorney General's Consumer Aid Fund.

Commonwealth v. Production Marketing Services, Inc. The Division filed suit against Production Marketing Services, a telemarketer whose fundraising campaign misled donors to believe that their contributions would benefit athletic and drug prevention programs for Pembroke youth, when the funds were in fact going to a baseball league on Cape Cod, another part of the state. The Division obtained a consent judgment

ordering Production Marketing to pay \$14,000 and obtained an Assurance of Discontinuance in which the Cape Cod baseball league agreed to pay \$5,000 in restitution.

ESTATES AND TRUSTS

In furtherance of his authority to “enforce the due application” of charitable trust funds and to “prevent breaches of trust in the administration thereof,” the Attorney General is an interested party in the probate of all estates in which there is a charitable interest and in all other judicial proceedings affecting charitable trusts.

Accordingly, the Division continued to handle a large volume of cases in this area involving such matters as proposed allowance of accounts, will compromises, sale of real estate, change of purposes or beneficiaries of charitable trusts and bequests, amendment of charitable trusts to meet IRS requirements, and termination of charitable trusts under G.L. c.203, §25. For example:

Board of Trustees of the Malden Public Library v. Attorney General The Trustees of the Malden Public Library filed a complaint for the application of the doctrine of deviation to permit the library, which is a public charity, to sell a valuable painting given to it in trust in 1885, the proceeds to be used to re-pay bonds taken out by the library to make the facility handicapped accessible, to expand its facilities, and to provide proper housing for its vast art collection. After investigation, the Division assented to the relief requested in the complaint. The Middlesex Probate Court approved the library’s request on April 8, 1999.

Trustees under the will of Caroline Weld Fuller v. The Attorney General In 1998 the Fuller Trustees submitted a complaint for cy pres for the probate court’s approval. The complaint is the last chapter of a lengthy case involving the removal for misconduct of the prior trustees of a charity which provided housing for elderly in Milton, the management of the trust by a receiver, the return to the trust of \$1 million by the former trustees, and an appeal to the SJC on issues raised by the probate court judge, and finally the appointment of new trustees in November 1996.

With the intervention and guidance of the Division, the relief ultimately sought by the trustees in the cy pres complaint requested modification of the trust so that the Fuller trustees can sell the trust property to a non-profit developer and then use income from the proceeds to subsidize the housing units in the development to make the housing afford-

able for moderate and low income tenants. The court approved the relief requested in October 1998. The Attorney General continues to monitor the progress of the development and the implementation of the court's order at the request of the court.

Museum of Fine Arts v. The White Fund Trustees, et. al. The White Fund Trustees, who hold a collection of paintings in trust for the purpose of creating and gratifying a public taste for fine arts, particularly among the people of Lawrence, are seeking court approval to sell the paintings, which include a valuable Monet, and to use the income from the proceeds to fund art projects in Lawrence. In 1912, the Reverend William Wolcott left the paintings in trust to the White Fund Trustees and stated in his will that until a suitable gallery existed in Lawrence to hang the paintings, the trustees should offer the paintings to the Museum of Fine Arts for exhibition. The paintings have been at the Museum since that time. The trustees challenge the museum's contention that the status quo furthers the intent of the testator. The case is scheduled for summary judgment arguments in August, 1999, and for trial in September, 1999.

Town of Amesbury The Division has been involved in this longstanding dispute between Amesbury and the now defunct Anna Jacques Hospital over control of trust funds held by the hospital. Following the Attorney General's assent in 1997 to court transfer of the trust funds to the Town of Amesbury, Anna Jacques Hospital filed a motion to intervene. Subsequently, and at the Division's urging, the Town of Amesbury established a health care commission to administer the funds in order to provide grants to individuals who incur necessary health services but who are uninsured or underinsured, and who lack the means to pay for such services. In addition, Amesbury agreed to reserve one seat on the five person health commission for a member of Anna Jacques Hospital management. After this arrangement was finalized, Anna Jacques withdrew its motion to intervene, and the court approved transfer of the trusts' assets to the health care commission.

In Re: Petition for the Allowance of the First and Final Account of James K. Glidden as Executor of the Estate of Walter Barrett The Division filed objections to the court allowance of the first and final account of James Glidden as executor and attorney for the estate of Walter Barrett, on the grounds that his fees were excessive, both as to the amount of time spent on various tasks, and the rate at which many executor services were billed. The Division further contends that estate taxes were overpaid; Glidden allegedly failed to file for a rebate when informed of his mistake; and he improperly billed the estate for unnecessary services, including meetings with representatives of

the charitable beneficiaries regarding the inadequacy of his accounting. The matter is scheduled for trial in fiscal year 2000.

Trustees of the Arthur G.B. Metcalf Foundation v. Air University, Falcon Foundation, United States Strategic Institute, Boston University, and Thomas Reilly

The Arthur G.B. Metcalf Foundation is a private foundation created by the former president of the Board of Trustees of Boston University to principally benefit Boston University. The trustees of the Foundation notified the Division that they wished to modify the terms of the trust to accelerate the funding of two professorships at the University which otherwise would be funded over time. After review of the Complaint for Modification of the trust, the Division assented to the proposed relief.

Glendale Park, Everett The Division continued to review the decisions by cities and towns in the Commonwealth to use parkland for other municipal purposes, most commonly for the siting of new schools. The crux of the Division's review is whether or not a park is held by the city or town in charitable trust. If so, the municipality must prove in a court proceeding that the park is no longer useful as a park.

In 1998, the Division reviewed the City of Everett's decision to site a new high school on the Glendale Park. The Division concluded that the park was not held in trust and, therefore, there were no impediments raised by charities law to the park's being used for a school once the city complied with regulations imposed on such changes by the federal government, the state Office of Environmental Affairs, the Department of Education, and the state legislature.

WILLS, TRUSTS, AND OTHER PROBATE STATISTICS

During the past fiscal year, the Division received and reviewed 1,083 new wills, and received and reviewed 624 interim accounts for executors and trustees, as well as 682 final accounts. In addition, the Division received 673 miscellaneous probate matters or pieces of correspondence in new or existing probate cases, in addition to 92 petitions for license to sell real estate and petitions under G.L. c.203, sec. 25 to terminate trusts too small to be administered economically and distribute the trust property to the beneficiary, resulting in the availability of more income to the charitable beneficiaries of such trusts by reason of elimination of administrative costs.

CHARITY GOVERNANCE

The Attorney General's oversight of charitable corporations focuses on stewardship by charity boards of directors. The Division can become involved when directors breach their individual fiduciary duties of due care and loyalty or to prevent the misuse of charitable funds. The Division has brought a number of enforcement actions and obtained several governance agreements, after investigation, in which charity boards have agreed to reform the manner in which they operate. This year such matters included:

Commonwealth v. Valley Oasis in Childhood Education. In September, 1998, the Division obtained a consent judgment banning the directors of a Bellingham day care center, Valley Oasis in Childhood Education (V.O.I.C.E.) from operating any charitable organizations in Massachusetts in the future. The ban was the resolution of a lawsuit previously filed by the Division against the directors, who were husband and wife, for allegedly mismanaging the center's finances. As part of the settlement, the couple resigned their positions from V.O.I.C.E., and turned its operations over to the Guild of St. Agnes of Worcester, an experienced day care provider in Worcester county. The transition was accomplished without any interruption in services.

Attorney General v. Hillcrest Remedial Reading School, Inc. The Division had obtained an order appointing a receiver for a charity for students with dyslexia and other reading disabilities following the death of the charity's president, because the charity had no remaining members of its board of directors or corporate officers. After liquidating the charity's assets and paying creditors' claims, the receiver initiated dissolution proceedings. The Supreme Judicial Court entered an interlocutory order distributing approximately \$295,000 to support programs at each of two other charities for students with learning disabilities: the Carroll School and the Landmark School.

FOR-PROFIT ACQUISITIONS

The Public Charities Division continued this year to devote considerable time and resources to investigating proposed for-profit acquisitions of health care providers. Massachusetts charitable organizations may not, on their own, "convert" to for-profit status. If charitable assets are to be transferred to a for-profit, it must be for fair value, the transaction must be necessary and in the best interest of the charity, and the charity board must have acted carefully and in a manner uninfluenced by conflict of interest.

During the year, the Division handled the following matters relating to conversions or proposed conversions of nonprofit health care providers.

Boston Regional Medical Center Boston Regional Medical Center ("BRMC") is an acute care hospital in Stoneham. Beginning in fiscal year 1997, the Division had investigated the proposed sale of BRMC to a for-profit hospital chain, Doctors Community Health Care, Inc. In February, 1999 the hospital declared bankruptcy without completing the proposed for-profit conversion. The Division continues to be involved in the bankruptcy proceeding in order to ensure the hospital's restricted funds are appropriately administered.

Health Foundation of Central Massachusetts In 1995, after investigation by the Division, Central Massachusetts Health Care (CMHC), a non-profit HMO in Worcester, had obtained court approval and sold substantially all of its assets to a for-profit HMO. The sale generated \$45 to 50 million in proceeds to be used by a foundation to make health-related grants for the benefit of the vulnerable population in Central Massachusetts.

In October, 1998, after an intensive, community-based planning process, the board of CMHC and the Division jointly presented a foundation plan to the Worcester Probate Court for approval. The plan provided for a community based board to oversee health-related grant making within the greater Worcester community and was approved by the Court on October 29, 1998. The court also approved a process for the search for an executive director. After a nationwide search, the Health Foundation hired its first executive director in July, 1999.

MetroWest Community Health Care Foundation, Inc. In February, 1999 the Supreme Judicial Court approved a plan filed by the Attorney General and MetroWest Health, Inc. for creation of the MetroWest Community Healthcare Foundation, Inc. The plan provides for creation of a community based foundation intended to maintain and improve the health status of people living or working in the 25 towns served by the MetroWest Medical Center prior to its conversion to for profit status in 1996. The Foundation will be funded with approximately \$40 million in hospital related assets generated by the 1996 sale of the Medical Center to Columbia/HCA, a for-profit hospital chain.

Nellie Mae Corporation In the second and final phase of this for-profit conversion, the Division investigated and approved sale of the Nellie Mae Corporation, a wholly owned

for-profit subsidiary of the Nellie Mae Foundation, to Sallie Mae. The net proceeds of the sale, approximately \$210 million, will be used by the Nellie Mae Foundation for education-related grant making in New England, bringing the total funding for the Foundation to approximately \$280 million. In September, 1997, the Supreme Judicial Court of Massachusetts had approved the initial transfer of Nellie Mae's student loan portfolio and secondary market operations to Nellie Mae Corporation, a wholly owned for-profit subsidiary, in return for 100% of the subsidiary's senior stock.

Review of Asset Dispositions Under amendments to the non-profit corporations act, which took effect in April, 1990 a charitable corporation must give 30 days advance written notice to the Attorney General before making a sale or other disposition of all or substantially all of the charity's assets if the disposition involves or will result in a material change in the nature of the activities conducted by the corporation. G.L. c.180, §8A(c).

In addition to for-profit dispositions such as those discussed above, the Division reviewed a number of significant transactions involving proposed disposition of substantial charitable assets, including the following:

Sale of Interest in MetroWest Medical Center The Division reviewed the due diligence by the charity limited partner of the MetroWest Medical Center Limited Partnership in evaluating its options in connection with the transfer from Columbia/HCA of the majority for-profit partnership interest in the MetroWest Medical Center to Tenet, another for-profit hospital chain. After investigation, the Division concluded that charities law requirements had been met and the sale occurred in March, 1999.

In Re Worcester Surgical Center The Worcester Surgical Center was a non-profit wholly-owned subsidiary of Central Massachusetts Health Care Inc., the nonprofit HMO which sold its assets to a for-profit HMO in 1995. The court order permitting the sale of the HMO business ordered that the interim Board of Trustees of the former HMO take all necessary steps to sell the Worcester Surgical Center. Net proceeds of the sale were then to be added to the funding of the health care foundation formed after the sale of the HMO.

In 1999, sale of the Surgical Center to a for-profit partnership which included the Center's doctors in a limited partnership was approved by the Probate Court after the

Division completed an investigation and concluded that (1) the valuation of the Center was properly conducted and the asking price reflected fair market value; (2) the monetary interests of the physician investors did not adversely affect the price of the transaction; (3) the Center was widely marketed; and (4) the selection process of the buyer was fair.

CHARITABLE CORPORATION DISSOLUTION STATISTICS

In order to cease corporate existence, charitable corporations must dissolve through a proceeding in the Supreme Judicial Court. To enforce the public's interest in the disposition of charitable assets, the Attorney General is a party to all voluntary dissolutions of charitable corporations under G.L. c.180, §11A. After review, negotiation of necessary modifications, and assent by the Division, the pleadings are filed by the dissolving charity in the Supreme Judicial Court.

During the reporting year, the Division assented to 68 final judgments dissolving charitable corporations pursuant to section §11A.

SIGNIFICANT DIVISION INITIATIVES

PUBLIC EDUCATION CAMPAIGN

In consultation with the Attorney General's Advisory Committee on Public Charities, the Division continued its ongoing public education campaign regarding charitable giving and charity stewardship.

The Division continued to distribute its wide variety of public education materials, including "The Attorney General's Guide For Board Members of Charitable Organizations", "How To Give But Give Wisely", "Tips On Charitable Giving", and "Questions Commonly Asked To The Division Of Public Charities".

In November, the Division conducted the seventh annual "Giving Season" public education campaign. Carried out in conjunction with the Better Business Bureau and the American Association of Retired Persons Of Massachusetts, this education campaign is part of long-term effort to inform individuals and businesses about the donating process and how to make sure that their contributions are put to the best possible use. Materials distributed, in addition to those men-

tioned above, included the "Attorney General's Guide For Charities Who Fundraise From The Public" and "Question And Answer Guide For Professional Fundraisers".

The "Giving Season" public education campaign featured the annual "Attorney General's Report On Telemarketing For Charity". The report provides general information about professional fundraisers and their statutory reporting obligations and specific information about the campaigns conducted in calendar year 1997. Annual financial reports from 449 charitable telemarketing campaigns conducted by 85 separate telemarketing companies were analyzed. Total revenue from all campaigns amounted to \$84,351,651 out of which slightly more than \$30,884,409 million dollars went to charity. The average percentage received by the charity was 37 percent, after all fundraising expenses were deducted. This represents 2 percent more than the amount received by charities the previous year. On a per campaign basis, the average percentage received by the charitable organizations was 28.5 %.

NATIONAL TRAINING FOR REGULATORS ON FOR-PROFIT ACQUISITIONS

In 1997, the Attorney General had received a \$295,000 grant from the W.K. Kellogg Foundation to develop and conduct a national training program for regulators dealing with for-profit acquisitions and conversions of nonprofit hospitals and other health care entities. In July 1998, the Division conducted a conference for 100 regulators from 46 states. The Division also developed a Guide to assist board members, regulators and advocates facing for-profit healthcare acquisitions and conversions in their communities. The Guide, which will be published in 1999, will be supplemented by a collection of conversion-related materials. A website is being created to maximize access to these materials.

THE ATTORNEY GENERAL'S COMMUNITY BENEFITS INITIATIVE

The Division was involved in the initial public meetings and final drafting of the Attorney General's Community Benefits guidelines for Nonprofit Acute Care Hospitals. Since the issuance of the Guidelines in June, 1994, the Division has been closely involved in monitoring and furthering hospital compliance. In 1998, the Division prepared a new financial template and summary guidance sheet and conducted informal training for hospital community benefit coordinators.

In January, 1999, 65 separate hospital Community Benefit Reports were reviewed and evalu-

ated and the aggregate findings made public in a status report. In addition, the Division prepared an inventory and classification of all the reported community benefit and community service programs and made that listing available to participating hospitals.

The Division participates actively in the Attorney General's Community Benefits Advisory Task Force and chairs the working group on Needs Assessment and Outcomes Evaluation. One of the goals of this working group is to create a community benefits website to further interstate and intrastate exchange.

PROBATE PROCEDURES OF THE DIVISION OF PUBLIC CHARITIES

In October, 1998, the Division developed a new guide, "Probate Procedures of the Division of Public Charities". The guide presents a practical description of the information needed by the Division in order to facilitate its review of probate or trust matters and of the steps followed by the Division in such reviews.

CONFERENCE AND PROFESSIONAL EDUCATION

PRESENTATIONS AND PUBLICATIONS

As part of the Division's ongoing public education effort throughout the year, the Director of the Division and other Assistant Attorneys General in the Division spoke to numerous charitable groups, served on several continuing professional education panels and national educational conference panels, and contributed to educational publications.

DIVISION ADMINISTRATION AND STATISTICS

Enforcement of laws requiring accountability by public charities is central to Division responsibilities with respect to charitable funds. With the exception of religious organizations and certain federally chartered organizations, all public charities must register with the Division and all registered charities must submit annual financial reports. The registrations and financial reports are public records and public viewing files are maintained. The Division responded to over 2,654 requests to view files in the past fiscal year and, in response, approximately 5,974 files were pulled.

CHARITABLE ORGANIZATIONS: REGISTRATION AND ENFORCEMENT

From July 1, 1998 through June 30, 1999, the Division processed approximately 13,460 annual financial reports and annual filing fees totaling \$1,242,610.00. These funds are revenues received by the General Fund. During this period, 1,088 new organizations were reviewed, determined to be charitable, and registered. Each was sent the Division's packet of information about the Division's registration and filing requirements.

As part of an ongoing compliance program, Division staff contacted charities whose annual filings were deficient or delinquent to rectify filing deficiencies.

ISSUANCE OF CERTIFICATES TO CHARITIES WHO FUNDRAISE

Under G.L. c. 68, sec. 19, every charitable organization which intends to solicit funds from the public, except religious organizations, must apply to the Division for a solicitation certificate before engaging in fundraising. Upon receipt, the Division reviews certificate applications for compliance with statutory requirements. Unless there is a deficiency in the application, all certificates are issued within a 10-day statutory period.

REGISTRATION OF PROFESSIONAL SOLICITORS AND FUND RAISING COUNSEL

Under §§22 and 24 of G.L. c.68, all persons acting as professional solicitors, professional fundraising counsel, or commercial co-venturers in conjunction with soliciting charitable organizations must register annually with the Division. Solicitors and commercial co-venturers must also file a surety bond in the amount of \$10,000.00. All fundraisers must also file with the Division a copy of each fundraising contract which they sign with any charitable organization, and solicitors must later file a financial return regarding each fundraising campaign.

During the fiscal year ending June 30, 1999, a total of 285 registrations were received and approved, resulting in \$58,950 in fees to the Commonwealth. Registrations were received from 93 solicitors, 143 fund-raising counsel, and 49 commercial co-venturers.

CHARITIES DIVISION COMPUTERIZATION

With Information Technology funding from the Legislature, the Attorney General's Office

began implementation of a test database and imaging system for the Division's charity and fundraiser registrations and financial filings during this fiscal year. The system is designed to enhance compliance with the registration and financial reporting requirements, facilitate the Division's administration of the registrations and filings, and improve public access to the filed information.

TABLE I: MONEY RECOVERED FOR THE COMMONWEALTH TREASURY

Charitable and Fundraiser Registration Fees	\$ 1,401,660.00
Other fees, requests for copies, requests for computer information	\$ 2,041.32
<hr/>	
TOTAL	\$1,403,701.32

CHIEF PROSECUTOR

The Chief Prosecutor of the Public Protection Bureau is responsible for the investigation and criminal prosecution of crimes related to the priority areas of the Bureau and Attorney General. The Chief Prosecutor, with the assistance of one full time Assistant Attorney General in addition to access to the Bureau attorneys, insures that the Bureau is able to protect the public interest through both civil and criminal means.

The Chief Prosecutor focuses on solving complaints by considering creative approaches to a myriad of crimes that traditionally have gone unprosecuted. Criminal cases are begun when investigations are completed and a determination that criminal, as opposed to civil, remedies are appropriate. On some occasions, investigations lead to a determination that civil or administrative remedies are more appropriate and will result in a better outcome for the Commonwealth. When patterns demonstrate the need for improved legislation, the Chief Prosecutor, in conjunction with the Bureau Chief, drafts the legislation and builds consensus with legislators and administrative agencies. Statewide training for prosecutors and police is performed when novel areas of enforcement, such as home improvement contractor fraud, demonstrate a need for improved methods of investigation and prosecution.

Primary areas for criminal investigation include consumer related crimes, including identity fraud, home improvement contractor fraud, elder fraud and abuse, health care fraud within the area of private insurers, the unauthorized or unlicensed practice by certain professionals such as dentists, doctors or public accountants, crimes relating to charities and telemarketing fraud. An emphasis has been placed upon the application of criminal remedies to areas of criminal activity that have been especially challenging to traditional law enforcement. PPB Prosecutors also devote substantial effort to prevention of crimes such as Identity Fraud and Home Improvement Fraud and helping victims, even if criminal prosecution is not feasible.

HIGHLIGHTS OF CASES PROSECUTED TO COMPLETION

Am-Tech/Wilbur Brown (Telemarketing/Business Opportunity Fraud)

The Chief Prosecutor was appointed to be a Special Assistant United States Attorney in order to work with an assistant United States attorney in prosecuting an egregious scheme selling private pay telephones. Based upon complaints received by the Attorney General's Consumer Hotline, sixty indictments were obtained and prosecuted in Federal Court. In October of 1998, Wilbur Brown was sentenced to serve five years in federal

prison. The defendant was ordered to pay \$821,000 in restitution.

The initial investigation by investigators assigned to the Public Protection Bureau and State Police also led to a civil injunction which froze Amtech's bank accounts and a civil judgment pursuant to G.L. c.93A.

Sean Wagner (Home Contractor Fraud/Larceny from Elders)

After defaulting on his probation and pending criminal charges for two years, Wagner was prosecuted in three District Courts for driveway paving scams involving the elderly. At the time that the complaints were initiated, Wagner was in violation of conditions of probation for prior convictions of larceny from an elder. The probation violations were used as a means to promptly dispose of the new complaints which included eighteen months incarceration in the House of Correction and a two year suspended sentence which ran concurrently with the period of incarceration with intensive drug treatment. This case served as the basis for state wide training of prosecutors and probation officers on the effective use of probation surrenders in matters of home contractor fraud. The case also formed the basis for proposed legislation regarding pavers in the Home Improvement Contract Fraud statute.

Robert Hernandez (Unauthorized Practice of Nursing Prosecutions/Forgery and Uttering)

District Court complaints were issued in response to the discovery that Robert Hernandez was working in a nursing home as a nurse without a license after faking his own death and submitting a phony death certificate.

Hernandez pleaded guilty to unlicensed nursing, forgery and uttering in the Lawrence and Framingham District Courts, and was sentenced to two years in the House of Correction suspended for two years. He was placed on probation for four years, banned from the health care field and ordered to perform 400 hours of community service. The prosecution garnered widespread media attention and has led to increased vigilance in the nursing home industry to the verification of nursing credentials. Recent legislation was also passed to require criminal checks on nursing home employees.

Paul Palaza (Larceny/Home Improvement Fraud)

Palaza was an unregistered roofer who took the roof off a disabled single mother's house and then abandoned work. Palaza was on default on his probation and was thought to have left the state. He was arrested and was arraigned on larceny and home improve-

ment fraud charges. Palaza pleaded guilty and received two years in the House of Correction with six months to serve. The balance of the sentence was suspended for three years. Restitution of \$7,500 was ordered and the defendant was banned from the home contracting field, except that the defendant may work for a licensed contractor, but must not accept money directly from homeowners.

Jeffrey Gordon (Unlicensed CPA/Larceny)

Gordon was charged with falsely holding himself out as a Certified Public Accountant and with larceny after claiming to be a CPA and doing a shoddy job doing tax preparation for two victims. Gordon pleaded guilty and was placed on one year probation, ordered to perform 100 hours of community service and pay restitution.

Dirk Kiefer (Home Improvement Fraud)

Kiefer was charged with larceny and home improvement contractor fraud after taking money from numerous consumers and doing little or no work. After several cases were joined into one District Court, Kiefer pleaded guilty in Salem District Court and was sentenced to two years in the House of Correction suspended for two years with restitution to be paid to the seven victims. After a restitution hearing Kiefer was ordered to pay \$43,538, the full amount of restitution.

Lori Lebeouf (Larceny By a Personal Care Assistant)

Lebeouf, a Personal Care Assistant, was charged with having bilked an elderly victim with Cerebral Palsy, through the unauthorized use of the victim's credit cards. Lebeouf who had moved to Florida, returned to Massachusetts and pleaded guilty to three counts of felony larceny. The Judge continued her matter without a finding. She was placed on probation for two years and ordered to pay \$4962 in restitution and was banned from being a personal care assistant or a fiduciary.

REFERRALS EVALUATED

The Chief Prosecutor evaluated hundreds of complaints during this year. The complaints came from a variety of sources including other divisions within the Office of the Attorney General, police departments, outside agencies, attorneys and private citizens. A large volume of complaints were generated by the Attorney General's Elder Hotline, Consumer Hotline and Insurance Hotline. Complaints to these hotlines that involved criminal behavior, and are not being handled by local District Attorney's offices, are assessed and investigated by the Chief

Prosecutor or investigators assigned to the Public Protection Bureau.

INITIATIVES AND PUBLICATIONS

Identity Fraud Legislation

The criminal arm of the Public Protection Bureau drafted and promoted legislation criminalizing identity fraud. The legislation, Massachusetts General Laws, c. 266 §37E was sponsored by the former and present Attorneys General and State Senator Jacques. The bill was enacted and became law in March of 1999. In the course of researching and drafting the bill we have now become involved in several of these investigations. A model for investigation and prosecution is being developed. The Chief Prosecutor also helped to develop and distribute the Credit Identity Fraud consumer handbook that can be found in Attorney General Reilly's Guide to Credit. The Chief Prosecutor also sits on the Check Clearinghouse Task Force and works with the Financial Organized Crime Task Force.

Home Improvement Contractor Fraud Initiative

The Chief Prosecutor continues to get cases for referral and consultation from all over the state on this difficult topic, leading to several new prosecutions. The Chief Prosecutor was named to the Advisory Board of the American Prosecutor's Research Institute (APRI) Home Improvement Project and is a co-author of APRI's newest publication, Home Improvement Fraud Against Seniors. When that publication is completed, the manual will be distributed to all members of the National District Attorneys Association.

Last June, the Chief Prosecutor and assistant attorneys general and investigators working under his direction embarked upon a project to increase and improve statewide prosecution of home improvement contractor fraud. The Chief Prosecutor and bureau personnel developed a prototype prosecution manual for use by local police and prosecutors. All legal and investigative documents were placed on computer disks and distributed at a state-wide conference attended by over 120 local police, prosecutors, probation officers and representatives of the Board of Building Regulations and Standards and the Department of Consumer Affairs. As an offshoot of the training, the Attorney General's office handles home improvement fraud complaints from around the state and acts in an advisory capacity to local assistant district attorney's handling these cases. Suggestions for improvements in the Home Improvement Statute are being collected and

are expected to be the basis for amending the Statute in a future legislative session.

MCLE Training-Superior Court Practice

On November 18, 1998 The Chief Prosecutor was one of three prosecutors on the faculty of the MCLE Superior Court Practice training. The MCLE Superior Court Criminal Practice Manual, including a chapter co-authored by the Chief Prosecutor, was published in June of 1999.

Telemarketing Fraud

The Chief Prosecutor has continued to work with Federal Authorities as a Special Assistant United States Attorney on a large telemarketing fraud case involving fraudulent charities. An initiative on coordinating with other state Attorneys General and Federal authorities on interstate telemarketing initiatives is underway. As part of this initiative, an assistant attorney general has coordinated with the National Association of Attorney's General in order to implement multi-state enforcement in this area.

District Court Rotation

The Public Protection Bureau continued to send assistant attorneys general to the District Court criminal prosecution rotation program which enabled them to gain valuable courtroom experience which they brought back to the criminal cases in the bureau.

REGULATED INDUSTRIES DIVISION

INSURANCE

The Regulated Industries Division's representation of consumer interests in insurance matters is divided into several distinct categories. The Division intervenes in both automobile and health insurance rate setting proceedings. The Division also performs a consumer protection/insurance laws enforcement function. Through the Division's insurance hotline for consumers, direct mail and telephone communications, the Division receives many consumer questions and complaints. Through mediation, negotiation and, if necessary, litigation, the Division obtains both restitution and injunctive relief for insurance consumers. Finally, the Division engages in non-case related work to advance insurance consumer interests, including legislative, regulatory, educational, and other outreach activities.

RATE CASES

Automobile

1999 Private Passenger Automobile Insurance:

On July 7, 1998, the Auto Insurers' Bureau (AIB) filed with the Division of Insurance its recommendation concerning the profit component of 1999 private passenger automobile insurance rates. On August 14, 1998, AIB filed with the Division of Insurance its recommendation concerning the main rate for 1999 private passenger automobile insurance rates. AIB requested an increase of 15.5 % increase over the 1998 rates. If approved, these requests would have been equivalent to an average increase in auto insurance premiums for Massachusetts drivers of \$129 per car or 462 million dollars overall. On behalf of Massachusetts consumers, the Division challenged the increase requested by the industry. In addition, the Division asked the Commissioner to recuse herself from playing any role in the decision for the 1999 rate year because of allegations that the Commissioner had engaged in private discussions concerning the rate with a member of the AIB. The Commissioner refused to recuse herself. On December 29, 1998, the Commissioner issued a memorandum and order fixing and establishing an average rate of \$841 which is approximately 0.7% higher than the equivalent 1998 rate or 14.8% lower than the industry's requested increase. This reduction included 20% of the 176 million dollars collected in error during the years 1991 through 1996. The savings to Massachusetts consumers was 443 million dollars or an average of \$114 per car.

2000 Automobile Insurance:

Proceedings concerning the 2000 automobile insurance rate began on April 13, 1999 with notice of the annual hearing called by the Commissioner to determine whether it was necessary that the rates for 2000 be fixed and established in accordance with G.L.M. c. 175, §113B. The Division participated in the hearings and took the position that market conditions continued to require that rates be set pursuant to G.L.M. c. 175. The Division noted, however, that for the third consecutive year some level of competition already existed in Massachusetts as a result of the large number of group rates and deviations approved by the Commissioner during 1996, 1997 and 1998. No decision had been issued by the Commissioner by the end of the fiscal year.

Homeowners**FAIR Plan Rate Increase:**

In September, 1998, the Massachusetts Property Insurance Underwriting Association ("FAIR") submitted filings to the Division of Insurance for increases in their Homeowners product and their Dwelling and Fire product. The Division participated in the hearings and the case was settled by stipulation. The stipulations resulted in savings to Massachusetts consumers of \$115,983.

Medicare Supplement**United Health Care:**

In April 1998, United Health Care filed for increases in its Medicare supplement policy rates to be effective in 1999. These policies are provided to members of the AARP. Following lengthy hearings before the Commissioner in which the Division actively participated and argued against the increase, the case was settled by stipulation of the parties. The Commissioner approved the stipulation in April 1999. The stipulation resulted in an aggregate rate that was \$578,998 less than United Health Care requested.

Bankers Life & Casualty:

In November 1997, Bankers Life and Casualty filed for an increase in its Medicare supplement rates to be effective in 1998. All of the policy forms for which Bankers Life seeks a rate increase are closed to new enrollment. For forms A043 (the Core Plan) and A044 (the MediSup

2 Plan), Bankers requested 100% and 117% respectively. For forms 73X, 98X, and A042, (guaranteed renewable age-rated plans with prescription drug coverage), Bankers Life requested respective rate increases of 83%, 77%, and 64%. For form A040 (age-rated, guaranteed renewable Core plan), Bankers requested a 46% increase. The Division intervened in the case and participated in the hearings. On June 11, the Commissioner disapproved the rate request and asked Bankers to submit additional evidence to demonstrate the reasonableness of its administrative expenses and other expense components. Following the Commissioner's disapproval, the parties entered into settlement discussions and settled the case by stipulation. The Commissioner approved the stipulation in July, 1998 with an effective date of August, 1998. The stipulation resulted in an aggregate rate that was \$24,645,060 less than Bankers requested.

Bankers Life & Casualty:

In November 1998, Bankers Life and Casualty filed for an increase in its Medicare supplement rates to be effective in 1999. All of the policy forms for which Bankers Life seeks a rate increase are closed to new enrollment. For forms A043 (the Core Plan) and A044 (the MediSup 2 Plan), Bankers requested 157% and 188% respectively. For forms 73X, 98X, and A042, (guaranteed renewable age-rated plans with prescription drug coverage), Bankers Life requested respective rate increases of 51%, 74%, and 52%. For form A040 (age-rated, guaranteed renewable Core plan), Bankers requested a 11% increase. The Division intervened in the case and participated in the hearings. The parties entered into settlement discussions and settled the case by stipulation. The Commissioner approved the stipulation in March, 1999 with an effective date of August, 1999. The stipulation resulted in an aggregate rate that was \$16,960,393 less than Bankers requested.

World Insurance Company:

In March 1998, World Insurance Company filed for a rate increase in its Medicare supplement policies. All of the policy forms for which World seeks a rate increase are closed to new enrollment. For forms D-A041 (old Medisup2 policy) and D-A044 (new Medisup 1 policy), World requested an increase of 52%. For D-A042 (old Medisup3 policy) and D-A045 (new Medisup2 policy), World requested a 103% increase. The Division intervened in the case and participated in the hearings. In August, 1998, the Commissioner approved a rate that was \$4,142,244 less than World requested.

World Insurance Company:

In April, 1999, World Insurance Company filed for a rate increase in its Medicare supplement policies. All of the policy forms for which World seeks a rate increase are closed to new enrollment. For forms D-A041 (old Medisup2 policy) and D-A044 (new Medisup 1 policy), World requested increases of 74.5% and 78.1% respectively. For D-A042 (old Medisup3 policy) and D-A045 (new Medisup2 policy), World requested increases of 48.1% and 50.4% respectively. The Division intervened in the case and participated in the hearings. The case was ongoing at the end of the fiscal year.

Community Health Plan/ Kaiser Foundation Health Plan of MA:

In April, 1998, Community Health Plan/ Kaiser Foundation Health Plan of MA filed for a rate increase for its Medicare cost contract. Kaiser asked for a rate of \$97.65 per member per month for the base medical product and \$69.10 per member per month for the drug rider. Combining the 2 rates, this represents approximately a 60% increase from last year's rates. The Division intervened in the case and participated in the hearings. By decision entered September 1998, the Commissioner approved a rate that was \$1,489,896 less than Kaiser requested.

CONSUMER PROTECTION/ENFORCEMENT

The Division also engaged in non-rate case related insurance work during fiscal year 1999 that involved consumer protection issues and/or enforcement of the Commonwealth's insurance laws. Representative matters include:

EMPLOYERS FAILURE TO REMIT HEALTH INSURANCE PREMIUMS

During the 1999 fiscal year, the Division continued to investigate complaints against employers who allow their group health plans to lapse because of their failure to remit health insurance premiums or their failure to provide sufficient funds to cover their employees' health costs.

Investigations

The Division investigated 53 employers in response to these types of complaints during this

fiscal year. The Division has seen a marked decrease in the volume of "failure to remit" complaints since 1996, when the Division was instrumental in promulgating an Attorney General regulation, 940 CMR 9.00, that requires insurers to pay claims until they have notified employees directly of any termination of coverage. With the exception of disputes between a single employee and the employer, most complaints now relate to self-insured plans.

Bankruptcy Intervention

Summit Plastics

During the fiscal year, the Division's motion to intervene in the bankruptcy filing of Summit Plastics was allowed by the bankruptcy court. Summit filed for chapter 11 protection leaving its former employees with medical bills in excess of \$22,000 outstanding. The matter was still pending at the end of the fiscal year.

Boston Regional Medical Center (BRMC)

BRMC filed for reorganization under chapter 11 of the bankruptcy code on February 2, 1999. Prior to the bankruptcy, BRMC had deducted a portion of the health insurance premiums from the employees' pay checks for approximately two months. BRMC failed, however, to remit those payments to the appropriate carriers. This resulted in unpaid medical bills for Fallon Health Care participants (approximately 240 employees) in the amount of \$200,000. The Division filed a Motion to Intervene on February 24, 1999 on behalf of the employees which was allowed by the court. The Division is working on a settlement and stipulation that would allow BRMC to remit payment to Fallon which would, in turn, pay the outstanding medical bills.

NewCare Health Corporation (NewCare)

NewCare employees began contacting the Division's Insurance Hotline in June with complaints about employee benefits not being funded. Through an investigation, prompted by the complaints received, the Division learned that NewCare had failed to remit premiums deducted from employee paychecks, as far back as January 1999, to the appropriate carriers, including Blue Cross Blue Shield and Health New England. On June 22, 1999, NewCare filed for protection under chapter 11 of the bankruptcy code. After the close of the fiscal year, the Division filed a Motion to Intervene on behalf of the employee consumers for payment of their medical claims.

Agreements

East Coast Medical (Massachusetts Rehab)

Jeff Greenfield, M.D. failed to remit employee paycheck deductions to New England Health Care (NEHC) between February 28, 1997 and April 21, 1997. After negotiations with Greenfield's attorney, we received payment to satisfy the outstanding medical bills for the five employees affected.

Everett Plating

An employee of Everett Plating complained that it was delinquent in its payments to the insurance company even though the premiums were deducted from the employees' paychecks. Through our intervention, the company remitted the premiums due and the benefits were reinstated.

Oasis Health Care

Employees of Oasis informed this Office that the self-funded health insurance plan was terminated retroactively and that there were outstanding medical bills in excess of \$100,000. Because it involved the self funded plan of a large national corporation, the Division referred the case to the US Department of Labor.

FMK Manufacturing

An employee of FMK Manufacturing was promised health insurance as a benefit of employment. Nonetheless, FMK failed to honor that promise. As a result, the employee and his family incurred medical bills in the amount of \$2564. Through our intervention, FMK reimbursed the employee for the outstanding medical bills.

Valley Gage

The Division entered into an agreement with self-insured employer Valley Gage, Inc. In which Valley Gage promised to pay off numerous outstanding claims against its health plan. Valley gage paid off approximately \$25,000 of the \$37,000 of outstanding claims before going out of business this year.

Violations of 940 CMR 9.00

Following an investigation of some companies' failure to pay their health insurance premiums, the Division discovered that three local HMOs were in violation of 940 CMR 9.00. (940 CMR 9.00 is the Attorney General regulation that requires insurance carriers, including HMOs, to pay medical claims unless they have notified employees that the coverage has been canceled for non payment of premium by their employer). The HMOs had refused to pay health insurance claims of employees of a number of companies without first notifying the employees that their coverage had been canceled because of nonpayment. That investigation was ongoing at the end of the fiscal year.

HEALTH COVERAGE

During the 1999 fiscal year, the Division undertook a variety of initiatives in the areas of health insurance coverage and managed care.

Hospital and HMO Community Benefits

A member of the Division oversees the implementation of the Attorney General's HMO Community Benefits Guidelines. During the 1998-99 fiscal year, the Division member provided guidance to the HMOs in their completion of their annual community benefits reports and analyzed those reports.

Community Benefits Task Force

A member of the Division also oversees the Attorney General's Advisory Task Force on Hospital and HMO Community Benefits, which was convened in June 1998 for the purpose of advancing the goals of the Community Benefits Guidelines. This Task Force includes representatives of hospitals, HMOs, insurance carriers, health maintenance organizations, community health advocacy groups and relevant state agencies, and is organized into several working groups that focus on the key elements of community benefits including needs assessment, program evaluation and community participation. There were initially five working groups: (1) Conference Planning (now concluded); (2) Statewide Public Health Initiative; (3) Community Participation; (4) Needs Assessment and Outcomes Evaluation; and (5) Guideline Implementation Issues.

Community Benefits Conference: Good, Better, Best:
Making the Most of Community Benefits

A member of the Division, working with the Task Force, played a lead role in planning a major conference focusing on community benefits best practices that took place in October 1998. The Conference was attended by a diverse group of more than 300 hospital, HMO and community organizations from across the state. Panelists included representatives from Harvard School of Public Health, the Heller School at Brandeis University, Stonehill College, Yale University School of Medicine, the MHA, MAHMO, Health Care for All, the Massachusetts Department of Public Health and representatives from hospitals, HMOs, Blue Cross Blue Shield of Massachusetts and community organizations.

Non-Group Health Insurance Advisory Board

Following the appointment by the Attorney General of the two consumer members to the Nongroup Health Insurance Advisory Board, the Division continued to review the work of the Board.

Balanced Budget Act, Medicare Plus Choice and Prescription Drug Coverage

Following the issuance of regulations by HCFA that implied that the Balanced Budget Act (the "BBA") preempted all state mandated benefits insurance laws, the Division worked with health advocacy organizations. Members of the Division met regularly with the advocates and with members of the Administrative Law Division in challenging the preemption by the BBA of the Massachusetts statute and regulations. The Office litigated the issue in the U.S. District and, following an adverse decision, appealed that decision to the First Circuit.

The Division worked with the Attorney General in the preparation of his testimony presented to the Joint Committee on Health Care of the Massachusetts legislature. The Attorney General supported the expansion of the Senior Pharmacy Program from its current \$750 per year benefit to \$1,500 per year. In addition, the Attorney General supported the expansion of the eligibility requirements so that more seniors would be eligible to participate in the Senior Pharmacy Program.

In addition, a member of the Division works with a coalition of health care advocates seeking to find alternate mechanisms to provide prescription drug coverage for seniors. The Coalition

has drafted and filed proposed legislation which would expand the current Senior Pharmacy Plan to include more elders and to increase the drug benefit.

Infertility Treatment Coverage

Members of the Division investigated the use of age limits by HMOs on the coverage of infertility treatments in violation of the Infertility Benefits Mandate, G. L. M. c. 175, § 47H, i.e., the HMOs would not cover treatments such as artificial insemination for women over 42-45 years of age. Members of the Division met separately with representatives from three HMOs. The HMOs agreed to cease using age limits.

Continuation Coverage after Divorce

A member of the Division participated in a working group made up of various health care advocates to provide education to pro se divorce litigants on their rights to continuing coverage in the event of divorce. The group prepared a brochure to be distributed to all divorce litigants through the probate court. In addition, the group drafted amendments to the current statute to clarify the rights of divorcees to continuing coverage.

LEGAL ACTIONS

Commonwealth v. Fraternal: Following complaints from consumers who had purchased health insurance from the Fraternal Insurance Group, the Division determined that Fraternal was operating an unlicensed insurance company and had over one million dollars in outstanding medical claims with no assets to pay those claims. The Division filed a complaint against Fraternal Insurance Group, its owner, Paul J. Pereira, and obtained a preliminary injunction against them, prohibiting them from engaging in the business of insurance, accepting premiums of fees from consumers in connection with insurance and freezing their bank accounts. The Commonwealth's Motion for Summary Judgment was allowed and judgment has entered for the Commonwealth.

Commonwealth v. Fraternal: Subsequent to the entry of a preliminary injunction prohibiting them from accepting insurance premiums, the defendants, Fraternal Insurance Group, its owner, Paul J. Pereira, accepted insurance premiums from several con-

sumers. The Division filed a contempt of court action and obtained judgment against Mr. Pereira.

Paul J. Pereira (Fraternal) Following suit by the Commonwealth, Mr. Pereira filed for protection under c. 13 of the Federal Bankruptcy code. The Division intervened in the bankruptcy on February 11, 1999. On May 5, 1999, the Division filed a Motion to Dismiss Mr. Pereira's bankruptcy. The bankruptcy was dismissed on June 10, 1999. As a result, Mr. Pereira's assets are no longer under the protection of the Federal Bankruptcy court. This will aid in the recovery of a civil judgment in the amount of approximately \$1.9 million the Division has obtained against Mr. Pereira.

LONG TERM CARE INSURANCE

During the 1998-1999 fiscal year, the Division continued its work in the examination of problems faced by elders in financing nursing home and other long-term care.

Consumer Complaints and Education

The Division responded to numerous consumer inquiries regarding long-term care insurance. A member of the Division made presentations to elder and other organizations concerning long-term care insurance.

Long-term Care Task Force

Members of the Division, together with Bureau attorneys, continued to participate in a statewide Task Force on Long-Term Care Financing (the "Task Force"). The Task Force is a bipartisan effort led by the Attorney General and the Governor to develop strategies to increase the private financing options for long-term care, and to provide financial security to elders who risk impoverishment from the costs of long-term care services. Participants include representatives of the relevant state agencies (Office of the Attorney General, Division of Medical Assistance, Division of Insurance, Executive Office of Elder Affairs, and the Group Insurance Commission), consumer and elder advocacy groups, the insurance industry and long-term care provider organizations. The Task Force is an outgrowth of the Interagency Workgroup on Long-Term Care Financing, in which members of the Division and Bureau attorneys worked with the Division of Insurance, the Division of Medical Assistance and the Executive Office of Elder

Affairs during the first part of the 1997 fiscal year to produce a preliminary report that called for further study of certain issues.

Members of the Division serve on the Task Force Steering Committee, and have worked on and participated in several working groups that studied and made recommendations on a number of issues. These included the redrafting of Division of Insurance regulations on long-term care insurance and the acceleration of death benefits in life insurance policies, public education concerning long-term care financing, and development of alternative insurance products to cover some of the costs of long-term care, such as the offering of long term care insurance to state employees through the Group Insurance Commission. Members of the Division have taken lead roles in drafting major revisions to the Division of Insurance's long-term care insurance and life insurance regulations for the purpose of expanding the private options available for covering the costs of long-term care, while enhancing consumer protection. The revised regulations are set to be promulgated early in the next fiscal year. The work of the Task Force will continue into the next fiscal year with a focus on designing consumer education and disclosure materials.

LIFE INSURANCE LITIGATION

Consumer Complaints

During the year, the Division continued to devote a considerable amount of time and resources to sales practices in the life insurance industry. These practices included the alleged misrepresentations made by various life insurance companies in the sale of their life insurance products. These misrepresentations generally involved "churning" (the practice of turning in old policies for new policies on the representation that the old policies would fully or partly support the new); "vanishing premiums" (the promise that premiums would no longer be necessary after a finite number of years). The Division mediated cases on behalf of individual consumers and also engaged in discussions with several companies that would resolve the cases on a global basis.

Companies with whom members of the Division mediated individual complaints included: Midland Life, Mutual of New York (MONY), Zurich Kemper, Beneficial Standard Life, Consec, Mass Mutual, Boston Mutual, Delaware American life, Presidential and Equitable Life. The Division estimates that benefits to policyholders as a result of its intervention were in excess of \$500,000.

Prudential Life Insurance Company of America Claims Settlement: The Division continued to monitor the Alternative Dispute Resolution ("ADR") process detailed in our consent judgement against The Prudential and in the global class action settlement. In addition, the Division provided advice to policyholders who were dissatisfied with their settlement proposal and wished to appeal the decision. The Division continued to participate in the Regulatory Oversight Group that is conducted by the various states to ensure the fairness of the remediation process. Members of the Division also spend time with policyholders who do not understand the offers made to them. The processing of claims and appeals, and accordingly the Division's work, will continue into the next fiscal year.

Hancock Mutual Insurance Company: On March 25, 1998, the Division filed a consent judgement in which John Hancock agreed to provide global relief for the alleged deceptive sales practices of its agents from 1979 through 1996. The judgment provided relief to approximately 250,000 Massachusetts policyholders. In the litigation, the Division, as in the case against The Prudential, alleged that John Hancock engaged in three primary deceptive sales practices in the sale of whole life, universal life and variable life insurance policies, as well as certain mutual funds and annuities sold during that time frame. The Division alleged that John Hancock engaged in: "churning" or replacement and financing; "vanishing premiums" or "abbreviated premium payment" plans; and selling life insurance as an investment, retirement plan, savings plan or college savings plan, the practice of selling life insurance by either disguising the product as life insurance or minimizing the life insurance of the product.

On May 1, 1998, the Division set up a consumer hotline to assist policyholders in making appropriate elections of either ADR or General Policy Relief ("GPR") and to assist them in filing their claim forms in a manner designed to afford them the best possible relief. Between fiscal year 1998 and fiscal year 1999, the Division received and responded to over 22,000 calls. The hotline was still in operation at the end of the fiscal year.

Between fiscal year 1998 and fiscal year 1999, the Division also conducted twenty-one (21) claim form assistance seminars, traveling across the state to reach as many policyholders as possible. The Division also met in small group sessions twice per week with John Hancock policyholders in order to assist those individuals who need special attention due to disability or age and for those who cannot attend a large group seminar. The Division has met with and assisted almost 3,000 policyholders through personal assistance and seminars.

In addition to consumer outreach, the Division has continued to allocate substantial resources and manpower to monitoring and participating in the training of claims analysts. The Division conducted four audits of the ADR claims and brought its concerns to the company's attention which resulted in the retraining of analysts. The Division continues to meet with defendants and plaintiffs' counsel in order to ensure compliance with the letter and spirit of the settlement.

In addition, members of the Division mediated individual complaints for out-of-class policies which has resulted in refunds of \$520,000 to over 50 John Hancock policyholders.

MetLife. Members of the Division began initial discussions with MetLife on the possibility of settling the national class action suit pending against MetLife.. Members of the Division mediated individual complaints against MetLife resulting in refunds of over \$100,000 in cash and \$287,000 in additional death benefits to twenty five MetLife policyholders.

CONSUMER ASSISTANCE

In addition to the many consumer complaints which the Division was able to resolve on behalf of consumers, members of the Division explained and worked with many consumers to guide them in such matters as: understanding the intricacies of various entitlement programs and the interplay between them; the billing practices of their health insurers; continuation of health insurance coverage following termination of employment or following divorce and the like. While no monetary consumer benefit can be placed on these activities, they provide a valuable service to Massachusetts consumers, many of whom are elderly or who have no other sources to turn to for help.

Consumer Mediation

Members of the Division mediated several matters on behalf of consumers throughout the year.

Consumer Hot-Line and Paralegal Resolution of Inquiries and Complaints

During the fiscal year, the Division received and responded to over 9,250 telephone inquiries, an increase of almost three percent from the prior fiscal year. In addition, the Division opened and mediated on behalf of consumers 1371 written complaints. The Division closed 1435 complaints. Over \$1,847,500.00 were received by consumers through the intervention of the paralegal and volunteer interns, an increase of 4.5% over the prior fiscal year.

AGELDER:

The Attorney General's Elder Hotline is a fairly recent initiative that began operation on June 16, 1997. The hotline was established in response to the high volume of calls from, or relating to, the elderly that come into the Attorney General's office. In the past fiscal year, the number of calls and the number of elders helped has continued to increase. The hotline has fielded approximately 5,241 phone calls in the past fiscal year. The hotline staff provides information, referrals, and mediation services to resolve the concerns of callers. The hotline is staffed by 10 elder volunteers and 3 part-time staff members who receive monthly trainings on elder issues. The majority of callers are elders, with an increasing number of calls coming from the children of elders as well as with professionals who deal with elders in the course of their duties. Since its inception, AGELDER has increased its mediation activities and these activities benefitted elders in the amount of \$93,046.23 during the past fiscal year.

The calls are remarkable for their variety, although some trends are discernable. Consumer issues and complaints have been the number one concern. Within this group complaints and queries about businesses and private contractors and reports of telemarketing and other scams directed at the elderly have been primary. Health insurance, especially Medicare, Medigap and Medicare HMOs and long-term care insurance constitute another broad area of concern. The hotline also receives calls about tenant/landlord issues, financial exploitation, home care, benefit programs, health concerns and questions, transportation problems, charities and non-profits and more.

OTHER ACTIVITIES

Legislative Activities

A member of the Division testified, on behalf of the Attorney General, before the Massachusetts Joint Committee of Insurance in support of two bills, S. 733 and S.734, both bills sponsored by Senator Dianne Wilkerson. Both bills would prohibit discrimination by insurance companies on the basis of gender.

Guest Speakers

Members of the Division made presentations to several organizations regarding insurance and financial exploitation of seniors.

ESTIMATED SAVINGS TO CONSUMERS

Auto Rate Case	443,000,000
Medigap Insurance Rate Cases	43,674,347
FAIR Rate Case	115,983
Life Insurance Individual Case Mediation	1,297,000
Consumer Hotline	1,847,500
AGELDER Mediation	93,046
<hr/>	
Total	490,027,876

UTILITIES

The bulk of the utility workload of the Regulated Industries Division in fiscal year 1999 involved advocacy of consumer interests in connection with the implementation of the dramatic changes underway in the telephone, electric and gas utility industries. There was only one traditional rate case, but a number of proceedings related to mergers between utility companies — two mergers between gas utilities were approved and another was proposed as were two involving electric utilities. Implementation of the 1997 Electric Restructuring Act (St.1997, c. 164) continued with the final proceedings on individual electric utility company restructuring plans as well as proceedings concerning sales of electric generating facilities, annual transition cost reconciliation filings, and the design of the “default” power service that must be made available to all customers. Work continued among interested parties to make competitive gas supplies available to more customers and the further progress was made at expanding the range of activities in which competition could occur in the telecommunications industry. The Division was an active participant in all of these developments. It advocated new structures and rules to maximize the consumer benefits from the change in regulatory approach as well as to protect the interests of small residential and business customers during the transition to new regulatory frameworks. Most of this work occurred in adjudications of specific cases. Examples of the Division’s public utility work relative to each industry in fiscal year 1999 include the following:

UTILITY MERGERS

Eastern Enterprises – Essex Gas Company, D.T.E. 98-27

On February 27, 1998, Eastern Enterprises (the corporate parent of Boston Gas Company) and Essex County Gas Company filed a joint petition in connection with a proposed merger in which they sought DTE approval of a “rate plan” under G.L. c. 164, § 94. Among other things, the rate plan called for the current rates of Essex to be “frozen” at current levels for 10 years and for Essex to be allowed to amortize the acquisition premia and other costs of the merger during that 10 year period. The Division opposed DTE approval of this rate plan on the grounds that a rate freeze would harm, not benefit Essex’s customers and, thus, that the Companies had not made the required demonstration that allowing the recovery of acquisition premia costs would not harm consumers, that in addition, the Division urged the DTE to require the Company to implement a plan to ensure the quality of the service provided to Essex’s customers did not deteriorate as a result of the merger. In a decision issued on September 17, 1998, the DTE concluded that a rate freeze would benefit customers and approved the rate plan, but it did require the

Companies to put into place a service quality plan.

Northern Indiana Public Service Company – Bay State Gas Company, D.T.E. 98-31

On March 209, 1998, Northern Indiana Public Service Company ("NIPSCo") and Bay State Gas Company filed a joint petition in connection with the proposed acquisition of Bay State by NIPSCo in which they sought DTE approval of the transaction under G.L. c. 164, § 96 and of a "rate plan" under G.L. c. 164, § 94. The rate plan called for the rates of Bay State that would be in place November 1999 (the end of an earlier rate plan) to be frozen for five years, but with rate reductions required/rate increases allowed to the extent the Company's earnings exceeded/fell below certain levels. The rate plan also provided for Bay State being permitted to recover the costs of the transaction in the future to the extent that it demonstrated that those costs had been offset by savings resulting from the merger. The Division opposed DTE approval of this rate plan on the grounds that a rate freeze would result in Bay State's customers paying higher rates than they otherwise would and argued that the Companies had not demonstrated that allowing the recovery of acquisition premia costs would not harm consumers. In addition, the Division urged the DTE to require the Company to implement a plan to ensure the quality of the service provided to Essex's customers did not deteriorate as a result of the merger. In a decision issued on November 5, 1998, the DTE concluded that a rate freeze would benefit customers and approved the rate plan, but it did require the Companies to put into place a service quality plan.

Eastern Enterprises – Colonial Gas Company, D.T.E. 98-128 On December 24, 1998, 1999, Eastern Enterprises (the corporate parent of Boston Gas Company and Essex County Gas Company) and Colonial Gas Company filed a joint petition in connection with a proposed merger in which they sought DTE approval of a "rate plan" under G.L. c. 164, § 94. Among other things, the rate plan called for the current rates of Colonial to be "frozen" at current levels for 10 years, as well as for Colonial being permitted to include in its rates over the subsequent 10 years an annual charge of approximately \$12.3 million to offset "costs" from the merger to the extent its rates in 2009 are less than the level that they would have attained had its 1998 rates been increased by \$8.5 million (10 percent) and then been further increased each year between 1999 and 2000 by the overall rate of inflation less 1.5 percent. The Division opposed DTE approval of this rate plan on the grounds that its approval would result in "harm" to consumers. The Division sponsored two expert witnesses and argued during the course of eight days of evidentiary hearings and in briefs filed in May 1999, that Colonial's current rates were excessive and

that approval of the Companies' proposal would result in Colonial's customers paying higher rates than they would in the absence of the rate plan. A decision in this case had not been issued at the close of the fiscal year.

BEC Energy – Commonwealth Energy System, D.T.E. 99-19

On February 1, 1999, BEC Energy (the corporate parent of Boston Edison Company) and Commonwealth Energy System (the public utility holding company parent of Cambridge Electric Light Company, Commonwealth Electric Company, Canal Electric Company and Commonwealth Gas Company) filed a joint petition in connection with a proposed merger in which they sought DTE approval of a "rate plan" under G.L. c. 164, § 94. The rate plan called for the current rates for all four utility subsidiaries to be "frozen" at current levels for four years as well as DTE approval of the utilities recovering through rates over the next 40 years approximately \$1 billion in "costs" resulting from the merger. The Division was an active participant in the DTE proceeding, opposing the rate plan on the grounds that its approval would result in "harm" to consumers because the Companies had not shown that their current rates were reasonable or the rates that would result under the plan (with the inclusion of the merger costs) would be reasonable. Following several days of evidentiary hearings, including testimony by two expert witnesses sponsored by the Division, briefs were filed in May and June 1999. A decision in this case had not been issued at the close of the fiscal year.

New England Electric System – Eastern Utilities Associates, D.T.E. 99-47

On April 30, 1999, Massachusetts Electric Company and its wholesale affiliate, New England Power Company, together with Eastern Edison Company and its wholesale affiliate, Montaup Electric Company, filed a joint petition with the DTE seeking approval of the merger of Eastern Utilities Associate's electric company operating subsidiaries into the New England Electric System's ("NEES") electric company operating subsidiaries as well as of rate plan for MassElectric after the merger with Eastern Edison. The proposed rate plan included provisions concerning the recovery of the acquisition premium and transaction costs associated with the acquisition of EUA by NEES as well as the acquisition of NEES by National Grid Company. The DTE held public hearings on the proposal during June 1999, but evidentiary hearings had not yet begun at the close of the fiscal year.

ELECTRIC MATTERSElectric Restructuring Plans**Western Massachusetts Electric Company, D.T.E. 97-120.**

As required under the terms of the Electric Utility Restructuring Act, on December 31, 1997, Western Massachusetts Electric Company filed a proposed restructuring plan with the DTE, which it supplemented in January 1998. Following a review of the Company's proposal and two evening public hearings, the Division filed comments with the DTE, arguing that the proposal did not satisfy the standards of the Act. In a February 1998 decision, the DTE granted interim approval to the Company's plan, but ordered minor modifications as well as further review and investigation. The Company modified its plan in May and later filed testimony in support of its proposal for the treatment costs related to its Millstone nuclear facilities. During 27 days of evidentiary hearings held between September 1998 and January 1999, the Division opposed the Company's plan through cross-examination of the Company's witnesses as well as through the presentation of the testimony of four expert witnesses who, among other things, proposed another approach to the Company's nuclear costs which reduced its recovery of nuclear costs to reflect the impact that years of mismanagement had on the market value of those facilities. The Division also opposed the Company's proposal to shift onto Massachusetts customers responsibility for costs that had previously been borne by the customers of its Connecticut affiliate as well as a number of erroneous approaches to accounting issues proposed by the Company. Briefs were filed in March and April 1999 and a decision by the DTE was pending at the close of the fiscal year.

Fitchburg Gas & Electric Light Company (DTE 97-115)

As required under the terms of the Electric Utility Restructuring Act, on December 31, 1997, Fitchburg Gas & Electric Light Company filed a proposed restructuring plan with the DTE, to which the DTE granted interim approval in February 1998. Following four days of evidentiary hearings, the Division filed briefs in May 1998 in which it urged the DTE to modify the Company's proposal to, among other things, include lower distribution rates, require that the accounting for the Company's earlier Seabrook loss be brought in compliance with a 1985 settlement, and reduce the amount of the balance claimed by the Company for deferred income tax liabilities related to its electric generating investments. In a decision issued on January 15, 1999, the DTE rejected the proposal for lower distribution rates but generally agreed with the Division's position on the interpretation of

the 1985 agreement on the Company's Seabrook, loss as well as on the treatment to be given to revenue shortfalls resulting from discount power contracts and the design of the low income rates required under the Electric Restructuring Act. The DTE deferred final resolution of the Seabrook and deferred income tax issues until the results of an independent audit.

Generation Asset Divestiture

Boston Edison Company/Commonwealth Electric Company, D.T.E. 98-118/119/126.

In December 1998, Boston Edison filed a petition with the DTE seeking approval of an agreement to sell its Pilgrim nuclear power plant to a wholly owned subsidiary of Entergy Corporation and, pursuant to G.L. c. 164, § 1H, to "securitize" (refinance with bonds supported by a pledge of transition charge revenues) approximately \$730 million of its remaining stranded costs. Commonwealth Electric Company, a contract purchaser of 11 percent of the output from Pilgrim, had entered into an agreement to terminate its life-of-unit agreement with Boston Edison and a substitute agreement with the Entergy subsidiary. ComElectric also filed a petition with the DTE seeking approval of its agreements. The DTE consolidated its consideration of the ComElectric petition with the two related Boston Edison proceedings. The Division participated in six days of evidentiary hearings and filed Initial and Reply Briefs in March 1999 arguing that the limited financial resources of the single purpose Entergy subsidiary impaired substantially the claimed value to Edison's customers of the transfer to that subsidiary of the Pilgrim decommissioning liability. In addition, the Division argued that the Company's earlier settlement agreement precluded Edison's proposal to shift onto its retail customers Pilgrim related stranded costs recovered previously under wholesale service contracts with municipal customers. On March 22, 1999, the Department approved the sale of Pilgrim and the related ComElectric proposals without modification. On April 2, 1999, the DTE approved the Company's securitization proposal.

Eastern Edison Company/Montaup Electric Company, D.T.E. 99-9

On January 7, 1999, Eastern Edison and its wholesale affiliate, Montaup Electric Company, filed a petition with the Department requesting approval of the sale by Montaup of its minority interest (2.89989 percent) in Seabrook to Little Bay Power Corporation, a yet to be formed affiliated of Great Bay Power Corporation ("Great Bay"), a single purpose corporation formed in the 1980s to take title to another minority interest in the Seabrook plant divested as a part of the bankruptcy plan of EUA Power Corp., a former affiliate of

Eastern and Montaup. Following evidentiary hearings, the Division filed briefs in April and June urging the DTE to reject the sale. The Division argued that Montaup had not maximized the benefits to consumers because the requirement that Little Bay assume Montaup's liability for decommissioning Seabrook reduced the sales price while the purported transfer of liability had little value in light of the fact that Little Bay lacked the financial strength to withstand any adverse developments at the plant. The Division argued that a premature shutdown of the plant would be likely to lead to a decommissioning default by Little Bay and such a development would result in harm to Massachusetts consumers, potentially even the customers of Eastern, who could possibly be required to make up any resulting shortfall. A decision was pending at the end of the fiscal year.

Eastern Edison Company/Montaup Electric Company, D.T.E. 99-105

On November 21, 1997, Eastern Edison Company ("Eastern") and its wholesale affiliate, Montaup Electric Company ("Montaup"), (collectively the "Companies"), filed a petition seeking DTE approval of the sale of the Montaup's Somerset station and Montaup's 1.96 percent minority interest in Wyman Station. Following two days of evidentiary hearings, the Division entered into a stipulation with Montaup reserving all rate issues for a Montaup proceeding before the Federal Energy Regulatory Commission and, subject to the terms of that agreement, the DTE approved the sales in a decision issued on April 27, 1999.

Commonwealth Electric Company, Cambridge Electric Light Company, Canal Electric Company/Eastern Edison Company, Montaup Electric Company, DTE 98-78/83

On July 31, 1998, the electric subsidiaries of the Commonwealth Energy System — Commonwealth Electric Company ("ComElectric"), Cambridge Electric Light ("CELCo"), and Canal Electric Company ("Canal") — filed a joint petition with the DTE seeking approval of the sale of substantially all of their non-nuclear generating facilities to Southern Energy New England, the allocation of the proceeds between the two retail subsidiaries — CELCo and ComElectric — and the terms under which those proceeds would be returned to those companies' retail customers. On August 7, Eastern Edison Company and its wholesale affiliate, Montaup Electric Company, filed a petition with the DTE seeking approval of the sale to Southern Energy of Montaup's minority interest in one of the ComEnergy generating units. The two proceedings were consolidated. Following three days of evidentiary hearings, the Division filed Initial and Reply Briefs in which it urged the Department to approve the sale as well as the proposed allocation of

proceeds between ComElectric and CELCo, but to reject the Companies' proposal to pay carrying costs on the balance of proceeds to be returned to customers at a significantly lower rate than the carrying costs paid by customers on the unamortized balance of the Companies' transition costs. Harvard University and Massachusetts Institute of Technology filed briefs arguing that the Companies should be required to allocate a greater portion of the proceeds to CELCo. In an order issued on October 30, 1998, the DTE approved the sale but deferred ruling on the allocation and carrying cost issues pending the development of further information at supplemental hearings. Following a day of supplemental evidentiary hearings, the Division filed a supplemental brief and on December 23, the DTE issued an order in which it adopted an allocation of the proceeds consistent with the position taken by the Division but allowing the Companies' carrying cost proposal, subject to a later review of the Companies' efforts to maximize the benefits to their customers from the proceeds.

Eastern Edison Company, D.T.E. 99-21

On February 16, 1999, Eastern Edison filed a petition with the Department seeking approval, pursuant to G.L. 164 § 17A, to guaranty payment of the obligations of its wholesale affiliate, Montaup Electric Company, under an agreement whereby Montaup transferred to Constellation Power Source, Inc. ("Constellation") its rights to power under various power purchase agreements and its entitlement to power from Hydro Quebec in exchange for Constellation's agreement to supply power to serve Eastern's standard offer. Following an evidentiary hearing, the Division notified the Department that it would not oppose approval of the petition. A DTE decision had not been issued at the end of the fiscal year.

Fitchburg Gas & Electric Light Company, D.T.E. 98-121

On November 20, 1998, Fitchburg Gas & Electric Light Company filed a petition seeking DTE approval of a proposed sale of its minority interest in United Illuminating Company's New Haven Harbor generating station. Following discovery, the Division notified the DTE that it would not challenge the proposed sale but would participate in the later proceeding in which the Department would consider the appropriate rate treatment to be given the proceeds from the sale.

Western Massachusetts Electric Company, D.T.E. 99-29

On May 4, 1999, Western Massachusetts Electric Company filed a petition seeking DTE approval of an agreement to sell its fossil generating facilities to Consolidated Edison

Energy, Inc. and of a proposal to allow the Company to retain a portion of the proceeds. Following a favorable ruling by the hearing officer limiting the scope of the proceeding to the question of whether the terms of the sale satisfied the requirements of the Electric Restructuring Act, the Division notified the DTE that it did not oppose the sale. A DTE decision had not been issued by the close of the fiscal year.

Miscellaneous Electric Restructuring Proceedings

Boston Edison Company, D.T.E. 98-111.

On November 4, 1998, Boston Edison filed with the DTE proposed new rates and charges designed to provide the first annual reconciliation of its transition charge and to increase the price of its standard offer. In comments filed in December, the Division argued that the filing represented a "general increase in rates" and that the Department should hold a hearing on the propriety of the Company's proposal. In a decision issued on December 31, 1998, the DTE allowed the Company's proposal to go into effect but agreed that hearings were appropriate. Hearings were held in early March and in briefs filed in April, the Division urged the Department to reject the Company's proposal regarding the pension expenses related to its former generation employees, the treatment of revenues from sales of power from its former fossil plants, and the computations required under provisions of an earlier settlement agreement creating performance incentives governing the Company's recovery of Pilgrim related costs. A DTE decision had not been issued by the close of the fiscal year.

Boston Edison Company, D.T. E. 97-95

In October 1997, the DTE opened an investigation to determine whether Boston Edison had complied with the terms of a 1993 DTE order which approved up to \$45 million of investments into an unregulated subsidiary for the express purpose of pursuing investments in three specified areas: demand side management, electric motor vehicles, and power generation. The focus of the investigation was the Company's involvement in a telecommunications/cable TV joint venture with RCN Corporation which involved cash investments, transfers of assets, and guarantees of indebtedness. During 27 days of hearings, ending in March 1999, Boston Edison and Cablevision of Boston presented 13 witnesses. Although it acknowledged the pro-competition impact on the market for cable TV and telecommunications services that resulted from the Company's investment, in briefs filed in May and June, the Division argued that Company had failed to comply with the 1993 order. In particular, the Division argued that the Company had made

investments beyond the \$45 million authorization and that the joint venture was outside the scope of the activities in which the DTE approved investments in its 1993 decision. The Division urged the DTE to require the Company to divest its interest in the joint venture and to credit its electric customers with any gain. A DTE decision had not been issued at the close of the fiscal year.

Fitchburg Gas & Electric Light Company, D.T.E. 98-120

On October 30, 1998, Fitchburg Gas & Electric Light Company filed a petition with the DTE seeking approval of a contract with Constellation Power Sources, Inc. ("Constellation") to supply the Company's entire standard offer service load between January 1, 1999 and February 28, 2005 and a motion seeking a protective order against disclosure of the terms and pricing of the contract. The Division opposed the Company's motion for a protective order. In its January 15, 1999, decision on the Company's restructuring plan, the DTE approved the contract and denied that portion of the Company's motion that sought protection against disclosure of the pricing terms of the contract but allowed that portion concerning non-pricing terms.

Fuel Clause Balances, D.T.E. 98-13

On January 22, 1998, the DTE issued a notice of inquiry soliciting comments regarding the treatment of any outstanding fuel and purchased power costs balances owed by or to utilities at the March 1, 1998 openings of the retail power market to competition and the termination of fuel clause recovery of such costs. In comments, the Division urged the DTE to consider limiting the scope of the inquiry to the identification of appropriate mechanisms to address any balances found owed or owing in individual company specific filings and the of the number of outstanding performance issues for each company. As of the close of the fiscal year, the DTE had not yet issued a decision delineating the scope of the proceeding.

GAS MATTERS

Base Rate Cases

Fitchburg Gas & Electric Light Company (DTE 98-51) In May 1998, Fitchburg Gas & Electric Light Company filed a request to increase its gas rates by \$1.55 million (9%). Following 13 days of evidentiary hearings, the Division filed briefs in October 1998, in which it urged the DTE to reject the Company's proposals to: increase substantially the

rate at which it depreciates its assets and implement rate redesigns that would result in substantial increases for some customers. In addition, the Division argued that the DTE should find that the Company's had violated the provisions of the DTE's cost of gas adjustment (CGA) regulations concerning the collection of gas inventory financing costs and require the Company to return the monies wrongfully collected to its customers. In a decision issued on November 30, 1998, the DTE allowed the Company to increase its depreciation rates, with the result that it approved a \$911,883 increase in the Company's rates. The DTE did accept the Division's position on the requirements of the DTE's CGA regulations, but deferred ruling on any remedy pending further review in a subsequent proceeding to be initiated. In a subsequent decision on a motion by the Company for recalculation, the DTE increased the amount of the approved rate increase by \$86,278. On March 15, the Company filed a petition seeking an exception from the provisions of the Department's CGA regulations. Hearings in this matter, *D.T.E. 99-32*, were scheduled to begin after the end of the fiscal year.

Gas Unbundling/Restructuring

Unbundling of Natural Gas Distribution Services, D.T.E. 98-32-B. During the fiscal year, important developments occurred in connection with ongoing effort to restructure the existing natural gas industry to allow all customers to choose among competing suppliers of gas to be delivered by the local distribution company. This undertaking began in 1997 when the Department of Public Utilities, the predecessor of the DTE, directed the 10 local gas distribution companies to initiate an informal process to build a consensus among various interested parties on principles upon which to restructure the existing industry. The Division has participated in this process, representing the interests of residential and small business customers in numerous meetings and technical conferences, urging, among other things, the principle that any restructuring or unbundling should not result in an unfair shift of costs from large to small customers. Most of this effort has been taken as a member of the so-called "Customer Group" (an informal coalition including the Division of Energy Resources as well as representatives of business customers). As a result of the inability of the interested parties to reach an agreement on the allocation of responsibility for the cost of the gas companies' existing gas supply capacity commitments, in April 1998, the DTE opened a notice of inquiry to examine the question of how to dispose of that capacity as well as the question of allocation of responsibility for those costs. In May and June 1998, the Customer Group had filed two rounds of comments and given testimony in support of a requirement that

existing customers of gas companies be assigned their pro-rata share of supply capacity if they elect to purchase gas from a third party. On February 1, 1999, the DTE issued its decision in which it adopted the "mandatory assignment" position advocated by the Customer Group and set October 1, 1999 as the date upon which all of the gas companies would be required to provide to all of their customers the option to purchase gas from competitive suppliers.

To assure continuation of a market for gas supplies for those customers that already had competitive alternatives, the Division entered into a settlement agreement with interested parties that: (1) exempted customers who had migrated to transportation service before February 1, 1999 from the mandatory assignment of capacity and (2) provided that those customers who entered into supply contracts between February 1 and November 1, 1999 (including a significant number of residential customers) would pay \$0.01/ therm or CCF in lieu of a mandatory assignment of capacity through November 1, 2000, after which they will be assigned their respective slices system capacity, with the funds collected being applied to reduce the gas supply costs of residential customers. On April 2, 1999, the DTE approved the settlement. At the close of the fiscal year, the gas utilities had not completed all of the tasks necessary to implement restructuring.

TELEPHONE MATTERS

Area Codes

Area Code Conservation in Eastern Massachusetts DTE 98-38.

Shortly before the May 1, 1998, completion of the implementation of the two new area codes created as a result of a January 23, 1997 DTE order (781 and 978), the national administrator of North American Number Plan announced an imminent shortage of number resources in the 508 and 617 area codes (March 4, 1998) and as well as in the new 781 and 978 area codes (May 12, 1998). On April 24, 1998, the DTE opened an investigation to evaluate means to delay the need for new area codes. The Division intervened in this proceeding and on June 1, 1998, filed a motion seeking an emergency order from the DTE requiring all telephone companies to conserve numbers through the implementation of "virtual number pooling," an approach to number resource conservation that increases the efficiency with which number resources are used. Shortly after the beginning of the fiscal year, the industry adopted a voluntary number pooling plan that

provided much of the number resource conservation sought in the Division's earlier motion. On March 19, 1999, the Division filed with the Department a report addressing rate center consolidation, another number conservation mechanism that would reduce the new number resources needed by new entrants in the market. Hearings on the rate center consolidation proposal were scheduled to occur after the close of the fiscal year.

Area Code Relief in Eastern Massachusetts, DTE 98-11.

On January 11, 1999, the DTE opened an investigation to consider alternative means to add new area codes in eastern Massachusetts: further division of the geographic areas covered by the existing area codes, or the implementation of multiple area codes within geographic areas covered presently by a single existing area code. Following public hearings, the Division made a request, which was rejected by the DTE, for evidentiary hearings on issues raised during the course of evening public hearings held throughout the state. A DTE decision had not been issued at the close of the fiscal year.

DTE Petition For FCC Waivers, NSD File No. L-99-17, 19.

In April 1999, the Division filed written comments with the Federal Communications Commission supporting February 1999 requests by the DTE for authority to implement a technology-specific overlay (*i.e.*, a separate area code for mobile phones) and/or other various area code conservation measures in the 508, 617, 781, and 978 area codes. An FCC decision had not been issued at the close of the fiscal year.

MISCELLANEOUS

Telesave, Inc. DTE 98-59.

On June 15, 1998, Telesave, Inc. filed a complaint with the DTE alleging that Bell Atlantic engaged in unjust and unreasonable practices by refusing to accept e-mail from its customers as a valid means to communicate their intention to change long distance service providers. The Division intervened in this proceeding on behalf of Bell Atlantic's customers. Following hearings in November 1998, the Division filed briefs arguing that subject to appropriate safeguards to ensure secure communications between the Company and its customers, Bell Atlantic should be required to accept e-mail as a valid means for customers to communicate their long distance carrier selection decisions. In a decision issued on May 21, the DTE required Bell Atlantic to accept electronic communications from its customers, but through a secure web site rather than e-mail. On June 11, Bell Atlantic filed a motion seeking reconsideration of the DTE and that motion was pending at the close of the fiscal year.

OPINIONS

No. 98/99-1



SCOTT HARSHBARGER
ATTORNEY GENERAL

The Commonwealth of Massachusetts

Office of the Attorney General

One Ashburton Place

Boston, MA 02108-1698

No. 98/99-1

September 4, 1998

Honorable William F. Galvin
Secretary of the Commonwealth
One Ashburton Place
Boston, MA 02108

Dear Secretary Galvin:

You recently transmitted to me a series of proposed ballot questions and requested my opinion whether those questions are ones of "public policy" within the meaning of G.L. c. 53, § 19, and, if so, what simple, unequivocal and adequate form is best suited for presentation of these questions on the November, 1998, ballot. I have reviewed the proposed questions and have concluded that, with two exceptions, each is a public policy question that may appear, in the form provided herein, on the November ballot.

The principles governing my review of proposed ballot questions are well settled, have been reviewed in prior Opinions of the Attorney General, and accordingly need not be extensively reviewed here. See, e.g., 1990-91 Op. Att'y Gen. No. 1, Rep. A.G., Pub. Doc. No. 12 at 78 (1990); 1988-89 Op. Att'y Gen. No. 1, Rep. A.G., Pub. Doc. 12 at 102 (1988). It is sufficient to say that each question must (1) involve a determination of what governmental action is desirable or necessary for the public interest, as opposed to individual concerns; (2) relate to an important public matter in which every citizen of the Commonwealth would have an interest, even if the direct impact of the question is confined in some way to a specific geographic area; and (3) be consistent with the powers of the Legislature and involve a subject matter that is fit for legislative action. With two exceptions, each of the questions proposed here meets these standards.

The first question I must disapprove asks:

Do you approve of the construction of a new high school at Legion Field, East Weymouth?

Viewed generally, this question appears to concern the construction of public educational facilities, a subject that may be viewed as of state-wide concern. The question is not necessarily deficient, therefore, because it concerns only a single town. On its face, however, the question does not contain an instruction to a State Senator or Representative on a matter that is appropriate for legislative action; rather, it contemplates only action at the local level--a decision by the town of Weymouth regarding the siting of a new high school. See 1968-69 Op. Att'y Gen. No. 5, Rep. A.G., Pub. Doc. No 12 at 38 (1968) (Attorney General may draw reasonable inferences from the form of the statement of the question in the petition). This view is confirmed by information, including news accounts, indicating that the decision regarding the siting of the new school will be determined at a special town meeting in Weymouth. See id. (in reviewing public policy questions, Attorney General may rely on such facts of common knowledge, actual or presumed, in the voting district concerned as may be reasonable). The question, therefore, clearly violates the requirement that public policy questions pursuant to G.L. c. 53, § 19, instruct state legislators on matters fit for legislative action. See 1990-91 Op. Att'y Gen. No.1 at 81 (rejecting proposed question asking whether town should institute a traffic safety operation on ground that it sought action from town officials rather than the state legislature).

The second proposed ballot question I must disapprove states:

We call for the removal of the chain link fence from the A. Piatt Andrew Bridge. We believe this project should not have gone forward without public input and approval. Though the motivation for the fence was well intentioned, the fence is ineffective and is aesthetically unacceptable.

On its face, this proposal (which, I am informed, concerns a bridge in Gloucester) does not take the form of an instruction to a State Senator or Representative. Voters considering this question, therefore, would not be informed that they are instructing their legislator, as G.L. c. 53, § 19, contemplates.¹ Moreover, the proposal fails to include a sufficient description of a law for

¹ An informational booklet prepared by the Secretary of the Commonwealth on State Ballot Question Petitions recommends that public policy questions take the following form: "Shall the (senator or representative) from this district be instructed to vote in favor of legislation (describe the legislation you wish to be enacted)?"

which a legislator should vote; rather, it comments on the perceived inadequacies of the fence and on the circumstances regarding its origination.² Public policy questions properly “involve determinations of what governmental action is desirable or necessary for the public interest, as . . . contrasted to statements of fact,” 1988-89, Op. Att’y Gen. No. 1 at 103.

In addition, one other ballot question merits discussion. That question asks:

Shall the state representative from this district be instructed to vote in favor of legislation requiring that the nuclear reactor presently operating in Cambridge on Albany Street near Mass. Ave. and MIT, be removed forthwith out of Cambridge to a safer and less densely populated area?

The question arises whether this legislation, if enacted, would be preempted by the federal Atomic Energy Act of 1954. See, e.g., English v. General Elec. Co., 496 U.S. 72, 80-82 (1990) (issues regarding radiological safety of nuclear plants are preempted by federal government), and, consequently, whether the subject matter of the question would be fit for state legislative action.

Prior opinions of Attorneys General have established not only that traditionally a broad view has been taken of what constitutes an appropriate question of public policy under G.L. c. 53, §§ 19-21, see 1988-89 Op. Att’y Gen. No. 1 at 102, but also that “in ascertaining whether a question is one of ‘public policy,’” the Attorney General’s review “does not and cannot extend to a consideration of the constitutionality of any legislation that might eventually be enacted as a result of the voters’ instruction.” 1986-87 Op. Att’y Gen. No. 2, Rep. A.G., Pub. Doc. No. 12 at 55 (1986). For the same reasons, my review does not and cannot extend to a consideration of the possibility that legislation enacted as a result of a public policy instruction might be preempted by federal law: the exact form of the action that might be taken by the Legislature based on the result of the voters’ instruction cannot now be foreseen; and, like questions of constitutionality,

² Thus, it is unclear, for example, whether the law should provide for the removal of the fence, for the removal of the fence until the public has had its opportunity for review, for the removal of the fence and its replacement by a fence that is more effective or aesthetically acceptable, or some other variation. For the Attorney General and the Secretary of State to alter materially the substance of a question when drafting it would be contrary to G.L. c. 53, § 19, and could interfere with proponents’ right to put an instruction before the Legislature. Moreover, revisions that materially change a proposed question would raise serious doubt whether the signature requirements of § 19 have been satisfied, because the question is no longer substantially the same as what was originally presented by petition to the voters. The authority of the Attorney General and Secretary of State to draft an approved question in “such simple, unequivocal and adequate form as shall be deemed best suited for presentation upon the ballot,” G.L. c. 53, § 19, does not encompass the kind of substantive revisions that this proposed question would require. See 1988-89 Op. Att’y Gen. No. 1 at 105, n.7.

questions of federal preemption that might result from one form of action might not be presented if that action took another form. See 1994-95 Op. Att'y Gen.No. 2, Rep. A.G., Pub. Doc. No. 12 at 199-200 (1994).³

In conclusion, each of the proposed questions may appear on the ballot, in the district(s) indicated, in the following form, which had been developed in consultation with your staff:

First Berkshire, Second Berkshire,
Third Berkshire and Fourth Berkshire Representative Districts

Shall the state representative from this district be instructed to vote in favor of legislation that would change the Berkshire County Commission, enabling it to become a stronger, more effective, and more locally controlled agency with a mission to develop and implement regional policies regarding economic development, transportation, environmental protection, land use, water, sewage, education and other county services?

Third Berkshire Representative District

Shall the state representative from this district be instructed to vote in favor of legislation prohibiting state action in support of the Environmental Protection Agency's designation of the General Electric plant, the Housatonic River, and off-site PCB landfill areas as a Superfund site?

Berkshire, Franklin, Hampden & Hampshire Senatorial District

Shall the state senator from this district be instructed to vote against the elimination of county government, which elimination would allow the state to take over the county courthouses, the Berkshire County House of Correction, and the county's Registries of Deeds?

³ A prior Opinion of the Attorney General did disapprove one public policy question, and suggested the possibility of disapproval of another, on constitutional grounds. See 1984-85 Op. Att'y Gen. No. 2, Rep. A.G., Pub. Doc. No. 12 at 76 (1984). However, I believe that more recent opinions declining to engage in such analysis are more persuasive for the reasons set forth in this opinion. Moreover, public policy questions regarding the subject of nuclear power have been approved in prior Opinions of the Attorney General. See, e.g., 1980-81 Op. Att'y Gen. No. 6, Rep. A.G., Pub. Doc. No. 12 at 110-11 (1980).

Ninth Essex and Twenty-third Middlesex Representative Districts

Shall the state representative from this district be instructed to vote in favor of legislation allowing capital punishment for persons convicted of first degree murder?

Second Norfolk and Tenth Suffolk Representative Districts

Shall the state representative from this district be instructed to vote in favor of legislation to create a health care system for all the residents of Massachusetts that provides universal coverage for comprehensive health care services that includes the freedom to choose doctors and other health care professionals, facilities and services; eliminates the role of insurance companies in health care and creates an insurance trust fund that is publicly administered and fairly funded; and, in order to safeguard the availability of quality health care, stops the buying, selling, managing and closing down of health care facilities by for-profit corporations?

Twenty Eighth Middlesex Representative District

1. Shall the state representative from this district be instructed to vote in favor of legislation requiring that the nuclear reactor presently operating in Cambridge on Albany Street near Massachusetts Ave. and the Massachusetts Institute of Technology be removed immediately out of Cambridge to a safer and less densely populated area?

2. Shall the state representative from this district be instructed to vote in favor of legislation stimulating increased production and availability of affordable housing for middle class and low income residents of Massachusetts, including rental and home ownership?

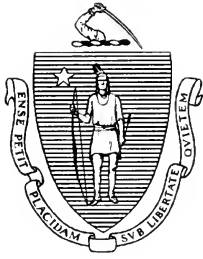
3. Shall the state representative from this district be instructed to vote in favor of legislation providing for universal, affordable, comprehensive health insurance for all residents of Massachusetts, and providing for a health care bill of rights for all residents of Massachusetts?

* * *

In accordance with the practice of prior Attorneys General, I have not made any independent inquiry whether the above questions meet the additional requirements for public policy questions set forth in G.L. c. 53, §§ 19-21 (1996 ed.). These requirements involve factual determinations which are more appropriately made by you as Secretary of the Commonwealth. I conclude only that the questions are ones of public policy and may, if these other requirements are met, appear on the ballot in the form set forth above.

Sincerely,

Scott Harshbarger



Office of Attorney General

Tom Reilly

One Ashburton Place

Boston, MA 02108

